

THE MINUTES OF THE REGULAR MEETING OF AUGUST 10, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 10, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Brian Butler, and Mr. Scott Collins. Mr. Mears was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, Mr. Elliott Young – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse requested the Commission remove the approval of the July 27, 2023, Planning & Zoning Commission meeting minutes from the agenda, as they had not yet been circulated for review by the Commission.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to approve the Agenda as revised. Motion carried 3-0.

Chairman Wheatley entered Council Chambers.

PUBLIC COMMENT

The Commission found that Ms. Judy Rose Seibert, from Lewes, wished to provide public comment. Ms. Seibert requested the Commission reconsider the decision to discontinue the teleconference line.

OTHER BUSINESS

2021-06 Brentwood (f/k/a Coral Lakes & Coral Crossing)

Final Subdivision & Landscape Plan

This is a Final Subdivision Plan for the creation of three hundred and four (304) single-family lots to be created out of 152.34 acres +/- . Included in the plan are fully improved streets, stormwater management, amenities, a Landscape Plan, and other site improvements. The Plan was previously approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, June 23rd, 2022. Staff note, that the property is within the Henlopen Transportation Improvement District, and a signed agreement with the Delaware Department of Transportation is in place. The development will be supported by central sewer and water systems, with providers of Sussex County and Tidewater Utilities, respectively. The property is located on the southwest side of Robinsonville Road (S.C.R. 277), approximately 0.62 mile south of Kendale Road (S.C.R. 287). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as Conditions of Approval. Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

2019-08 Azalea Woods

Section 2 - Final Subdivision Plan & Landscape Plan

This is a Final Subdivision Plan and Landscape Plan for Section 2 of the Azalea Woods Subdivision, a proposed cluster subdivision to consist of a total of six-hundred and ten (610) lots and associated amenities to include a proposed in-ground pool, clubhouse, pickleball courts, gathering areas and tot lot. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their

meeting of Thursday, December 19th, 2019, subject to twenty-one (21) conditions for 610 lots. Section 2 consists of ninety-one (91) lots of total, representing 15% of the overall lots within the Subdivision. This Section of the subdivision contains a 30-ft wide buffer to consist of existing vegetation in accordance with Condition “F” of the Conditions of Approval for the Subdivision, which clarified that the buffer, “May include existing forest.” The Applicant is requesting that the subdivision be approved in Phases. In accordance with a previous condition of the Commission’s approval, a separate Overall Section Plan has been submitted to the Department of Planning and Zoning to assist in the Commission’s review of future phases of the subdivision and to ensure compliance with the subdivision’s Conditions of Approval. The property is located on the east and southeast sides of Shingle Point Road (Route 249), the north side of Lewes-Georgetown Highway (Route 9), and the west side of Gravel Hill Road (Route 30). Section 2 of the Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 135-11.00-32.04, 48.00, 49.00 & 56.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Section 2 – Final Subdivision Plan and Landscape Plan. Motion carried 4-0.

2021-20 Lands of John J. Hamstead

Final Subdivision Plan

This is a Final Subdivision Plan for the standard subdivision of 5.034 acres +/- into five (5) single lots and other site improvements. All lots shall have access through an ingress/egress access easement located on the west side of Calhoun Road (S.C.R. 621), approximately 1,100 feet north of Rust Road (S.C.R. 635). The Preliminary Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Thursday, June 23rd, 2022, subject to four (4) conditions. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel 130-6.00-82.04. Zoning: AR-1 (Agricultural Residential District.) Staff are in receipt of all agency approvals.

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

2021-26 Harpers Glen (F.K.A. Workmans)

Final Subdivision Plan

This is a Final Subdivision Plan for a cluster subdivision to divide 29.39 acres +/- into thirty-three (33) single-family lots, private roads, open space & out parcels that have not been designated for any proposed use. The Forested/Landscape Buffer is to consist primarily of existing vegetation in accordance with Condition “D” of the Conditions of Approval for the Subdivision which requires that the buffer “utilizes existing forest or similar vegetation if it exists in the buffer area.” Staff would like to note that a Landscape plan has not yet been submitted for the proposed planted portion of the buffer. The Preliminary Subdivision Plan for the proposal was approved by the Planning & Zoning Commission at their meeting of Thursday, March 24th, 2022 & a later Revised Preliminary Plan was approved by the Commission at their meeting of May 26th, 2022, for the removal of Condition “F” of the Conditions of Approval. Tax Parcels: 235-14.00-61.00 & 61.06. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals and, other than not being in receipt of a Landscape Plan, the Final Subdivision Plan complies with the Subdivision Code and the Zoning Code and all conditions of approval. Staff would therefore request that, should the Commission wish to approve the Final Subdivision Plan, that an approval be contingent upon staff receiving and approving a Code-compliant landscaping plan for the planted sections of the buffer.

Mr. Young advised the Commission that the required Landscape Plan had recently been received for the subdivision.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan. Motion carried 3-0. Chairman Wheatley abstained.

S- 23-33 Church of God Prophecy

Preliminary Site Plan

This is a Preliminary Site Plan for the development of a 12,739 square foot +/-, 324-seat, multilingual church, to host a covered main entrance drop-off area, 86 parking spaces, stormwater management, and other related site improvements. The proposal is located on a 3.24 acre +/- parcel of land on the east side of S. Rehoboth Boulevard (Route 14/S.C.R. 1B) in Milford, Delaware. Churches are permitted in all Zoning Districts, and accordingly, the Agricultural Residential (AR-1) District lists this use as a permitted use under §115-20(A)(4) of the Sussex County Code. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 330-11.00-44.02 & 44.04. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this plan, it is requested that final approval be made subject to staff upon the receipt of all agency approvals.

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

S-23-32 Vulcan/Horsey Asbury Borrow Pit Expansion (C/U 2294 & 1741)

Preliminary Site Plan

This is a Preliminary Site Plan for the expansion of an existing 200 acre +/- borrow pit site to include an additional 62.201 acres +/- of land. The expanded borrow pit includes a 200-ft buffer from Asbury Road and a 100-ft buffer from wetlands and will utilize the existing entrance off of Hardscrabble Road. It should be noted that were two (2) previous Conditional Use Applications on the site. The first Application is Conditional Use No. 1741 for a borrow pit, which was approved by the Sussex County Council at their meeting of Tuesday, December 16th, 2008, and the change was adopted through Ordinance No. 2021. The second application is Conditional Use No. 2294 to facilitate the expansion of the borrow pit, which was approved by the Sussex County Council at their meeting of Tuesday, September 21, 2021, and the change was adopted through Ordinance No. 2804. The property is located on the east side of Asbury Road (S.C.R. 446) and the north side of Hardscrabble Road (Route 20), approximately 0.35 south of County Seat Highway (Route 9). The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcels: 231-21.00-21.00 & 22.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Therefore, the plan is eligible for both preliminary and final approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Preliminary Site Plan as a preliminary and a final. Motion carried 4-0.

S-23-14 Hilltop Apartments at Lewes

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 31-unit condominium building. The plan includes parking, stormwater management, other site improvements, and buffers for the non-tidal wetlands located on the site. Specifically, 62 parking spaces have been provided alongside two (2) full-size loading spaces. However, the applicant has submitted a request to have nine (9) of the required 62 spaces to be compact parking and for 19 of the required spaces to be located within the front yard setback. The property is located on the Nassau Road (S.C.R. 266B). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-82.01. Zoning: C-1 (General Commercial District).

