

THE MINUTES OF THE REGULAR MEETING OF JULY 14, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, July 14, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson was absent, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Elliott Young, Planner I, and Ms. Ashley Paugh – Recording Secretary.

ADDITIONAL BUSINESS

Annual Administration of Oaths – Mr. Robertson administered Oaths to the Planning and Zoning Commission Members.

REORGANIZATION

Chairman Wheatley announced that Mr. Whitehouse, Planning & Zoning Director would act as Chair for the purpose of electing a Chair, Vice-Chair, and electing Officers.

Mr. Whitehouse opened nominations for the Chairperson.

Ms. Wingate nominated Mr. Wheatley as Chairman. There were no other nominations for Chairman.

Motion by Ms. Hopkins, seconded by Mr. Mears, that the nominations for Chairman be closed.
Motion carried 4-0.

Vote to close nominations by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea.

Motion by Mr. Mears to elect Mr. Wheatley as Chairman, seconded by Ms. Wingate. Motion carried 4-0.

Vote for Mr. Wheatley, as Chairman by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea.

Mr. Whitehouse opened nominations for Vice-Chair.

Mr. Mears nominated Ms. Stevenson as Vice-Chair. There were no other nominations for Vice-Chair.

Motion by Mr. Mears, seconded by Ms. Wingate, that the nominations for Vice-Chair be closed. Motion carried 4-0.

Vote to close nominations by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea.

Motion by Chairman Wheatley, seconded by Ms. Wingate to elect Ms. Stevenson as Vice-Chair. Motion carried 4-0.

Vote Ms. Stevenson as Vice-Chair by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea.

Mr. Whitehouse turned the meeting over to Chairman Wheatley as the now elected Chairman of the Planning & Zoning Commission.

Motion by Ms. Wingate to authorize the Planning and Zoning Director, the Director of Planning and Zoning, or the Assistant Director of Planning and Zoning, and his or her designees to sign Record Plans on behalf of the Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the authorized Plan signers as stated in the motion. Motion carried 4-0.

Vote to close nominations by roll call: Mr. Mears-yea, Ms. Wingate-yea, Mr. Hopkins-yea, Mr. Wheatley-yea.

Mr. Whitehouse announced the Chairman designation was handed back to Chairman Wheatley.

Motion by Ms. Wingate, seconded by Ms. Wingate and carried unanimously to approve the Agenda as circulated. Motion carried 4-0.

Motion by Ms. Wingate, seconded by Mr. Mears to approve the Minutes of the June 9, 2022, Planning and Zoning Commission meeting as circulated Motion carried 4-0.

OTHER BUSINESS

All Climate Storage of Millsboro (F.K.A. Dagsboro Storage Facility) (S-21-38)

Preliminary Site Plan

This is a Preliminary Site Plan for the establishment of a self-storage facility to include nine (9) buildings of non-climate-controlled storage space totaling 19,700 square feet and one (1) building of climate-controlled storage space totaling 100,300 square feet. Staff note that 400 square feet of the climate-controlled building will be used as office space. The parcel is 6.17 acres and is located on the northeast side of Dupont Boulevard (Rt. 113), in the Combined Highway Corridor Overlay Zoning District (CHCOZ). The applicant requests a waiver from the transit and pedestrian accommodations that are required by the overlay district under section § 115-194.1(G) of the Code. The applicant also requests a waiver from the interconnectivity requirement established in section §115-220(B)(16). Staff note that included in the packet is a waiver from retaining the existing native vegetation within the 20-ft. landscape buffer from DuPont Blvd. (Rt. 113) required under Chapter 115-194.1(B). The applicant seeks these waivers due to the facility being secured and fenced self-storage. Zoning: C-1 (General Commercial District) and AR-1 (Agricultural Residential District). Tax Parcel: 233-5.00-153.00. Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Workman’s Crossing (Phase II) (2021-33)

Final Subdivision Plan

This is a Final Subdivision Plan for the subdivision of a 7.66-acre +/- parcel of land into three (3) lots. The property is located on the northeast side of Brittingham Road (S.C.R. 455), 0.16 mile north of the intersection of Brittingham Road (S.C.R. 455) and Pepperbox Road (S.C.R. 66). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of Thursday, June 23rd, 2022. The Final Subdivision Plan complies with the Sussex County Zoning Code and Subdivision Codes and all Conditions of Approval. Tax Parcel: 532-15.00-11.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan as final. Motion carried 4-0.

Red Mill Pond South Amenities (2004-17)

Revised Amenities Plan

This is a Revised Amenities Plan for the construction of a 1,600 square foot clubhouse, 2,040 square foot pickleball court, 1,500 square foot pool, as well as parking and other site improvements to be located within the existing subdivision of The Villages at Red Mill Pond South. The property is located on the north side of Deerwood Lane. The Final Subdivision Plan for The Villages at Red Mill Pond South was approved by the Planning and Zoning Commission at their meeting of Thursday, August 15th, 2007. The applicant has submitted a letter of support from current homeowners within the development, which contains signatures from 30 of the 48 existing homeowners. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 334-5.00-170.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals; therefore, this plan can be considered for preliminary approval with final by staff.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Revised Amenities Plan as Preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Welches Pond (Clubhouse) Amenities (2017-20)

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the construction of a 3,988 square foot clubhouse, 1,568 square foot lanai, 2,964 square foot pool, 1,500 square foot playground, as well as parking and other site improvements to be located within the existing Welches Pond Subdivision. The property is located on the north side of Deaver Circle. The Final Subdivision Plan for Welches Pond was approved by the Planning and Zoning Commission at their meeting of Thursday, July 9th, 2020. The Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Staff note a waiver letter was received on July 13, 2022. The Applicant requests a waiver from parking within the front yard setback under Chapter 115-166(C) and the parking screening required under Chapter 115-166(H). The submitted waiver letter was included within the Supplemental Packet. Tax Parcel: 334-12.00-16.08 (p/o). Zoning: AR-1 (Agricultural Residential District) and GR (General Residential District). Staff are awaiting agency approvals; therefore, this plan can be considered for preliminary approval with final approval to be by staff.

Motion by Ms. Wingate, seconded by Mr. Mears and carried to unanimously to approve the Amenities Plan as Preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Sweetbay Amenities (2018-26)

Preliminary Amenities Plan & Revised Subdivision Plan

This is a Preliminary Amenities Plan for the construction of a 1,400 square foot pool, two (2) 425 square foot structures to contain bathrooms and pool supply storage, a fence, as well as parking and related improvements to be located within the existing subdivision of Sweetbay. The property is located on the north side of Zion Church Road (Route 20) approximately 0.25 mile west of Bayard Road (S.C.R. 384). The Final Subdivision Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, June 11th, 2020. If this Preliminary Amenities Plan is approved, the Applicant will be required to submit a Revised Subdivision Plan for recordation. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 533-11.00-81.00 & 82.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to unanimously to approve the Amenities Plan and Revised Subdivision Plan as preliminary, with final approval to be by the staff upon all agency approvals. Motion carried 4-0.

Lands of Judy L. Pfeiffer & Lands of Atkins

Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus residual lands off a 20-foot access easement. Proposed Lot A will be 6.7499 acres +/- . Lot B will be 5.7531 acres +/- . The residual parcels will be 1.03 and 3.17 acres +/- . The property is located on the southeast side of Seashore Highway (Rt. 18/404). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 231-6.00-22.00 & 22.04. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as preliminary with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Shady Oak DE, LLC

Minor Subdivision off a 28-ft Easement and a 15-foot Easement

This is a Minor Subdivision Plan for the creation of two (2) lots off a 28-foot access easement and a 15-foot access easement. Proposed Lot 4-4-1 will be 1.16 acres +/- . Proposed Lot 4-4-2 will be 2.26 acres +/- . The property is located on the east side of South Old State Road (S.C.R. 213). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-3.00-26.03. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 28-ft. easement and a 15-ft. easement a final. Motion carried 4-0.