Staff are awaiting agency approvals. Should the Commission desire to act favorably on this preliminary plan, it is requested that final approvals be made subject to staff upon the receipt of all agency approvals.

Mr. Robertson advised the Commission that the Applicant is requesting a waiver from the interconnectivity requirement and a waiver requesting parking to be permitted within the front yard setback.

The Commission found that Mr. Kenneth Christenbury, Professional Engineer with Axiom Engineering, was present on behalf of the Applicant for the Application. Per the request of the Commission, Mr. Christenbury provided information regarding the Application. Mr. Christenbury stated that the property consists of 2.58 acres, which does allow for the 31 units; that of the 2.58 acres the impervious ground cover is approximately one acre; that there is no other opportunity to place the parking in other locations to meet what the Zoning Code allows on the property; that there are 11 parking spaces on one side of the driveway and seven parking spaces on the other side, that are shown in the front yard setback; that the proposed plan is very much in character with the surrounding properties along Nassau Road; that DeIDOT will be placing a new sidewalk soon; that the site is part of where DeIDOT is placing a new traffic circle; that there is still a 15 ft. easement from the back of the new DeIDOT sidewalk to the parking spaces; that the property immediately to the south is owned by the Applicant; that the property is the location of Bayside Exteriors, roofing and siding business; that each property has its own access to Nassau Rd.; that they have already met with DeIDOT; that DeIDOT will be constructing their entrance as part of the sidewalk construction; that they felt intermixing traffic between apartment dwellers and a roofing company would not be beneficial for either party and there is a 40 ft. front yard setback, which is difficult to request a person not to use in some way.

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

Lands of Renewable Redevelopment, LLC

Minor Subdivision Plan off a 50-foot Easement

This is a Preliminary Minor Subdivision Plan for the creation of one lot off a 50-foot access easement. Lot 1 will be 140.25 acres +/-, and the residual land will be 479.56 acres +/- . The proposed lot will be served by an existing 50-foot access easement and road known as “Gate A Road.” The property is located on the north side of Iron Branch Road (S.C.R. 331) and is a part of the Indian River Power Plant. Tax Parcel: 233-2.00-2.00. Zoning: Heavy Industrial (HI-1). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this preliminary plan, it is requested that final approvals be made by staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off a 50-ft. Easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

2022-18 Wil King Station

A Coastal Area and standard cluster subdivision to divide 29.10 acres +/- into fifty-eight (58) single-family lots, to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the west side of Wil Kind Road (S.C.R. 288), approximately 1.01 miles south of Kendale Road (S.C.R. 287). Tax Map Parcels: 234-6.00-26.00 & 59.19. Zoning: GR (General Residential) and AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since July 27th, 2023.

In relation to 2022-18 Wil King Station. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/U 2373 Sarah Peterson

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS. The property is lying along Morning Glory Farms Road, on the northwest side of Portsville Road (S.C.R. 492), approximately 0.84 mile east of S Shell Bridge Road (S.C.R. 492A). 911 Address: 8982 Morning Glory Farms Road, Laurel. Tax Map Parcel: 432-3.00-41.06.

The Commission discussed the Application which had been deferred since July 27th, 2023.

Ms. Wingate moved that the Commission recommend denial of C/U2373 Sarah Peterson based upon the record made during the public hearing and for the following reasons:

1. There are a lot of concerns about this project, including a deficient site plan, a property line bisecting buildings that are to be used as part of the proposed event venue, and access to the proposed venue.
2. Sections 115-173 and 115-220 describe the preliminary site plan requirements for any conditional use. There was not a preliminary site plan submitted with this application, only a survey. There is not sufficient information to identify where and how the proposed event venue will operate on this site. For example, with a preliminary site plan, the locations of all tented areas would be shown, along with parking areas, bathroom facilities, or other aspects of the use. That information was not supplied in the form of a preliminary site plan.
3. According to the survey that was submitted, and testimony given during the hearing, a portion of the site to be used by the proposed event venue is on land of other ownership. The barn and corral on the property are actually bisected by this property line. And, the adjoining property owner who owns the land where these encroachments exist has not joined in the application. Instead, the adjoining property owner has opposed the application. This conditional use should not be approved with this substantial encroachment.
4. Although the subject property technically has access to Portsville Road, that access is undeveloped and blocked by trees and other vegetation. Instead, the Applicant intends to access the proposed venue over an existing driveway across her neighbor's land. While that driveway may be suitable for the Applicant's residential purposes, it is not appropriate to burden that narrow driveway and the neighbor's land through the approval of an event venue serving as many as 200 people at a time. Additionally, the neighbor testified that she objects to this increased use of the driveway. She testified that the use would adversely affect her property and the value of it by creating a liability from all the traffic on the driveway and her property, particularly after events where alcoholic beverages are served. The neighbor's concerns are valid.
5. Unfortunately, without the types of details that an adequate preliminary site plan would provide, and until the property line dispute is resolved along with another means of access, this conditional use should not be approved.

6. If the applicant can resolve the property line dispute by acquiring a part of the neighbor's land or removing the encroachments and open up a driveway that is entirely on her land, then it would be appropriate to reconsider this event venue through a new conditional use application with an appropriate preliminary site plan.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend denial for C/U 2373 Sarah Peterson, for the reasons stated in the motion. Motion carried 3-0. Mr. Butler abstained.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Chairman Wheatley – yea

C/Z 1985 Love Creek Acquisition, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS. The properties are lying on the south side of John J. Williams Highway (Rt. 24), approximately 0.26 miles northeast of Camp Arrowhead Road. 911 Address: 20565 & 20581 John J. Williams Highway, Lewes. Tax Map Parcel: 234-7.00-111.00 & 112.00.

The Commission discussed the Application which had been deferred since July 27th, 2023.

Mr. Collins moved that the Commission recommend approval of C/Z 1985 Love Creek Acquisition, LLC for a Change in Zone from an AR-1 Agricultural Residential District to an M – Marine District based upon the record made during the public hearing and for the following reasons:

1. The purpose of the M - Marine District is “to provide for and to preserve waterfront land in appropriate locations for commercial docking, waterfront sales, storage and repair of small boats, including out-of-water repairs, and for seafood packing and processing establishments, subject to applicable sanitation and processing laws and ordinances. Marinas, yacht clubs, and tourist-oriented services are permitted uses. Since land in the district is limited, construction of dwellings should be discouraged, but since marine development will be gradual, low-density residential uses are permitted.”
2. This site is adjacent to a property that is Zoned M – Marine that has been developed residentially and with boat docking facilities. The adjacent property has frontage on Love Creek and Route 24. This is a reasonable expansion of that existing M-Marine property.
3. In addition to the existing M-Marine zoned property next door, there are properties in the vicinity that are zoned C-1, B-1, and MR. This rezoning to M-Marine is consistent with the area uses and zoning.
4. The Applicant has stated that they intend to use the property for the purposes of the M-Marine District, including uses that may include boat storage and repairs, boat and marine equipment sales, bait, and tackle shops, and other similar uses. A restaurant or similar “tourist-oriented” service may also be developed on the site. All of these uses are appropriate within the M-Marine District.
5. There was support in the record from a marine service company that operates on the adjacent M-Marine land stating that the rezoning of this parcel would provide a suitable and convenient location for such things as boat storage and repairs to supplement that company's operations along Love Creek.