OLD BUSINESS

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

The Commission discussed the Ordinance which had been deferred since June 23, 2022.

Mr. Mears moved that the Commission recommend approval of Ordinance No. 22-05 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for a portion of Parcel 334-12.00-16.04 from a Commercial Area Designation to a Coastal Area Designation based on the record made during the public hearing and for the following reasons:

1. The parcel is 21.62 acres of land. A portion of it is designated as the “Commercial Area” according to the Future Land Use Map. The rest of it is designated as “Coastal Area”. This results in the property having two different designations according to the Map. Given the differing rules for the Commercial Area and the Coastal Area, it is appropriate for this property to have one classification on the Future Land Use Map.
2. With the exception of the Saddle Ridge development to the west of this site (which is developed as an MR Medium-Density residential subdivision that is itself inconsistent with its own “Commercial Area” designation), all of the properties that are in the area and that have developed residentially have the “Coastal Area” designation. It is appropriate to bring this entire site under the single “Coastal Area” designation.
3. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
4. This revision of the Future Land Use Map is appropriate given the particular circumstances involved, including the fact that the property has two different Area designations according to the current Future Land Use Map and the fact that the property is in the vicinity of other Coastal Areas that have developed residentially according to the Future Land Use Map. When several factors like this exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of Ordinance No. 22-05, in relation of a portion of 334-12.00-16.04 for the reasons stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Wingate – yea, Mr. Mears- yea, Chairman Wheatley-yea.

C/Z 1949 J.G. Townsend Jr. & Co.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

The Commission discussed the Application which had been deferred since June 23, 2022.

Mr. Mears move that the Commission recommend approval of C/Z 1949 J.G. Townsend, Jr. & Co., for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This Application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This application satisfies the stated purpose of the MR District.
2. Both central water and central sewer will be available on this site.

3. This site is the location of Route 24 at a lighted intersection. DelDOT is planning to widen and improve this section of Route 24 in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is adjacent to the Saddle Ridge development that was developed as an MR residential development. The site is also adjacent to the Love Creek Elementary campus. There are other C-1, CR-1, and B-1 zoning districts along this area of the Route 24 corridor as well. This rezoning is consistent with other zoning and land uses in the area.
5. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The site is located within the Commercial Area and the Coastal Area according to the Future Land Use Map in the Sussex County Comprehensive Plan. Both of these are “Growth Areas” according to this Plan. By separate motion, this Commission has recommended that the Map be amended so that the entire parcel is designated as being within the Coastal Area. MR Zoning is appropriate in this Area according to the Plan.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1949 J.G. Townsend, Jr. & Co., for the reasons stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Wingate – yea, Mr. Mears- yea, Chairman Wheatley-yea.

C/U 2304 J.G. Townsend Jr. & Co.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

The Commission discussed the Application which had been deferred since June 23, 2022.

Mr. Robertson read the motion into the record as requested by Mr. Mears.

Mr. Mears moved that the Commission recommend approval of C/U 2304 J.G. Townsend, Jr. & Co., for 84 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The Commission has recommended that this property be rezoned to MR Medium-Density Residential. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This Conditional Use application for multi-family units is in compliance with the purposes of the MR Zone.
2. Both central water and central sewer will be available to this site.
3. This site is along Route 24 at a lighted intersection that was designed by DelDOT to accommodate this project as well as the adjacent school and police barracks. DelDOT is also planning to improve and widen Route 24 in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection. In addition, although the property is in the Henlopen Transportation Improvement District, or “T.I.D.”, DelDOT has stated that the traffic impact of the development would have a “minimal” impact on area roadways.

4. The site is in the T.I.D. The Developer will be required to pay a set fee into the T.I.D program to cover the cost of off-site roadway improvements throughout the T.I.D Area.
5. The property is in the immediate vicinity of other properties with a variety of residential and institutional uses. The site is next to Love Creek Elementary School and across from Beacon Middle School. It is also near a State Police Barracks. Other residential developments exist nearby along with business and commercial uses along the Route 24 corridor. This conditional use at approximately 4 units per acre is consistent with the mixture of other uses and residential developments in the area.
6. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
7. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is recommended that the entire property be within the Coastal Area according to the Plan, which is a Growth Area. The property is also surrounded by other properties that are designated as being within either the Coastal Area or the Commercial Area according to the Plan. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
8. There are limited wetlands on the property, and a buffer of at least 50 feet will be provided from them.
9. Approximately 11.42 acres or 52% of the site will be preserved as open space including a substantial amount of the existing woodlands.
10. In summary, the proposed project creates additional residential housing options at a density of 3.9 units per acre, an appropriate density in an area served by County sewer and central water, which is near a significant number of commercial uses and employment centers, is in keeping with the character of the area, situated along a main road – a Major Collector (John J. Williams Highway), at a signalized entrance, where DelDOT has ongoing projects on the Capital Transportation Improvement Program consistent with the purpose of both the MR (Medium-Density Residential District) and the Coastal Area designation on the Comprehensive Plan.
11. This recommendation is subject to the following conditions:
 - A. There shall be no more than 84 units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. The developer shall also participate in the TID program and comply with the requirements of it.
 - C. All recreational amenities shall be completed within the development on or before the issuance of the building permit for the 7th residential building to be constructed on the Site. These amenities shall include a pool and bathhouse.
 - D. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - E. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - G. Interior street design shall comply with or exceed Sussex County standards. Sidewalks shall be included on both sides of all streets except "Road A". The sidewalks shall connect with the multi-modal paths required by DelDOT.

- H. Road naming and addressing shall be subject to the review and approval of the Mapping and Addressing Department (A.K.A. Geographic Information Office (GIO)).
- I. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- J. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- K. A 20-foot-wide forested buffer shall be installed along the northern, eastern, and western perimeters of the development and the two outparcels along Route 24. This buffer area shall comply with the planting requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- L. There shall be a buffer that is at least 50 feet wide from all wetlands on the site. There shall be a minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. A street lighting system that provides lighting in a downward direction with minimal up lighting shall be provided.
- P. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2304 J.G. Townsend Jr. & Co., for the reasons and conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Wingate – yea, Mr. Mears- yea, Chairman Wheatley-yea.

PUBLIC HEARINGS

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

2021-29 Deer Creek – A standard subdivision to divide 93.582 acres +/- into 79 single-family lots, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the north side of Staytonville Road (S.C.R. 224), at the northwest corner of the intersection of Staytonville Road (S.C.R. 224) and DuPont Boulevard (Rt. 113). Tax Parcel: 230-19.00-27.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Subdivision Plan, Exhibit Booklet, Soil Report, Staff Review Letter, PLUS comments, the Applicant's response to the PLUS comments, the DelDOT Memorandum, drafted Restrictive Covenants, and Homeowners Association (HOA) documents for the proposed subdivision, a letter from the Sussex

County Engineering Department Utility Planning Division, the Applicant's Chapter 99-9C response, Technical Advisory Committee (TAC) comments, which included letters from the U.S. Department of Agriculture (USDA), the Division of Waste and Hazardous Substances, the State Fire Marshal Office, one letter of opposition, which was circulated to the Commission as it was received after the publication of the Paperless Packet and one mail return.