6. In addition to its location next to existing M-Marine land, the property also has frontage along Route 24, which is classified as a “Major Collector” Road by DelDOT. This is an appropriate location for this rezoning.
7. The property is designated as both the Commercial Area and the Coastal Area according to the Sussex County Comprehensive Plan. The M-Marine zoning and the types of uses permitted in that zone are appropriate in both areas according to the Comprehensive Plan.
8. The property is served by central water and sewer, making this rezoning from AR-1 appropriate at this location.
9. Any future development of this property will still be subject to site plan review by the Sussex County Planning & Zoning Commission as well as all other agencies that have jurisdiction over it.
10. For all of these reasons, I move that we recommend approval of this rezoning to M-Marine.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1985 Love Creek Acquisition, LLC, for the reasons stated in the motion. Motion carried 3-0. Chairman Wheatley abstained.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea,

PUBLIC HEARINGS

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

2022-19 Grayrock Preserve

A cluster subdivision to divide 47.48 acres +/- into ninety-four (94) single-family lots, to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County. The property is lying on the northwest side of Wilson Road (S.C.R. 244), approximately 0.88 miles west of Sand Hill Road (S.C.R. 319). 911 Address: N/A. Tax Map Parcel: 135-10.00-10.00. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Preliminary Subdivision Plan, the Applicant’s Exhibit Booklet, a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Review Letter, the property deed, the PLUS Review comments, the DelDOT Service Level Evaluation Response, the Applicant’s Chapter 99-9C responses, and the Technical Advisory Committee (TAC) Comments which included comments from, Delaware Division of Historical & Cultural Affairs, DNREC’s Drainage Program, the Delaware Fire Marshals Office, Delaware Electric Co-op and Artesian Resources, Inc. Mr. Whitehouse stated that no public comment had been received for the Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of Applicant, Grayway Developers, LLC; that also present were Ms. Katja Kalinski, Senior Landscape Designer with George, Miles & Buhr, LLC, Mr. Web Gray, Principle of Grayway Developers, LLC, and Mr. Drew Boyce, Senior Vice President with Century Engineering, Inc. Mr. Hutt stated that the property is located off of Wilson Rd., being a just less than a mile from its intersection with Sand Hill Rd.; that the property is located within a rural and residential area of Sussex County; that there are multiple single-family lots, agricultural and forest lands, as well as several other subdivisions located in the surrounding area; that nearby communities include, Iron Hook Harbor, Sand Hill Acres, County Seat Gardens, The Vines of Sand Hill, Reddenwood, Bridlewood, the Estates at Carriage Springs, the Estates of Enchanted Woods,

as well as others; that the property is located near the elementary school for Sussex Academy, formerly known as the Jefferson School, and the Reddenwood Forest; that Reddenwood Forest is located to the north and west of the site; that the Application is comprised of one tax parcel consisting of approximately 47.5 acres; that the property is designated as being within a Low Density Area, according to the Future Land Use Map; that the nearby Iron Hook Harbor is located within the Developing Area, being one of the County's seven Growth Areas; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that on the south side of Wilson Rd., Iron Hook Harbor is located within the GR (General Residential) Zoning District, coinciding with the Developing Area per the Future Land Use Map; that the property is currently unimproved; that approximately 40.5 acres of the site are wooded, being located to the rear of the site; that the front, unwooded portion of the site, is used for agricultural purposes; that the cluster subdivision tool was available for the property because both central water and sewer are available through the design resources; that the cluster subdivision tool allowed for a superior design of the project, when compared to a standard subdivision; that when entering the community from Wilson Rd., there is approximately 200 ft. to 250 ft. before arriving to the first home on the right; that the primary road through the community is a looped road; that a stormwater management pond is proposed for the middle of the residential area; that trails connecting the outside ring of the looped road to a path that circles the stormwater management pond, is proposed; that sidewalks would be located on one side of the streets; that the network of sidewalks around the perimeter would be connected to the trail network on the interior of the lots; that there is a playground amenity proposed; that the design configuration of the site allowed for the preservation of 16.9 (42%) of the wooded area on the site; that the preservation of 42% of the woods would not have been possible with a standard subdivision; that the plan proposes 94 lots; that all proposed lots meet the minimum 7,500 sq. ft. requirement of an AR-1 cluster subdivision; that the proposed density is 1.98 units to the acre, being the base density within AR-1; that the site has central water and sewer available to it; that the proposed density is consistent with the site's Future Land Use designation of a Low Density Area; that the density is consistent with the Investment Level 4 designation on the State Strategies Map; that there is a 30 ft. landscape buffer proposed to surround the perimeter of the community; that there are no regulated wetlands located on the property; that public utilities are available to the site; that within the submitted letter from Artesian, it confirms that public water is available to the site, including water for fire protection; that the letter from Artesian also confirmed their readiness and willingness to treat the wastewater from the site; that the Artesian letter also confirms that the property is already located within a CPCN area for both water and wastewater uses; that two portions of the property are located within an Excellent Groundwater Recharge area; that impervious cover located in those area will be less than 35%, which is the threshold when mitigation measures are required per Chapter 89, the Source Water Protection Chapter of the County Code; that there are no Wellhead Protection areas located on the site; that there are no known historical sites, or endangered species located within the property; that the property is not located within a flood zone; that there will be a property owners association created to manage and govern the common areas within the community; that the property lies on the very outer edge of the Cape Henlopen School District; that if the school district desired, the Applicant would coordinate with the district on the location of a bus stop; a Service Level Evaluation Request was filed with DelDOT; that DelDOT responded through the Service Level Request, as well as through the PLUS process; that as set forth in both documents, the traffic impact for the proposed project would be minor pursuant to Sussex County's Memorandum of Understanding with DelDOT; that minor impact means that the trip generation is greater than 50 vehicle trips in a peak hour, but less than 200, and greater than 500 vehicle trips per day, but less than 2,000; that within DelDOT's Development Coordination Manual, it states that the Applicant can be afforded the option of paying an Area Wide Study Fee in lieu of a Traffic Impact Study; that Mr. Boyce did conduct a pre-submittal meeting with DelDOT on July 17th; that the minutes from the meeting are included in the project materials; that DelDOT also supplied a memorandum, dated July 24th 2023, which confirm that the option of paying the Area Wide Study Fee was available to the Applicant; that the Applicant's obligations are to pay the Area Wide Study fee and to improve Wilson

Rd. to its functional road classification as a Minor Collector road; that a minor collector road would have 11 ft. travel lanes, with eight foot shoulders; that there is a design deviation to have six foot shoulders in a particular location; that a shared use path is not being required along Wilson Rd.; that a primary concern of the PLUS Report was that the majority of the site is currently forested; that the PLUS comments noted that the site appeared to have maintained some degree of forest cover since 1937, which could be considered a mature forest; that mature forest would make a suitable habitat for rare, threatened and endangered species; that three things were performed to evaluate and address the PLUS concern; that first, the cluster subdivision option was selected as the tool by which the property would be developed; that the cluster subdivision option resulted in less area being consumed by infrastructure and lots, leaving more area available for open space; that secondly, the Site Plan was modified to place more of the homes in the location of the agricultural field and less homes to be located within the wooded areas; that the initially submitted Site Plan did propose a cul-de-sac, which went into the rear triangular portion of the site; that re-designing of the site removed the homes from the wooded area, placing them in a row to the right when entering the community; that thirdly, Watershed Eco, Inc. was retained to perform a study of the wooded areas; that the results were submitted within the project materials; that because Sussex County does not currently have a specific set of regulations or guidelines for forest conservation; that Watershed Eco used the New Castle County Unified Development Code, Ordinance No. 21-009 to conduct a Forest Habitat Value Assessment; that within that Code, it requires the assessment to only be conducted by a certain type of professional, which include landscape architects, foresters, arborists, or botanists; that the licensed individual who conducted the study, has been a qualified forest professional since 2001; that through Maryland's Department of Natural Resources process, a qualified forest professional visits the site, identifying fixed radius locations that are 1/10 acre and characterizes the forest within each of those radius areas; that not only does the UDC (Unified Development Code) and New Castle County use that, but it is the same standard that Maryland would employ to evaluate a forest; that within each of the 1/10 acre sample plots, all trees that are great than six inches in diameter, at breast height are measured; that then a list of all under story trees, tall shrubs, low shrubs, herbaceous species, and plants are taken; that the list is an inventory of everything that lies within the radius area; that each one of the plant species and trees are given a coefficient of conservancy number; that the numbers provided were established by DNREC botanist, Mr. Bill McAvoy; that certain things are given greater weights and a greater number of points; that large diameter trees are given additional points based on their height and their diameter; that in addition, forest interior is something that would be given additional points; that a potential mature forest would be more points if it was clear that it had been in existence since 1937, being the date referenced in the PLUS report; that there are also Valued Tree Species, which are given additional points as well; that when a total result is taken of all the points for the species of trees and the ground cover, a total value for each area is established; that there are three provided tiers; that Tier 1 is for older growth and being the highest habitat value forest; that Tier 1 areas are an area that has accumulated 52 points or more; that Tier 2, referred to as a Mid-Successional Forest, is an area that has accumulated a point range from 26 to 51 points; that Tier 3, being comprised of the lowest quality of forest, is an area that has accumulated a point range of one to 25 points; that the report reflected four locations where the 1/10 acre area was evaluated; that the total habitat value point scores in those four area locations were, 10.14, 15.09, 17.62, and 15.5; that the provided scores demonstrate that all four locations would be in Tier 3, being the lowest quality forest that exists on the evaluation of habitat; that the UDC states, based on the type or tier of forest in each zoning classification, how much forest preservation there is required to be; that Tier 3 forest do not garner much support; that 1/10 acre is all that is required to preservation of a Tier 3 forest; that based on the site investigation and the data calculations, the on-site forest would not be classified as a mature or old growth forest; that the current on-site forest would not qualify as a Tier 1 or a Tier 2 forest; that according to the point values, the current forest is considered Tier 3, meaning there is going to be less biodiversity and less reasons to preserve the forest; that he was told the forest was timbered in 1968, as reflected in aerial imagery; that the forest would not be considered a mature forest from 1968 until now,

because the soils are too well drained; that the well-draining soils do not provide an environment in which the trees and habitat can develop into something more; that this information is consistent, when looking at the properties that surround the site; that the surrounding properties are involved in silviculture; that there are crops of trees being grown by the State on the adjacent properties; that the types of pine trees existing on those sites are the types of trees that like the more sandy, well drained soils; that it appears that not all forest are created equal; that some forest have more habitat value than others; that he hoped with the provided explanation of the studies and efforts that went into analyzing the forested area, and by minimizing the impact of the project on the existing wooded area, the Commission would agree that the cluster subdivision application was the right tool for providing a superior design; that within the project materials, there are answers and responses to each of the elements in Chapter 99-9C; that the Code provides that the subdivision should provide for a total environment of design which is superior to what could be achieved with a standard subdivision; that the Code then lays out a four-step process to accomplish that; that the first step is to identify lands that should be preserved; that with the subject site, there are no wetlands, no waterways, no historical features, and no rare, threatened or endangered species to protect; that the only special feature for the site, would be the forested area; that as explained, the existing forest area is considered to be a Tier 3 forest, and may not be considered as special as other forested areas; that due to this, the developable area of the project is essentially the entirety of the site; that the next step is to located roads and trails in order to minimize the impact on the forested area; that the looped road was designed and then trails were added, which connect to the interior portion of the looped road; that the area in the interior will remain forested; that the last step is to add the lot lines; that the project proposes 94 lots; that the result of the process for a cluster subdivision has led to a design that is superior to that of a standard subdivision as the subdivision preserves approximately 16.9 acres (42%) of the woods; that 25.11 acres (53%) of the site will be open space, which far exceeds the 30% open space requirement of the Code; that the smaller, clustered, lot sizes allowed for the creation of the large open spaces and the creation of the sidewalk and trail networks to connect all of the lots and the play area; that the existing topography of the site was utilized so that mass grading would be minimized, as the goal is to leave as much of the forest cover as possible; that he hoped through the information provided in the project book, the Commission would agree that the subdivision meets the requirements found both within the Comprehensive Plan and the Zoning Code, including the requirements for a cluster subdivision and he requested to submit a proposed set of Findings and Conditions of Approval for the Application.

Ms. Wingate stated the submitted Artesian letter expired in January 2022, as the letter notes its expiration within one year of its issuance; that she stated her concern regarding the pond located on the adjacent property, nearest to the rear of Lot 20 and Lot 21, and the safety issue the pond may cause if kids were to wander to it. Ms. Wingate questioned if consideration could be given to the installation of a fence around the pond, as she noticed the properties share the same ownership.

Mr. Hutt stated a 30 ft. buffer would be provided between the lots and the pond.

Mr. Collins stated he understood the existing forest was not fantastic; that he questioned if the project has the potential to locate the forested area to the middle of the site, creating more contiguous forest land for the wildlife.

Mr. Hutt stated that Mr. Collins' concern was one of the primary considerations that led to the elimination of the cul-de-sac; that he believed that in order to have the necessary areas for stormwater management and such, it required a similar shape to that proposed; that he did believe it would be difficult to achieve; that they believed, with the elimination of the cul-de-sac, the plan did preserve forest, being adjacent to the State of Delaware corridor, leaving the combined tracts of forest for any wildlife.

Mr. Butler stated that he came from a forester family; that the forest tiers are usually created by a lack of maintenance after cutting is performed; that he requested that, instead of placing more retention ponds, the water flow more naturally by providing forest thinning; that he stated by doing this, it would create a more natural flow of water instead of containing the water into ponds.

Mr. Hutt stated the pond size will be determined, as it is not yet hard-engineered.

Mr. Butler questioned the name of the forester who evaluated the site and if the pond sizes could be reduced, by thinning the existing forest, creating more runoff, because the drainage is not well, and the site is not getting enough drainage to grow the timber fast enough.