The Commission found that Mr. David Hutt, Esq., with Morris James, spoke on behalf of the Application; that he is representing Cromer Management, LLC who is the Applicant of the Application; that also present was Mr. Wes Cromer, Principal of Cromer Management, LLC, Mr. Jim Lober, Engineer with The Kercher Group, Inc. a Mott MacDonald company; that the project is a standard subdivision; that the lots are proposed to be 3/4 -acre; that each of the 79 lots are proposed to have onsite well and wastewater treatment disposal systems; that due to being a standard subdivision, there are no superior design requirements; that the Commission had already answered the question as to if the Application met the requirements of Chapter 99-9C of the County Code by having considered the Application previously; that the previous Application went by the same name, "Deer Creek"; that the subdivision application number was 2005-62; that the previous Application for 2005-62 Deer Creek was granted preliminary approval by the Commission on August 24, 2006; that Final Site Plan approval was granted for 2005-62 Deer Creek on April 14, 2010; that due to the downturn of the economy the subdivision did not get built in the time period required within the County Code, causing the project to sunset; that the property is located on Staytonville Rd.; that the property is located 80-ft. away from the intersection on Staytonville Rd. and Rt. 113; that once Staytonville Rd. crosses Rt. 113, the road becomes Flea Town Rd.; that in 2005 when the Carlisle family presented their application to the Commission, they explained the soils were very sandy, not being good farming conditions, and that was their reason for seeking subdivision at that time; that there are a number of standard subdivisions in the area of the property; that the subdivisions include Hudson Pond Acres, Hudson's Mill, and Sussex Woods; that the property consists of a little over 93.5 acres; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the property is located in the Low-Density Area on the Future Land Use Map; that the property is located within Investment Level 4 on the State Strategies for Spending Map; that the current Application is the same as the previous Application, with the same 79 proposed lots; that all of the proposed lots meet the 3/4-acre minimum requirement found in Chapter 99-9C; that all of the proposed lots are intended for single-family detached homes; the proposed density is 0.84 units to the acre; that the proposed density is consistent with the property's designation on the Future Land Use Map; that the proposed project is consistent with the general neighborhood and subdivisions in the area; that the proposed project compliments the existing character of the site; that there are woodlands along the perimeter of the site; that the lots are proposed at the middle of the site; that the lots will comprise 62 acres of the site; that there are approximately 7.8 acres of right of way within the streets and roads; that there are 17 acres of Non-Tidal Wetlands, which largely surround the property; that 5.6 acres of open space or storm management is proposed; that the Non-Tidal Wetlands provide a significant buffer to adjacent properties; that the wetlands meet the function of the required 20-ft. forested landscape buffer; that the Delaware Forest Service did review the proposed plan; that the Delaware Forest Service did issue a letter approving compliance of the required forested landscape buffer; that the buffer currently exists, not requiring to be planted; that there are not wetlands located within the 79 lots; that DelDOT was requested to provide comment on the project through the TAC and PLUS processes; that DelDOT provided a memo on April 1, 2022, stating the warrants are met allowing the Applicant to pay the Area Wide Study Fee and all required off-site improvements required by the Applicant; that the required improvements include the entire frontage of the project on Staytonville Rd.; that no sidewalks are proposed within the subdivision; that the construction of sidewalks would be out of the rural nature of the area and the large nature of lots; that there are no active amenities proposed; that the large sized lots will allow individuals to construct their own activities and amenities on their properties; that this will result in low Homeowner Association (HOA) dues; that the subdivision will be integrated into the

existing terrain and landscape, with the perimeter existing wetlands as a buffer; that there will be no use of wetlands, as no lots will contain any wetlands; that the property is not located within a flood plain; that there are no significant historical features found on the site; that the forested perimeter does offer scenic views for the project; that there will be minimal removal of tree and vegetation; that there will be minimal grade changes; that the only grade changes will be changes necessary to provide positive drainage to the stormwater management features; that the forested perimeter will offer screening from objectionable features and adjacent properties; that the project will be served by onsite wells and onsite septic systems, which will be designed and constructed to State standards; that submitted into the record was the original Soil Feasibility Study for 2005 project; the Soil Feasibility Study was prepared by Coastal Soil Consultants; that Coastal Soil Consultants did return to the site, performing an up to date study; that a report from Coastal Soil Consultants, dated October 2021, confirming the site meets the current regulatory requirements, was submitted into the record; that pollution of surface and groundwater will be minimized, as there will be stormwater management located on site; that the developer will install the stormwater management items; that the Property-owners Association will then take over, being responsible for maintaining the stormwater items; that part of the site is located within an Excellent Recharge Area; that due to this, there are requirements in Chapter 89 which will be met by the Applicant; that the entrance to the project will receive a new approval from DelDOT; that area property values will not be decreased; that it is likely property values will increase with the addition of the project; that the project is located within the Milford School District; that a bus stop with a shelter is proposed to be located near the initial intersection within the project; that the bus stop was part of the requirements for the original approval in 2005; that the current site plan proposes a bus stop, with shelter and four parking spaces in the same area it was previously proposed in 2005; that the project will be compatible with the other uses in the area, including the residential uses in the vicinity along Rt. 113; that the project will not adversely affect the area waterways, as there will be surface and stormwater management plans which will provide the containment and treatment onsite; that all of these things are identical to the previously proposed project in 2005; that initially there was a waiver request placed for the forested landscape buffer; that he was not involved in the initial submission of the Application; that after reviewing the preliminary plan for the project and discussions with Mr. Robertson, it was determined that there would not be a waiver required; that Lot 6 on the site plan does show the rear lot line being within eight feet of the property boundary; that due to the large lot size, there is room to move the rear lot line inward; that this would allow for the additional 12-ft. for the required buffer; that the project is a low-density project; that the project is well buffered from surrounding properties; that the design meets the requirements of the Comprehensive Plan , Zoning Code, specifically Chapter 99, the Subdivision Ordinance; that he requested to submit proposed findings and conditions for the project; that the proposed conditions are consistent with conditions proposed in 2005; that the newly proposed conditions are much more robust; that there have been no changes to the conditions, only additional conditions proposed; that there are hunting activities which take place on surrounding properties to the site; that a notice will be placed within the Restrictive Covenants, placing notice that there are hunting activities that occur in the area; that there will be wetland and agricultural use protection notice provided and the Applicant requested the Commission approval the standard subdivision request.

Mr. Robertson stated that he and Mr. Hutt did have discussions regarding the buffer requirements; that they did question if the wetland area could be part of the required buffer, which the Commission, historically, had allowed; that the existing vegetation remains within the forested wetlands; that forestland is what is desirable in a buffer; that the existing forested perimeter does accomplish the requirement for a buffer; that due to this, the waiver was not required; that he did confirm with Mr. Whitehouse that there was no waiver needed for the front portion of the property and the Applicant meets requirements, subject to the lot line revision on Lot 6.

Mr. Hopkins questioned how the Applicant could ensure all the proposed lots would perk adequately and questioned if there was an option for County sewer.

Mr. Hutt stated the Soil Feasibility Report addresses the concern of all lots to perk adequately; that the original study shows the breakdown of every lot; that Coastal Soil Consultants did return to the site; that they did not retest every site; that Coastal Soil Consultants did perform random borings to ensure the results remained the same and to ensure the most recent borings would comply with all regulatory requirements; that a response was received, through the Technical Advisory Committee (TAC) process, from Sussex County Engineering Department; that the Sussex County Engineering comments indicated the area was considered Tier 3 and that there was no sewer available to the site and Tier 3 generally means sewer is planned for the area in the future, but there is no time sewer is expected to be available.

Ms. Wingate questioned if the cul-de-sac, at the location of Lot 6, could allow emergency access to the site; that she felt doing this would allow for a backup plan, rather than one way in and out to the property; that she questioned if the 50-ft. setback from the stormwater basins as required in the report from 2005; that she questioned the comment from the 2005 DNREC report stating, *“a 50-ft. setback would be required from all catch basins and stormwater management, ditches and ponds, which are designed to carry or hold surface waters”* and if the requirement would be possible from an engineering standpoint.

Mr. Hutt stated he would need to speak with the owner; that he believed the difficulty of that request would be in trying to keep with the ¾-acre lot size for the proposed lots; that he believed Ms. Wingate’s proposed location is in the area where the wetlands cross under the road; that there is a wet area there; that he is unsure of the ability to construct emergency access and he stated through the design process the Applicant can look for possible options for emergency access.

The Commission found that Mr. Jim Lober, Engineer with Mott MacDonald Company, stated that he believes there is adequate spacing for the 50-ft. setback requirement around the sediment stormwater BMPs; that the BMPs are proposed to be large, open, infiltration type facilities; that with the large proposed lots there will be plenty of green space for that requirement; that they intend to construct an open drainage system; that he is not familiar with the requirement from 2005; that he doubted the requirement of a 50-ft. buffer was intended for every proposed catch basin; that he would need to research the details of the 2005 requirement and he felt the requirement was referring to the larger facilities located at the end of the drainage fronts.

The Commission found that Mr. Ken Droddy spoke in opposition to the Application; that he has visited every property from Rt. 113 to Union Church Rd.; that most people stated they were not aware of the proposed subdivision; that the main concern was regarding the traffic flow; that a proposal of 79 houses could increase traffic by 300 additional vehicles; that there are hunting activities on adjacent properties; that there are smells in the area which are created by the nearby chicken houses; that he is concerned if there are more people, there is a possibility of more crime; that his main concern is traffic and it is already difficult to get out onto Rt. 113.

The Commission found that Ms. Shirley Lech spoke in opposition to the Application; that she requested to read a portion of the response from the Office of State Planning Coordination in relation to the project; that the response is located on page 107 of the Paperless Packet; that the Office of State Planning Coordination stated, *this project represents a major land development that will result in approximately 79 residential units in an Investment Level 4 area according to the 2020 Strategies for State Policies and Spending; that this project is also located within a low-density area according to the Sussex County Certified Plan; that Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection and the continuation of the rural nature of these areas; that*

new development activities and suburban development are not supported in Investment Level 4; that these areas are comprised of prime agricultural lands, environmentally sensitive wetlands, and wildlife habitats, which should be, and in many cases are preserved; that from a fiscal responsibility perspective, development of this site is likewise inappropriate; that the cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources; that over the long term, the unseen, negative ramifications of development will become even more evident as the community matures, and the cost of maintaining infrastructure and providing services increases; that she stated the response went on to state there was a federally threatened plant that occurs upstream and downstream of the site; that the threatened plant is projected to be located on the site as well and there are species that are listed as State of Delaware rare, threatened or endangered species, which have been documented within the project area.

The Commission found that Mr. Paul Lech spoke in opposition to the Application; that he had a major concern with fire suppression; that there will be 79 homes in close proximity of each other; that he questioned where the water would be drawn from should there be a fire; that there are no fire hydrants in the area; that there are no water supplies in the area and these issues pose a major concern for fire suppression.

The Commission found that Mr. William McBane spoke in opposition to the Application; that he and his wife, Anna Marie McBane, own the property to the west of the project; that their property is a 50-acre miniature, three lot subdivision; that the smallest lot is five acres; that he has one house located on a 27-acre parcel; that they originally purchased the property with the intent of raising a family; that he does have some concerns to the compliance to the Chapter 99-9C requirements; that he has concern to the proposed density of Deer Creek and the projects compliance in keeping with the character of surrounding subdivisions; that he previously spoke in 2005 in relation to the original application for the property; that in 2005, he was not as opposed to the project as he currently is; that he does believe it is important a man should have the right to build his property out; that he does not believe the new owner of the property has the same intention for the property as the previous owner did; that within the original application it was stated the homes would be 1,200 sq. ft.; that with 3/4-acre lots will not allow for much room with 1,200 sq. ft. homes; that at the time of the original application, Ruth Ann Minner was the Governor; that there was a directive for affordable housing; that he believed the site was a location selected to meet the affordable housing obligations; that he does not feel the proposed subdivision fits with the surrounding area; that he hunts and fish on his property; that the wooded adjacent parcel, owned by Mr. Ben Jones and Mr. Skip Jones, also provides hunting activities; that the State of Delaware owns property on both sides of the highway, that is open for public hunting; that there is over 1,000-acres attached contiguously to the property belonging to the State of Delaware; that if the project gets developed, the flow of migration for the wildlife will be cut off; that the Town of Ellendale have future plans for a subdivision to the south; that the Town of Ellendale has annex almost up to Flea Town Rd.; that this will create an island for the existing wildlife; that the wildlife will not be able to move through wooded parcels; that there is no voice for the wildlife; that after the 2005 application was submitted, he wrote a letter to Mr. Carlisle asking him to consider developing five acre parcels; that he requested a project be proposed that keeps with the character of the surrounding area, with little impact to the roads; that DelDOT plans to place a grade separated intersection at Rt. 113, or an overpass, known as Option 5; that the overpass will require a lot of earth moving, raised elevation, and grade changes to the land and this will cause change to the way the wildlife will move through the parcel.

The Commission found that Mr. Jeffery Foster spoke in opposition to the Application; that he and his neighbor, Ms. Walls, are the only two people located across the street who received notice about the proposed project; that he did see the notice sign placed on the property; that he has lived at his property since 1989; that the area has experienced less traffic since the road has been closed; that with the proposal

of 79 additional homes, there is concern about the additional traffic; that he lives adjacent to the wetlands; that during rainy seasons, the water in the pond rises and gets very close to the road; that he is concerned the runoff would be more than the retention pond could handle; that he questioned how the Planning & Zoning Department determines who gets a mailing notice and who does not; that he had concern the notices by mail were sent to people who would be more affected by the project than others; that there have been a lot of chicken houses built in the area; that many people are concerned about the nitrates getting into the water table; that he believed, he and most of his neighbors wells are located at approximately 48-ft. to 52-ft. deep and he questioned if having 79 separate septic systems will have any affect on the adjacent properties water in years to come.

Chairman Wheatley stated the notice by mailings is part of the Sussex County regulations that govern advertising and he requested Mr. Whitehouse provide the rules of advertising within the County Code.

Mr. Whitehouse stated the rules for the advertisement of a subdivision are the same, regardless of the size of the subdivision; that all properties located within 200 ft. of the outer perimeter of the subject parcel were sent a notification by mail; that the Planning & Zoning Department keep copies of the names and addresses of who the mailings were sent to; that any mailings which were returned undeliverable are kept in the file; that notice is published in the newspapers a minimum of 15 days before the public hearing; that the notice placed in the newspapers are typically published three weeks before the public hearing date, due to the way the Planning & Zoning Department processes the advertisements; that these notices are in addition to the notification board placed on the parcel and notice is also placed on the Sussex County website and the County Noticeboard.