Mr. Hutt stated Mr. William S. Twupack, PWS, Environmental Scientist evaluated the site, and it was his understanding that the soils on the site were too well drained; that an old borrow pit was believed to be located on the site; that when walking the site, there is a great deal of fluctuation in height, which is not typical of Sussex County; that this would indicate that this soil is the type that is used for projects, which is believed to be the genesis of the pond in the area; that one of the project designers was present and would consider Mr. Butler's comments; that he believed the typical mindset is to preserve as much of the existing forest as possible, without disturbing it; that forests are known for their filtering capabilities of stormwater runoff, and he is unaware of how the thinning of forest would enhance that or not.

Chairman Wheatley requested that an explanation be given, in terms of how the Ordinance is written, to how the requirement for superior design was pursued.

Mr. Robinson questioned if they considered how the land would be developed if the subdivision was proposed as a standard, with 20,000 sq. ft. lots, and how it would be different.

Ms. Kalinski, Landscape Designer with George, Miles & Buhr, LLC stated by applying the superior design, they identified any constrains on the site; that there are no wetlands, no forest that require preservation, and no historical areas; that with that information, they identified the developable area; that from there, they laid out the street network, trail system and the sidewalks; that they tried to leave a whole central area open; that the size of the ponds, as shown on the plan, as not yet been determined; that if there is a possibility for infiltration, they will use it instead of having wet ponds on the site; that they then applied the lot layout; that after looking at the wooded areas, they decided to eliminate the cul-de-sac, which projected into the triangular wooded portion of the site; that they chose to do this in the effort to preserve more trees; that by doing this, they have achieved a resulted open space of over 50% of the site and under a standard subdivision design there would be almost no tree left.

The Commission found that there was no one present in support of the Application.

The Commission found three people were present in opposition of the Application.

Mr. Kyle Hoyd, State Forester for the Delaware Forest Service of the Department of Agriculture spoke in opposition to the Application. Mr. Hoyd apologized that no PLUS comments were provided by the department; that he explained there was a department vacancy; that the proposed project came to them at the TAC level, causing them to review the project later in the process; that the project is of particular interest to them, mainly because of its location, being surrounded on three sides by State lands; that the road would naturally be the fourth; that he did like the comment that not all forest are created equal; that forests require a lot of attention, a lot of detail and a lot of work; that the site is located adjacent to, what

they refer to as the Eskridge Tract, consisting of 210 acres; that they have put a lot of time into the Eskridge Tract; that the Department of Transportation has also put a lot of time into the tract; that it was not an old borrow pit; that it was a remediation site for Rt. 113 that the State of Delaware took ownership of after getting it from the local family historically; that on the property the monitor and improve habitat; that the Tiger Salamander, being considered a State Endangered Species, resides on the property; that they have monitoring devices on the salamanders through the Department of Fish and Wildlife; that they previously had interest in the subject site; that they understand development has to take place, but their stance on the particular parcel, is that there is a better suited place for the proposed 94 homes; that the development should not be proposed between the Redden State Forests, especially not adjacent to the Eskridge Tract; that he used to manage all three forests; that they have a total of 23,000 acres, with the Redden Forest making up 16,000 acres of the forest; that it ties into over 2,000 acres of consecutive forest, being one of the largest pieces of consecutive forest in Sussex County; that the unique thing about the Eskridge Tract is it is a valuable recharge area for water quality; that anyone from DNREC's Water Quality Division will speak to this; that they have a joint agreement with DNREC, as they perform the majority of the work on their site; that their business is growing trees, growing habitat and growing recreational opportunities for those that use their properties; that a tough situation they have, is when subdivisions are constructed, especially like the development proposed, it creates a concern of potential fire threats, which they take very seriously; that Delaware does not have huge wildfires, but the potential is there, especially within the marshes; that a lot of people do not realize that pine lands throw a lot of fire around; that an example of this would be the Pine Barrens in New Jersey; that if Grayrock Preserve were approved, it would change their management tactics and essentially reduce the forest on their site; that they would be required to cut a 35 acre walk around the property due to the fire threat, public hunting, and to create buffers on the timber harvesting pieces; that there is one piece that they do not timber, as it is used as a research area; that for these reasons, they felt it was important to voice the Department's opinion on behalf of Secretary Michael Scuse; that also present was Mr. Chris Miller, Deputy State Forester and he requested Mr. Miller provide the Commission with the current research being performed.

Mr. Chris Miller, Deputy State Forester stated he wanted to provide background to the property with the ponds located on it; that the location of the two small ponds and the larger pond, is the location of the Tiger Salamander habitat; that the Tiger Salamander is a Tier 1 species in the State; that the Tiger Salamander is State Endangered according to the Delaware Wildlife Action Plan presented from DNREC; that there are several breeding pairs, with telemetry, located within the existing ponds; that it is very likely that the existing Tiger Salamanders will going over to the adjacent property as well; that there are plans to place another pond in the area to create a wagon wheel effect from the larger pond; that their department perform these things for endangered species; that the Tiger Salamanders are really the species they focus on; that Tiger Salamanders are good umbrella species for water quality; that these salamanders need good water recharge; that the Tiger Salamander is S1 species, which means there are less than five occurrences of the species in the State of Delaware; that it happens to be one of those occurrences is located on their property; that he has had discussions with the biologist, the State Herpetologist, for the past two years; that they have had failures in breeding due to low water levels in the ponds from the lack of rains in the Spring; that it should be noted that the parcel to the north is part of a Forest Legacy area for the Federal Government; that these areas were purchased with Federal funds that were Federally ranked; that they competed nationwide, and these areas forests were deemed appropriate for their department to the money to purchase them; that the forest areas have been deemed important to the State of Delaware and important to their department; that he was happy to answer any questions regarding forest harvest or timber plans for the area, as these areas do fall under their stewardship plans; that all the forests are working forest for wildlife, and for timber production for many Sussex County landowners.

Mr. Robertson questioned if it was the State's position if the project should or should not be developed as proposed and if the State had ever attempted to purchase the property.

Mr. Hoyd stated that after discussing the proposed project with the department and with their Cabinet Secretary, it is his understanding that they believe the project should not be developed at all; that the subject site has always been of high interest to his department; that the Open Space Council awarded funding for them to purchase the property; that in 2020 they had named the property, the Banning Property, and unfortunately, due to the appraisal value and the request from the family and the ownership, they were unable to strike a deal to acquire the property.

Mr. Collins questioned if there were any suggestions from his department's perspective of ways to mitigate the impact of the development if it were to be approved and if there was any complementary work that could be done, that may support the goals of the developer and their department.

Mr. Hoyd stated from his perspective in the urban forestry world, dealing with a lot of PLUS and TAC reviews, if the project did move forward, he believed his department would like to see the project reduce to at least half of the homes currently proposed; that they would like to see a much larger buffer; that they manage invasive species; that historically, with large subdivisions, yard waste has been the number one spreader; that they have seen this issue all over their 23,000 acres of State Forest when there is some type of land ownership adjacent to them, and due to this fact, he felt in order for the project to move forward, there would need to be a substantial reduction in units.

Mr. Miller stated that Tiger salamanders are a highly specialized species; that there would need to be quite a bit of coordination required to achieve this; that the developer would be required to work directly with the State Herpetologist, who is the person their department takes their orders from, and currently, their department does not have anyone on staff that could perform the work without the help from the Department of Fish and Wildlife.