The Commission found that Mr. John Peters spoke in opposition to the Application; that his property would be located adjacent to the proposed large stormwater management pond; that he owns approximately seven acres; that he has spent extensive time in the construction industry; that he is familiar with environmentally sensitive areas; that due to this he has a realistic view of his property; that he has always treated his property as a small refuge, in which he had attempted to protect; that there are Northern Atlantic White Cedars that grow in the swamp; that the area is a swamp that feeds into Hudson Pond; that he has walked in the swampy areas, where the normal person would not walk; that he does not understand how the stormwater management pond can be constructed in the area proposed, with a 50-ft. setback, without having an environmental impact; that he feels the environmental impact will especially affect his property; that he was born and raised in Rehoboth Beach; that he has watched all the development in the area and he questioned when does the development stop.

The Commission found that Ms. Anna Marie McBane spoke in opposition to the Application; that she and her husband purchased the property over 26 years ago from Mr. Wilson; that they, as well as their children, enjoy hunting and fishing on their property; that she had concerns of the lack of improvements on the current roadway; that the State dug the ditches deeper; that all the mailboxes along the road are leaning into the ditch; that at times the ditches have filled with water, creating the mailboxes to fall over; that they recently had helicopters searching for a man, in broad daylight, who was fleeing from Royal Farms; that Staytonville Rd. is a main thoroughfare for drug distributors; that she had witnessed drug exchanges along her road, closest to Union Church Rd.; that her family previously had the Delaware State Police in their attic searching for a man wanted for a drug crime; that she would prefer not to have the high-density development so close to her home; that she would love to protect her heritage; that all down Staytonville Rd. to Greenwood is mostly farmettes, located on one acre or more; that the proposed project does not fit in with their area; that she understands the project is located along Rt. 113, however, there are a lot of wetlands in the area; that she would like to see a larger buffer provided or a change to the plan to offer farmette-style homes; that near Lot 5 and Lot 6, there is a ditch in the area; that when

it rains, the water level rises to the road and the area of Lots 3, 4, 5 and 6 would require major improvements due to this.

The Commission found that Ms. Margie McBane spoke in opposition to the Application; that she had environmental concerns with the proposal of 79 septic; that she had concerns about the ability of the wildlife to move; that the proposed project does not fit in with the surrounding area; that the traffic will be horrible and she does not believe the density of the project will be good for the area.

The Commission found that Ms. Cynthia Blemle spoke in opposition to the Application; that her property is located near Lot 26 and Lot 27; that they purchased their land to be close to hunting properties; that she does have wildlife come and go through her backyard; that there is a creek located to the rear of her property; that the creek does get very muddy; that she feels the proposal of 79 homes in her back yard is a lot; that she believed the project will impact the traffic on Staytonville Rd.; that she does not feel Staytonville Rd. will be able to handle the additional traffic and for those reasons, she is opposed to the proposed project.

The Commission found there was no one present by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Application 2021-29 Deer Creek. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Ms. Wingate recused herself from the next Application and left Council Chambers.

C/U 2300 MRBP, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.93 ACRES MORE OR LESS. The property is lying on the southwest side of McCary Road (S.C.R. 385), approximately 857-ft south of Frankford School Road (S.C.R. 92). 911 Address: N/A. Tax Parcels: 533-5.00-38.00 & 41.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, the Environmental Assessment, the Applicant's proposed Conditions of Approval, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the Technical Advisory Committee (TAC) comments, the DelDOT Service Level Evaluation Response and zero comments.

The Commission found that Mr. Steve Marsh, Engineer with GMB, Inc., spoke on behalf of the Application; that also present were Mr. R. Lawton Myrick, Business and Property Owner of MRBP, LLC., and Mr. Edward Launay, with Environmental Resources, Inc.; that MRBP, LLC, is seeking a Conditional Use for the site, located on McCary Rd., for a borrow pit operation; that the total acreage is 57.03 acres; that the Conditional Use application was submitted on June 28, 2021; that the parcels are located within the AR-1 (Agricultural Residential) Zoning District; that the parcels are located within the Coastal Area; that the immediate area consists primarily of agricultural use and low-density residential; that there are some substantial chicken farm operations in the area; that there is significant development activity plan in the general area, particularly in the Town of Millville, starting as far south

as the intersection of Peppers Corner and Powell Farm Rd., at the intersection with Rt. 17; that no public water or sewer services are proposed for the operation; that stormwater management will meet the requirements of the Sussex Conservation District; that the bulk of the operational activity is contained to the interior of the site; that a 100-ft. planted buffer is required and proposed along all road frontage; that a 50-ft. wooded buffer is required for all other adjacent property boundaries; that much of the 50-ft. buffer is already in place; that some planting will be required in areas where the buffer is not located or requires enhancing; that the single access to the site will be a small commercial entrance from McCary Rd.; that Century Engineering, Inc. prepared the entry plan; that DelDOT approved the entrance plan on April 6, 2021; that due to the length of time needed to schedule the public hearing, the DelDOT approval will be required to be renewed; that the owner is anticipating an average of 30 trips per day; that Mr. Edward Launay performed a site investigation in 2021; that Environmental Resources, Inc. has advised GMB that the proposed plan avoids impacts to any potential wetland areas; that a wetland report and plan will be submitted to the U.S. Army Corp of Engineers; that tax ditches run along the western and southern boundary of the site; that no tax ditches are proposed to be disturbed by the project; that the property does contain some man-made channels internal of the site; that impacts to drainage channels at the perimeter of the project have been avoided in order to maintain drainage conditions for adjacent properties; that during the permitting process, a design team will ensure that drainage from adjacent properties is maintained, causing no negative impacts; that the State Historic Preservation Office noted the site's historical and archeological significance and potential is low; that if anything should be encountered of archeological significance, operations would stop and the State Historic Preservation Office would be notified; that the site is located within the Coastal Area; that the Coastal Area is a designated growth area; that the preferred option, following the completion of the borrow pit operations would be to work with Sussex County Land Trust to explore options of creating a public park; that the project has been through the PLUS process; that the PLUS responses and Environmental Assessment and Public Facility Evaluation Report were included in the project binders.

Mr. Mears questioned if the Applicant would be proffering a condition relating to the property being placed with Sussex Land Trust after the completion of the borrow pit activities.

Mr. R. Lawton Myrick stated he wanted to suggest the property be placed with Sussex Land Trust after the completion of the operations; that he does not request it be made a Condition of Approval; that he has not yet spoken to Sussex Land Trust and it is currently an option he is considering.

Mr. Robertson stated borrow pits are regulated significantly by provisions of the Zoning Code, which references Conditional Uses for borrow pit use; that there are conditions required by the Code; that the Commission and County Council, historically, impose a standard set of conditions on borrow pits and he suspected the Application would be deferred to allow for review of the required and proposed conditions.

The Commission found that Mr. Tyler White spoke in opposition to the Application; that his primary residence is in Wilmington, Delaware; that he is part owner of the farm located adjacent to the property; that he owns more property directly across the street from the property; that he, as well as the other owners of the farm, oppose the project; that he feels, as an invested land owner, the area property values will be reduced; that he questioned who would want to live next to a hole in the ground; that he has not heard how many years the project is proposed to be digging; that he questioned if the digging will be based on the number of projects awarded; that he did have concerns regarding the notification process; that he questioned if the buffer would be installed before the digging process would begin; that there are multiple soccer fields located on the adjacent property; that kids will be having competitions, camps, and training next to the borrow pit; that he feels this should raise some safety concerns; that even with a provided buffer, the buffer is only foliage, not being a solid fence; that he is concerned to the unknown

impact of the project to underground water sources; that he is concerned about the unknown length of time the project may operate; that if the borrow pit is based on the number of industrial projects rewarded, the operations could go on to an undetermined amount of time; that he questioned if the State or County require an escrow account stating who is responsible to maintain the property should the owner be unable to; that there was a home located on the property, which had burned down; that he questioned if there would be any historic relevance to the home; that there is no residential use currently on the property and he and his partners oppose the project.

Chairman Wheatley questioned the estimated time of operations; that he questioned if there was information regarding the impact on nearby wetland areas and neighboring wells, the sequencing of construction and operations of the borrow pit and if any safety measures are being proposed for the project.

Mr. R. Lawton Myrick stated they are proposing in the Conditions of Approval that a permit be granted, permitting operations for 30 years; that they anticipate the operation of the borrow pit to be 10 years or less; that certain portions of the property have existing hedgerows and forested areas which will serve the purpose of a buffer from construction; that where the buffer is insufficient, they are proposing to plant fast-growing seedlings; that they may place the seedlings on top of a berm made from the existing topsoil; that they will attempt to speed up the process where possible; that they propose small trees initially; that there is an existing tax ditch along the perimeter boundary of the site; that parts of the perimeter are wooded; that safety would be a case of trespassing laws; that he does not anticipate children coming onto the property and he feels the proximity of the soccer fields would be a benefit in the long term.

Chairman Wheatley stated the Code places requirements concerning landscape buffers; that if the project should be approved, the landscape buffer will need to comply with the Code requirements; that he does not want the pit to be an attractive nuisance and he stated the Commission has the authority to place conditions on Conditional Use applications.

Mr. Steven Marsh stated he does not anticipate any negative impact on the water quality to the wells in the area; that the project is a hydraulic dredging operation; that the operations are well regulated; that the concern from a pollutant aspect would be sediment getting out into the ditches; that there are many regulations to prevent that from happening; that the children from River Soccer Club would be required to cross the existing tax ditch to access the property; that the borrow pit will be constructed under the same requirements as a stormwater management pond; that the side slopes are 4:1, with a 10-ft safety bench; that a safety bench is a flat area, being 10-ft. wide, located under the water level; that if someone were to approach the water, there would be no drop off immediately to below water surface; that a person would have to fall in the water, then walk 10-ft. out into the water before going off the edge of the bench; that the depth becomes 3:1 after the edge of the bench; that those meet the guidelines within the DNREC requirements for stormwater management ponds and they intend to meet all of the DNREC safety guidelines.

The Commission found that Mr. Chris White spoke in opposition to the Application; that he is a part owner of the adjacent farm; that the farm has been in his family for over 100 years; that it was mentioned a renewal is required for the entrance to the project; that he would like to have concrete answers as to the location of the entrance; that if the project is proposed for 30 years, he does not believe the road will withstand the traffic; that he is concerned about property values dropping; that he is concerned about security; that the project may propose parking at the site and possible drug activity; that dumping is a big issue in the area; that safety is a concern; that recently, someone drowned at the Sand Town Dump in Kent County; that the drowning occurred even with the placement of fence; that he questioned the

times of operations; that he questioned if there would be set guidelines to when the diesel trucks could run; that he assumed there would be a diesel truck on site to help convert the water from one side to the other; that he has environmental concerns; that the requirement of other agency approvals is an issue; that it is difficult to reach State agencies when there are issues; that often there is no remedy to raised issues; that he has concerns to how the project would affect their property values in the future; that he had concerns regarding bugs and mosquitos, being the borrow pit is an open body of water, and he stated a man is welcome to do what he needs to do for his family as long as what he is proposing does not hurt others.

The Commission found that Mr. Art Ford, II spoke in opposition to the Application; that he lives adjacent to the property; that the McCary Rd. has many trees; that near his home, there are no trees; that the Applicant is not proposing to place any trees nearest to his home; that there will be no buffer between the project and his back yard; that he requested to submit a photograph taken from his backyard to the proposed site of the borrow pit; that he has a clear view to where the operations are proposed; that any existing trees on the property have fallen into the tax ditch or onto his property, where he was required to cut the trees down; that it was proposed the operations would provide 30 loads a day; that a dump truck is equal to 16 yards of dirt; that he averaged the total to equal 13.5 years of digging operations; that McCary Rd. is a 45-MPH road; that he questioned the safety of the dump trucks pulling out of the small entrance way while being surrounded by trees; that the soccer fields have hundreds of children playing on site every weekend; that he felt the project has not been well thought out; that he requested the Commission give great consideration to what the project will affect; that he and his wife have experience in real estate; that he knows the project will affect adjacent property values; that he requested, if the project is approved, there be limitations placed on the project and he is entitled to peaceful, quiet enjoyment of his property, within the limits of the law.

The Commission found that Mr. Nicholas Harrington spoke in opposition to the Application; that he has had previous conversations with the Applicant about some of his concerns; that he is not in complete opposition to the borrow pit use; that he is opposed to the potential use of a park after the borrow pit operations are completed; that DNREC is understaffed; that this will cause a park to not be monitored; that without monitoring there will be drug activity within the proposed park; that he would like to know the hours of operations proposed for the project; that McCary Rd. is barely a two-lane road; that drivers speed frequently on the road; that if trucks leaving the property only exit to the left, they will avoid 90% of McCary Rd., as the majority of the homes are located to the right and regardless of the way the trucks exit, there is no easy access to main roads.

Mr. Mears questioned if the watering equipment, moving water from one pit to another, operating 24/7 will be part of the proposed operation activities and if a diesel motor will be associated with the dredging.

Mr. Myrick stated they have suggested the hours of operations be 8:00 am until 6:00 pm, Monday through Friday and 8:00 am until 2:00 pm on Saturdays; that there would be no hours of operations on Sundays; that there would be a gate on-site; that the dredge may operate 24/7; that the dredge does not cause any noise and he was unsure if a diesel motor would be required to operate the dredge.

Mr. Robertson stated previously, that the dredging issues have been based on the location of the borrow pit; that previously trucking has been limited, but the dredge was able to operate up to 12 to 18 hours a day and the condition primarily depended on the surrounding properties.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Application C/U 2300 MRBP, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 3-0.

Ms. Wingate returned to Council Chambers.

C/U 2301 Jason Tedesco

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.00 ACRES, MORE OR LESS. The property is lying on the west side of Roxana Road (Rt. 17), approximately 0.23 mile south of the intersection of Powell Farm Road (S.C.R. 365) and Peppers Corner Road (S.C.R. 365). 911 Address: 34018 Roxana Road, Frankford. Tax Parcel: 134-15.00-20.04.

Mr. Whitehouse advised the Commission that submitted into the record was a survey, Staff Analysis, DNREC Flood Map, Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found Mr. Jason Tedesco spoke on behalf of his Application; that he and his wife began a small landscape maintenance company, Bethany Blooms Landscaping, 15 years ago; that they are locals to the area; that they desire to keep growing their business; that they desire to hire employees; that their operation should not impact the traffic; that there are numerous businesses located on Rt. 17, which are already zoned for commercial use; that his adjacent neighbor to the rear of his property was approved over 20 years ago for a landscape business on a 10-acre property; that the adjacent business runs the same type of outfit they have and shown on the submitted survey is a pole barn where he stores his boats and other items.

Ms. Wingate questioned the number of employees proposed, the hours of operations, if flexible hours would be required for snow removal and if a sign would be required.

Mr. Mears questioned if the property located behind Mr. Tedesco's property is Resort Landscaping and he questioned if any debris is brought back to the property from job sites.

Mr. Robertson questioned if there was any storage of material or supplies onsite.