Mr. Hoyd stated that the loss of 35 acres would be vital for them in terms of habitat, not necessarily in timber revenue; that they are willing to work with their adjacent land owners to modify what their management tactics will be; that they do this daily, depending on it being a proposed one or two homes; that the habitat in the area, and the location of the property is unique; that when he was first contacted by the property owner, he took the proposed project directly to the front office and before the Open Space Council, due to the Tiger Salamander and current habitat and because their property is one of the few within the entire State.

Mr. Butler questioned if there had been any thinning of the forest or if the forest in its natural existence since 1968.

Mr. Hoyd that their particular interest is in the Eskridge Tract, being 210 acres surrounding the proposed project; that it was a heavy remediation site, with a heavy pine component; that there were also wetland species trees located on the site; that DelDOT purchased some of the tree species for the Route 113 expansion; that when his department took ownership of the tract, they began replanting what had failed the first time around, and has since been modified from there; that the trees are about 23 years old on their side, and are due for a thinning in the near future; that a lot of their plans will be dependent on the proposed subdivision; that regarding the Tiger Salamanders, it will depend on what the other agency they work with has to say, and they do not want to reduce the habitat, they desire to grow the habitat for the Tiger Salamanders.

Mr. William Sykes spoke in opposition to the Application. Mr. Sykes stated the developer had sent him a letter in February 2023, requesting to purchase property from him and his neighbor; that they both declined to sell; that he requested to be shown where the access for the development is now proposed; the DeIDOT had stated the Developer would be required to put shoulders on both sides to provide passing lanes; that the Developer cannot obtain the land needed on either side; that there are many people who hunt in the area; that a safety zone of 300 ft. to 400 ft. will be requested, and will close a lot of Redden Forest off to people who have lived in the area their whole life, and there are wetlands located near the project; that the run off of chemicals and fertilizer will go into the pond and kill everything.

Mr. Hutt stated from the comments provided, it would seem appropriate to provide a hunting notice, similar to the Agricultural Use Protection Notice and should the Application be approved, the Developer would require a notice at a minimum.

Mr. Drew Boyce with Century Engineering stated his company had been engaged by the Applicant to work with them through the DeIDOT process for the required road improvements associated with the Application; that as part of the due diligence effort, they came up with some conceptual designs associated with the entrance and road widenings; that the preliminary designs did indicate the need for some property rights outside of the Applicant's control; that typically, DeIDOT first requires the Applicant to make an effort to secure the necessary right away needed for improvements; that DeIDOT requires that an initial contact with the property owner, and then an appraisal, for a good faith offer and negotiation; that if negotiations fail, the Applicant will go back to DeIDOT for renegotiation of the required frontage improvements and they would look to minimize the design, narrowing things as much as they could, to pull themselves off any properties that were not willing to provide any additional right of way needed for the improvements.

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 2022-19 Grayrock Preserve. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

2022-20 Marvel Subdivision

A Coastal Area standard subdivision to divide 40.182 acres +/- into forty-four (44) single-family lots, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southwest corner of Brasure Road (S.C.R. 345) and Vines Creek Road (Rt. 26). 911 Address: 32688 Vines Creek Road, Dagsboro. Tax Map Parcel: 134-11.00-27.00. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Revised Preliminary Subdivision Plan, the Applicant's Exhibit Booklet, the property deed, the Staff Analysis, the DNREC Soil Feasibility Study, Technical Advisory (TAC) Comments which included comments from the Sussex County Engineering Department Utility Planning Division, Delaware Department of Agriculture, and the Delaware Division of Historical and Cultural Affairs. Mr. Whitehouse stated that no comments had been received in support of the Application; that three comments had been received in opposition and no mail returns were received for the Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the Applicant, Double H Development, LLC; that also present were Mr. Robert Horsey, Principal Double H Development, LLC, Mr. Ring Lardner, and Mr. Cliff Mumford, with Davis, Bowen & Friedel, Inc.

Mr. Hutt stated that the property is located at the southwest corner of Brasure Rd. and Vines Creek Road (Rt. 26); that a portion of Brasure Rd. is State maintained, however, ending and becoming a 50 ft. wide easement right of way along a subdivision of land; that the property is located within a rural and residential area of Sussex County; that there are a number of single-family lots, agricultural areas and poultry houses located in the area; that there are a number of subdivisions which have been developed in the area which include, Blackwater Village, Blackwater Cove, Sea Grove, Hickory Woods, Boyers Village, Hidden Acres, The Cove at Sandy Landing, Seawinds, Dogwood Acres, Dogwood Estates, Waverly and Harmony Heights; that the Application is comprised of one tax parcel, containing 47.48 acres; that the property is presently improved with a residential dwelling, with the remainder of the property being unimproved; that the property consists of 10.5 acres of wooded area; that the balance of the property is agriculturally used for farming; that there is a drainage channel that bisects the property; that the drainage channel benefits DelDOT with a 100 ft. wide drainage easement; that there is a 50 ft. from centerline easement in either direction as part of the DelDOT easement; that the Application proposes 44 lots for the property, resulting in a density of 0.91 units per acre on the site; that the Application is not a typical subdivision application; that the Application is a large lot cluster subdivision permitted under Sussex County Code; that each lot will have its own, individual well and onsite wastewater treatment system; that the Subdivision Code indicates that in AR-1 (Agricultural Residential), the minimum lot size may be reduced to .5 acre or 21,780 sq. ft., where soil conditions are suitable as approved by DNREC; that the Applicant retained Mr. Jay Duke, with Coastal Soil Consultants, Inc. to provide DNREC with a Soil Feasibility Study; that DNREC responded to the Soil Feasibility Study and provided a non-binding statement of feasibility; that this is a typical process for a subdivision that has on site wastewater treatment systems; that DNREC's response confirmed Mr. Duke's findings, and identified on those findings with a plot showing where each septic system is to be located and which septic system design is proposed for each lot; that the 2020 State Strategies Map promulgated by the Office of State Planning Coordination identifies the area as being a Level 3 area; that the Sussex County's 2045 Future Land Use Map, located within the 2018 Comprehensive Plan, designates the area to be within the Coastal Area, which is one of the County's seven Growth Areas; that growth is anticipated; that because of the property's Coastal Area designation, special environmental concerns must be addressed, specifically the drainage channel ditch that bisects the property; that the property and much of the surrounding area is located within the AR-1 (Agricultural Residential) Zoning District; that the Blackwater communities, as well as another large area to the southeast, are located within the MR (Medium-Density Residential) Zoning District; that along Rt. 26 there are a number of commercial and business zonings consisting of C-1 (General Commercial), B-1 (Neighborhood Business) and CR-1 (Commercial Residential); that when DNREC confirmed the Soil Feasibility Study, there was a statement contained in their letter stating that because the property is in the Inland Bays Watershed, nitrogen reducing technologies meeting the PSN3 Standard must be incorporated in the design of all onsite wastewater treatment and disposal systems; that DNREC stated all of the septic systems in the community, regardless of what style or type of septic system, will be required to have a pre-treatment system to allow for the nitrogen reducing portion of the system; that this requirement is important to the environmental, coastal nature and area of the property; that due to the proposed onsite septic and well, a minimum lot size of .5 acre or 21,780 sq. ft. is required; that essentially, the lots are three times larger than lots seen in a typical 7,500 sq. ft. cluster subdivision; that this results in a density of less than one unit to the acre, which is consistent with the nature of the area, and the designation on the Future Land Use Map of being within the Coastal Area; that the project is consistent with the Level 3 designation on the State Strategies Map and consistent with the AR-1 (Agricultural Residential) zoning; that there would be a property owners association formed to manage and care for the common areas; that with the proposal of larger lots, it is anticipated that homeowners will place their own amenities on their lots, as opposed to spending their money on a property owners association with clubhouses, pools and other amenities; that with the low number of 44 lots, could create a financial burden; that the project is superior to what could be achieved under a standard subdivision;