Mr. Tedesco stated he proposes no more than six employees; that the business currently has four employees; that hours of operation are typically 8:00 am until 4:30 pm; that they do not work holidays or weekends; that they work in a very small radius; that he intends to keep his jobs within the Millville and Bethany locations; that they do offer snow removal; that he typically is the person to perform the snow removal; that as his business grows, he may outsource or subcontract out the snow removal jobs for commercial sites; that he was considered 25% of his business's workforce; that after a recent injury, he had to change the way he had the business structured; that he is required to grow slightly; that he does not desire to have a large overhead; that he would like the permission to have a sign; that he is unsure currently if he will utilize sign advertising or not; that he believes Resort Landscaping is located at the property behind his; that the neighbor to the left of his property has a construction company; that the property across the street performs metalwork; that currently he has no storage of material at the site;

that he does own a six cylinder dump truck; that if the future forces him to store material onsite, he would like to, if it is permitted; that he believes Stockley Material will have a location in Ocean View; that he currently uses Eastern Shore Forest Products for the majority of his material; that he does not provide hardscaping services; that all equipment is stored in an enclosed trailer or in the existing pole barn; that there is little equipment servicing onsite; that he may service a belt occasionally; that he has a mechanic that he takes all of his equipment to and all acquired debris is taken to Eastern Shore Forest Products.

Mr. Whitehouse stated there was a Conditional Use approved for the property located adjacent to the rear of the Applicant's property; that it was C/U 1432, which was presented before the Commission in 2002, and County Council approved the Conditional Use on January 9, 2002.

The Commission found there was no one present in the room or by teleconference in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Application C/U 2301 Jason Tedesco. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 4-0.

C/U 2303 Antonia Lopez Lopez

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FOOD TRUCK BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.238 ACRES, MORE OR LESS. The property is lying on the northwest side of Jersey Road (S.C.R. 305), approximately 500 feet southwest of the intersection of John J. Williams Highway (Rt. 24) and Hollyville Road (S.C.R. 305). 911 Address: 26719 Jersey Road. Tax Parcel: 234-32.00-55.00.

Mr. Whitehouse advised the Commission that submitted into the record was a survey, Staff Analysis, comments from Sussex County Engineering Department Utility Planning Division, DelDOT Service Level Evaluation Response, and one letter in opposition.

The Commission found that Mr. Mario Garcia spoke on behalf of the Application; that he has a property in Millsboro, located on Jersey Rd.; that he had plans to build a home on the property; that he and his wife have now decided they would like to place a food truck on the property and they intend to sell tacos and empanadas from the food truck.

Mr. Mears questioned if the food truck would sell food from the proposed site or if the proposed site was being proposed for the station of the food truck, with the food being sold at a different location; that he questioned if a sign is desired, the hours of operation, if restroom facilities would be provided, the number of proposed employees and he stated extra parking accommodations will be required for Mr. Garcia and his wife, as they currently do not live onsite.

Mr. Wingate questioned if there would be any outdoor seating provided for customers on-site.

Mr. Hopkins questioned how the trash removal will be processed and questioned if there would be onsite music.

Chairman Wheatley stated the area looked to be fairly residential and he questioned if there were any other commercial uses in the nearby area.

Mr. Young stated there was one commercial business, a medical office, within one mile of the site.

Mr. Garcia stated that the food truck will come with all of the plans; that there will be no construction required for the truck; that they do need to create three to four parking spaces; that the food would be prepared in the truck; that customers would pick up the food at the food truck; that the operation would run like a fast-food operation; that all operations would occur at the property; that the food trailer is approximately 10'x 28' in size; that they will sell hotdogs and other items; that he would like permission for a sign on the property; that the hours of operation are proposed to be 9:00 am until 7:00 pm; that they propose to provide a portable restroom; that in time they may build a restroom if they find business is good at the property; that the only employees would be himself and his wife; that he does not live on the property; that there is space provided for parking at the rear of the property; that they propose two outdoor tables onsite; that he may place an 8'x 8' pergola onsite; that they will hire a company to haul away the trash from the site; that if they find the trash becomes excessive, they may obtain a dumpster; that they will take home any food that does not sell; that they would have music but only for inside the trailer; that there would be no outside music and there was a previous restaurant, La Quetzalteca, located on Rt. 24; that the restaurant is currently out of business and no longer located in the area.

The Commission found that Mr. David Parker spoke in opposition to the Application; that he owns 106 acres across from the parcel; that he feels the Application will cause traffic issues; that Jersey Rd. receives the traffic from both ends of Rt. 24; that there is now a lighted traffic signal in the area; that even with the traffic light he has issues getting across Rt. 24; that there are approximately 24 young children who live along Jersey Rd.; that there have been parties had in the past; that vehicles were parked along his property and fence; that he cannot confirm it was the Applicant or the owner next door; that vehicles parking along his fence, broke his fence, offering no notice or reimbursement for the damage; that trash is a tremendous issue; that he collects a half bag weekly of trash; that he constantly has vehicles pull into his two driveways to idle despite his four No Trespassing signs; that he has owned his property since 1969; that there is not enough parking for the proposed use; that there are five to six vehicles belonging to the adjacent property, but park in the stoned area provided at the site; that the area has always been residential and he requested to submit photos of the trash on site.

The Commission found that Mr. Edward Timmons spoke in opposition to the Application; that he resides across from the proposed property; that the traffic on Holly Oak Rd. is awful; that when the new bypass is placed, Holly Oak Rd. will be made into a cul-de-sac dead-end road; that there will only be one way in and one way out and this will cause a large issue with traffic from the site.

The Commission found that Mr. Tom Zadorzany spoke in opposition to the Application; that he lives on Carlisle Rd.; that the traffic on Rt. 24 is awful; that there are kids who live along Jersey Rd.; that there are people that walk along Jersey Rd. and he is concerned about safety risk the traffic will cause.

The Commission found that Mr. Tillie Cordrey spoke in opposition to the Application; that there is a small single alley located on her property, between the two properties; that she has a concern that if the business were to get busy, customers will begin using her alley as an exit route to Rt. 24; that there are children who play along the alleyway and the alley is not meant for traffic.

The Commission found that Mr. Bruce Sentmen, Sr. spoke in opposition to the Application; that traffic is terrible in the area; that he feels traffic slowing down to turn onto the site will cause accidents; that he

feels if customers park across the road to walk to the site, it would be a safety concern for the customers; that he has concerns to the potential smells the food truck may create for the area; that the waste from the dumpsters will create a smell; that the smell from the dumpsters may draw rodents to the property; that this use is not needed in a residential neighborhood and he does not understand why the Applicant would want to place a restaurant facility located on a road that is proposed to be cut off in the future.

The Commission found that no one was present by teleconference who wished to speak in support or opposition of the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Application C/U 2303 Antonia Lopez Lopez. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Wingate and carried unanimously. Motion carried 4-0.

C/Z 1961 Country Lawn Care & Maintenance, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 7.75 ACRES MORE OR LESS. The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.89 mile east of Steiner Road. 911 Address: 24347 Lewes-Georgetown Highway (Route 9). Tax Parcel: p/o 135-11.00-32.00.