that the first step is to identify lands that should be preserved, such as the drainage ditch, which is a blue line stream; that the drainage ditch intermittently has water in it; that the ditch fills when there are storms and then empties; that due to this, a permit would be required for each of the proposed cross over areas; that the second step is to identify the developable areas which would be areas outside of the 100 ft. easement for the waterway feature; that the third step is to locate the roads and trails; that the plan proposes a looped road concept, which was chosen to allow for no dead ends; that the final step is to locate the lot lines; that the drainage feature is the most significant environmental concern that exists on the property; that the drainage ditch has a 50 ft. from center line requirement which is protected by an easement; that with the proposed design, there is an additional 30 ft. on either side, totaling 80 ft. provided from the centerline in either direction; that another superior design is the result of 12 acres if provided open space for the community, being largely centered around the drainage channel to provide further protection from encroachment of future development and allow the ditch to function properly; that these requirements will be included within the covenants for the community; that there will be 30 ft. landscape buffers between the development and the adjacent properties, which is greater than the required standard subdivision buffer; that rather than having a trail network through the drainage ditch area, requiring additional permits, sidewalks are proposed on both sides of the street, creating an internal networking, in lieu of; that there were three comment letters submitted for the Application; that one comment letter was submitted by a resident who indicated dissatisfaction with being displaced by the project; that the other two letters of opposition related mostly to traffic; that the proposed Application is a low-density subdivision, being less than one unit to the acre; that any development will increase traffic, however the increase traffic would be for the lowest density for a property of this size; that the other letter of opposition expressed concern regarding clear demarcation between their property and the future subdivision, as they do not want the impression to be given that they are part of the subdivision or part of the homeowners association; that there will be a 30 ft. landscape buffer between the property boundary and the lots immediately adjacent; that the project meets the requirements of the Comprehensive Plan and the Zoning Code, specifically Chapter 99 of the Subdivision Code and for all the reasons stated he requested the Commission approve the Application. Mr. Hutt submitted proposed Findings of Fact, and Conditions of Approval.

Mr. Cliff Mumford, a Professional Engineer with Davis, Bowen & Friedel, Inc. spoke on behalf of the Application. Mr. Mumford stated that according to the FEMA Maps, the property is not located within the Hundred Year Floodplain; that the Environmental Map does not reflect any NWI (National Wetland Inventory) wetlands located on the property; that there a drainage ditch that bisects the property; that the site was investigated by Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc.; that Mr. Launay found wetlands located along the ditch; that Mr. Launay flagged the wetlands as requiring a 30 ft. resource buffer per the County Code; that the resource buffer will fall within the 50 ft. or 100 ft. drainage easement, which will be shown on the Final Site Plan; that according to the Source Water Protection Area Map, there is an area of Excellent Recharge located on the northern portion of the property; that the Recharge Area line also runs with the ditch; that the northside of the property falls within the Excellent Recharge Area; that per the County Code, if the property is within the recharge area will have an impervious cover of less than 35%, no mitigation measures are required; that if they assume the entire buildable area of each lot is impervious, and then county the sidewalk and road area, they would still be less than the 35% impervious cover requirement; that therefore, no mitigation measures are required for the project; that according to the NCRS Soil Survey Map, the section of soils for the development are generally well drained; that the portion of soils that run with the drainage ditch are less well drained; that the bulk of the development is located within well-draining soils, and those areas are conducive to the proposed type of development; that the subdivision has dual frontage on Vines Creek Dr. to the north, and Brasure Rd. to the east; that there is a sign at the end of the road where the State maintenance ends; that Vines Creek Rd. (Rt. 26) is classified as a Minor Arterial road; that a 10 ft. wide shared use path will be provided along the frontage, as it is a typical DelDOT requirement; that the

closest lot line will be 30 ft. or more from the right of way of Vines Creek Rd.; that the subdivision will have an entrance on Brasure Rd. subject to DeIDOT review and approval; that Brasure Rd. is a state-maintained road, classified as a Local Road, per DeIDOT's Functional Classification Map; that Brasure Rd. serves an abandoned trailer, a single-family home and a couple other homes owned by the Brasures; that the entrance is roughly 200 ft. from the intersection of Vines Creek Rd.; that the internal streets will be 24 ft. wide with open drainage swales, located eight feet from the edge of pavement; that the swales can be utilized for stormwater runoff treatment; that in addition to the proposed infiltration ponds a five foot concrete sidewalk is proposed on both sides of the road, and will be located on the back side of the ditch and easement; that the road and drainage will be designed to meet the requirements of Sussex County Engineering Department, being subject to their review and approval; that there is a 50 ft. easement on either side of the drainage ditch, equaling a total of 100 ft. easement; that a 30 ft. strip has been provided in addition to the easement to provide separation from the lot lines; that two crossings are proposed along the ditch to provide a looped road network, eliminating the requirement for a dead end internally; that stormwater management will be provided to meet the requirements of Sussex Conservation District; that two stormwater infiltration ponds are proposed; that one will be located on the north side of the ditch, and the other pond to be located on the south side; that the pond sizes could get minimized as they move into the design portion of the project; that the initial site work will consist of installing the entrance and stormwater ponds; that the roads, site work, and grading will be limited to the right of way and easement areas for installation of the road and sidewalks; that no grading for tree removal is proposed past the front building setback, which is 30 ft outside of the right of way, will be proposed in order to preserve the integrity of the septic disposal areas; that the subdivision is on well and septic, similar to Harper's Glen subdivision; that each lot will be required to have a Site Evaluation performed by a Class D Soil Scientist; that pursuant to the Soil Feasibility Study, performed by Mr. Jay Dukes of Coastal Soils, Inc., the site evaluation will identify the type of system suitable for the lot, and it will map the acceptable disposal areas; that after the Site Evaluation is approved, a Class C Septic Designer, who will design a septic system based on the Site Evaluation and the number of bedrooms proposed for the house; that selective lot clearing can be prescribed as part of the individual Site Plan for the lot; the project was reviewed by TAC (Technical Advisory Committee); that responses to the TAC comments were provided within Exhibit 5 of the Exhibit Booklet; that a letter regarding the project's compliance with Chapter 89, Source Water Protection was included with Exhibit 2 of the Exhibit Booklet, which address the impervious area as proposed within the Excellent Groundwater Recharge Areas; that an Environmental Assessment and Public Facilities Evaluation Report was included within Exhibit 4, and addresses items found within Chapter 115 of the County Code; that the prepared a response to Chapter 99, which can be found within Exhibit 3 of the Exhibit Booklet; that the project is integrated into existing terrain and surrounding landscape; that the project provides buffers to screen objectionable features within the 30 ft. landscape buffer around the perimeter of the site; that the project prevents pollution of surface and groundwater with the stormwater management controls; that the project provides for safe vehicular and pedestrian movement, and is compatible with other surrounding land uses.