Mr. Whitehouse advised the Commission that submitted into the record was a survey, Exhibit Booklet, Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, spoke on behalf of the Application; that also present were Mr. Gerald Dougherty and Ms. Stephanie Dougherty, who are the owners of Country Lawn Care & Maintenance, LLC; that the application is to request a Change of Zone of 7.75-acres, located on the northside of Lewes Georgetown Hwy., within the AR-1 (Agricultural Residential) to C-2 (Medium Commercial) Zoning District; that the remainder of the property is 3.85 acres, which is currently zoned as C-1 (General Commercial); that they propose the 3.85 acres to remain C-1 (General Commercial); that the property is bordered on the east by Weston Willows Apartments, being commercially zoned; that Country Lawn Care & Maintenance, LLC recently received the contract to maintain the lawncare for Weston Willows Apartments; that should the Application receive approval, the business will be located adjacent to the property they will be providing services for; that to the north of the property is a major subdivision, Azalea Woods; that to the west of the property, there are multiple split zoned properties, being zoned for commercial and agricultural use; that the purposed of the C-2 (Medium Commercial) District is to support uses which include retail sales and performance of consumer services, permitting a variety of retail, professional and business services, being located near arterial and collector streets; that in Ordinance 2250, County Council desired to create a more specific C-2 (Medium Commercial) Zoning District with smaller, more related uses, within the District, to promote better planning an predictability within Sussex County; that the Applicant proposes to utilize the site as the headquarters for their landscaping business named Country Lawn Care; that the business currently employs 22 employees; that currently the business is located west of the property; that the Applicant was leasing their current property; that the leased property has now been sold, requiring the Applicant to vacate the property; that the commercial use of the property will not diminish

property values of surrounding areas or create a public nuisance with an increase of public expenditures; that there are multiple other businesses in the surrounding area; that these business include Sequoia Landscaping, M&V Tire, Rt. 9 Industrial Center, VS Service & Cycle Center and the DelDOT Maintenance Yard; that the rezoning request is consistent with the Comprehensive Plan; that Rt. 9 is considered a business corridor, with a mixture of business and residential uses; that according to the Sussex County Future Land Use Map, the property is located within a commercial land use area; that the Comprehensive Plan requires the rezoning of a property to help promote growth and development where capital facilities and infrastructure is already available, being adequate to support the growth; that Artesian offers water and sewer services to the area; that the Comprehensive Plan promotes commercial development in designated commercial and industrial areas and scaled intensity, distance appropriate to adjacent residential neighborhoods; that they feel the nearby residential neighborhoods will benefit from the fact the subject property is in close proximity to service the residences with future landscape services, such as lawn maintenance and landscape design; that due to the close proximity to residences, there will be less travel required to the residential areas; that the zoning map shows the subject property is an appropriate location for C-2 zoning; that the Applicant will work with DelDOT on road improvements, transportation projects and dedication of additional right-of-way along Rt. 9; that the proposed land use of the property is expected to increase a trip generation of fewer than 50 vehicle trips per day; that this is considered a negligible amount of traffic; that since Rt. 9 is a principal arterial road, setback requirements are increased to allow for future right-of-way dedication, permanent easements and additional stormwater management setbacks; that Table 4.5-2 references the applicable zoning designations which match the Future Land Use Map; that within Table 4.5-2 the C-2 Zoning District is considered applicable; that there are isolated wetlands located on the property; that the wetland area has been delineated; that the report was included within the Exhibit Booklet; that no disturbance of the wetland area will occur during the development of the site; that the property is located within Flood Zone X; that along the easternly property line there is a tax ditch, with 85-ft. maintenance easements; that court order change requests have been submitted to DNREC, requesting a reduction in the easement from 85-ft. to 25-ft.; that the DNREC request is currently under review; that the site is not located within a Groundwater Protection Zone; that the properties are located within Investment Level 3 and Investment Level 4; that they feel the proposed zoning request meets the general purpose of the Zoning Ordinance, being the property is located in an appropriate location, meeting the strategies and objectives of the Comprehensive Plan, promoting the growth and development in an area located along a principal arterial roadway; that a sufficient dedication for expansion of the highway will be provided, where a general mixture of commercial and services activities exist; that the rezoning is essential and desirable to the general convenience, orderly growth, prosperity and the welfare of the County and he requested to submit a revised set of Findings of Fact.

Mr. Hopkins questioned if there were wetlands present on the site; that he stated there is a tax ditch that runs through the property and questioned how the tax ditch was currently functioning.

Mr. Davidson stated there are isolated wetlands on the site, located adjacent to the tax ditch; that the wetlands have been delineated; that the report was included within the Exhibit Booklet; that there is a tax ditch that runs along the eastern border of the property and he believes the tax ditch is currently functioning and draining appropriately.

Mr. Young advised the Commission that the adjacent property is Weston Willows; that the Planning & Zoning Commission did condition that Weston Willows provide interconnectivity, as staff knew about the potential of having two commercial properties adjacent to each other.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to Application C/Z 1961 Country Lawn Care & Maintenance, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, BY AMENDING SECTION 115-77.1 (LARGE SCALE USES) TO CLARIFY HOW FLOOR AREA IS CALCULATED

Mr. Whitehouse advised the Commission that the Ordinance was introduced to County Council on June 14, 2022; that the Ordinance was noticed and no comments had been received; that the Ordinance seeks to make a subtle, but important, change; that staff have reviewed the Zoning Code, specifically in terms of how floor area is defined between different zoning districts; that staff particularly reviewed Large Scale Uses within the CR-1 (Commercial Residential) Zoning District and the definition in Chapter 115-77.1 (Large Scale Uses) within the C-1 (General Commercial) Zoning District; that it was Mr. David Hutt, Esq. who brought the issue to staff's attention; that staff found there to be an inconsistency with how floor area is referred to; that within the CR-1 Zoning District, when considering a Large Scale Use, the limitations and requirements apply to a very specific "total floor area"; that within the C-1 (General Commercial) Zoning District, the Code refers to "total gross building area"; that within the architectural and engineering world, there is a difference between the two phrases; that "total floor area" refers to how the building is measured from its outer perimeter; that within the Zoning Code, the definition of Floor Area, does not equate to Total Gross Building Area; that staff suggested to remove the words "Gross Building" from Chapter 115-77.1 and insert the word "Floor" and that the suggested change would rectify the inconsistency between the two Zoning Districts.

Mr. Robertson stated Mr. Hutt, Esq. had to leave the meeting but requested it is stated on his behalf, that he is fully in support of the requested Ordinance amendment.

The Commission found that no one was present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to the Ordinance. Motion by Mr. Mears to recommend approval of the Ordinance to amend Section 115-77.1 (Large Scale Uses) of the Sussex County Code, to clarify inconsistencies of the County Code as to how floor area is calculated, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Vote by roll call: Mr. Hopkins – yea, Ms. Wingate – yea, Mr. Mears- yea, Chairman Wheatley-yea.

Mr. Robertson stated he will be working in a section regarding subdivisions in his Rules of Procedure speech that he provides; that the State Legislature has passed an act; that the act is waiting to be signed by the Governor; that the act changes FIOA; that the act states any meeting being open to the public, must include time for public comment unless the meeting is of a public body within the general assembly; that the Planning & Zoning Commission is not; that the Commission may impose reasonable time management restrictions on the length of the public comment period and the amount of time allotted for each public comment; that County Council allows public comment; that the public comments are not to exceed three minutes; that Commission does have a timer in place to enforce limits to the length of comments; that the public comment would be added as an additional agenda item at the beginning or, the end of the Commission meeting; that this will require the Commission to be vigilant to the provided comments, ensuring public comments are not referring to a Application who's record is closed or circumstances outside of the Commission's control; that he does believe the act to be well intentioned, however, with the Planning & Zoning Commission, the jurisdiction is very limited; that due to this, he is uncertain how well it will work, despite the good intention; that there will be a condition, where public comment must be addressed to the Commission as a whole and it would not be permitted to speak directly to or about an individual person.

Mr. Whitehouse advised the Commission that the new document management system is nearing the point where it will be permitted to be revealed on the website in September; that the Commission will need to schedule a meeting in late August to allow for training on the system and that the large metal signs are now being used for large applications.

Meeting adjourned at 8:30 p.m.

**Planning and Zoning Commission meetings can be monitored on the internet at
www.sussexcountyde.gov.**