Ms. Wingate questioned the drainage ditch, the required permitting for the ditch, how the road will be constructed, what is proposed to be constructed along Vines Creek Rd, and if DeIDOT expressed any interest in matching up West Beach Rd. with Brasure Rd. Ms. Wingate expressed an interest in having emergency access from Rt. 26, to provide first responders an additional entry point into the subdivision without the requirement to access Brasure Rd., and she questioned if an archaeological study had been performed as there was concern expressed within the packet documents.

Mr. Mumford stated the road would be constructed similar to the way Brasure Rd. crosses the ditch; that there is a culvert, which provides the road crossing, which would be permitted through the regulatory agencies; that the drainage ditch is about two to three feet deep; that a multi-use path is proposed to be

constructed along Vines Creek Rd.; that they had been had detailed conversations with DelDOT; that due to the size of the subdivision, the project did not require a Traffic Impact Study (TIS); that once they send for a pre-submittal meeting request, some of the issues will start being addressed;

Mr. Hutt stated Mr. Edward Otter to perform a Phase 1 Archaeological Study.

Mr. Collins stated he understood the desire to eliminate dead ends within the subdivision but questioned why the need to create two crossings over the drainage ditch, which will require permitting, and what type of wetlands are located around the ditch area.

Mr. Hutt stated there are no other wetlands located on the property, other than the ditch itself; that Mr. Launay flagged the drainage ditch as a blue line stream, as he indicated within his report; that a blue line stream does have intermittent water during summer seasons and large storm events; that the blue line stream is considered Waters of the United States and that jurisdictionally the drainage ditch falls into an area of regulation for them.

Mr. Mumford stated Mr. Edward Launay has marked, what he considers to be Waters of the United States Army Corp of Engineers regulated wetlands, which runs with the drainage ditch.

Mr. Hutt stated the most important fact regarding the wetland drainage ditch area, is the DelDOT easement of 50 ft. from the centerline, would exceed the County's Resource Buffer Protection requirement; that in addition to that requirement, the plan is designed to provide an additional 30 ft. beyond the 50 ft. from the centerline and there should be no impact to the drainage ditch, as there will be a total of an 80 ft. separation.

The Commission found that no one was present in support of and two people were present in opposition to the Application.

Mr. Gary Case spoke in opposition to the Application. Mr. Case stated he resides across the street from the property; that when it rains, there is substantial flooding in the area of the intersection of Brasure Rd. and Vines Creek Rd.; that he agreed it is difficult to get out onto Vines Creek Rd.; that there have been two accidents in the past two years; that the road is very busy; that Vines Creek Rd. is the only route into Bethany Beach, unless coming in through coastal or through Maryland; that he does not understand how the impact could be considered minor; that traveling through Dagsboro in the area is very difficult; that there is water located in the wetland area the majority of the time; that there are only a few periods during the year where there is not water running under the road; that the right of way is at 75 ft., and now they have marked the right of way to be 77 ft.; that the proposed development brings nothing to the existing community; that the project does not propose to bring in water or sewer; that the nitrate rates in his well are at 20,000; that the Delaware Standard is 10,000; that the placement of 44 homes, with the increase of traffic at two vehicles per home, will result in at least 100 additional vehicles to the daily commute; that he understood the Developer will try to mitigate the nitrates; that his nitrates are already above the Delaware standard; that the water is going to be drawn down to the natural rejuvenation point; that this will create difficulty for them to get water; that there is a lot of wildlife living within the existing forest; that he questioned if a traffic light will be placed, will the Developer realign the road, how bad will the traffic be and he stated there are a lot of mitigating circumstances that make the proposed location not a viable option for the proposed project.

Ms. Kelly Mitchell spoke in opposition to the Application. Ms. Mitchell stated she and he husband reside across the road, and have lived there for 25 years; that she appreciated the proposal of .5 acre lots, as it will raise property values; that she did not like the minimalization that the ditch is just a drainage ditch;

that deer come and go across the ditch daily; that the deer drink the water; that she is concerned why the road is required to be placed in that location twice; that she also concerned that she will now be looking directly at the proposed development; that there is another development in the area, which was built on the side, similar to the proposed project; that the previous development offers no appealing landscaping; that there are only backyard that face the roadway; that people pull their vehicles into their back yards in an attempt to sell them; that are a lot of signs and other items placed in the rear of the lots, along the road; that if the proposed development proposes the same, she would not appreciate that, and she would like to understand the proposed landscaping.

Mr. Hutt stated a landscape buffer is proposed between the rear yard line and the right of way along Vines Creek Rd.; that there is an additional 30 ft that exists there for landscaping or some other type of barrier, and the landscaping is prescriptive in the Ordinances of the County Code.

Mr. Whitehouse stated the landscape buffer requirements are called out within the Ordinance of the County Code; that the Ordinance regulates the depth, number, and species of the trees; that depending on the species, it requires landscaping of five to six feet; that there are heights and caliper widths built into the Code and the Code requires more than just shrubs.

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 2022-20 Marvel Subdivision. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 4-0.

Recess

5:27 pm – 6:00 pm

C/U 2357 Pingue Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 (AGRICULTURAL RESIDENTIAL DISTRICT) FOR A PRIVATE TENTING AREA TO BE LOCATED ON A 1.8 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.61 ACRES, MORE OR LESS (PORTION OF). The property is lying on the northwest side of Cedar Beach Road (Rt. 36), approximately 0.29 mile east of Coastal Highway (Rt. 1). 911 Address: 20420 Pingue Dive, Milford. Tax Map Parcel: 330-7.00-7.00.

Mr. Whitehouse advised the Commission that submitted into the record were the property Deed, the DelDOT Service Level Evaluation Response, Sussex County Constable Department Inspection notes dated July 2021, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, the Applicant's Exhibit Booklet, and the Applicant's Preliminary Site Plan. Mr. Whitehouse stated zero comments were received in support of, five comments were received in opposition to, and zero mail returns were received for the Application.

Mr. Robertson requested clarification as to why the advertisement for the Application referred to a "tenting area" rather than a campground, as campgrounds are subject to specific requirements.

Mr. Whitehouse stated that when the Application initially was submitted there was some back and forth between the Applicant and staff regarding whether the proposed use was or was not to be considered a

campground; that per the Applicant's request, the Ordinance was introduced with "tenting area" in the short title.

Chairman Wheatley stated the submitted exhibit is titled "Pingue Campground."

The Commission found that Mr. Chad Lingenfelder, Esq. with the Smith Firm, LLC, spoke on behalf of the Applicants, Mr. Robert Pingue and Mrs. Melissa Pingue, who were also present. Mr. Lingenfelder stated that the Applicant's are requesting a private tenting area; that they believe there is a distinct difference between a tenting area and a campground; that there is a definition within County Code, under §115-22, as to what a campground is and what a campground requires; that those specific conditions are not subject to tenting areas; that a tenting area, under the definitions, is different than a campground; that under §115-4 of the County Code, a tenting area is any park, tourist camp, camp court site, lot parcel or tract of land, which is designed, maintained, or attended for the purpose of supplying a location or accommodation for two or more tents, tent trailers, camp trailers, or other camping vehicles or facilities as temporary living or sleeping quarters for persons engaged in recreational, educational or vacation activities; that do to this definition, that Applicant is requesting the Application be considered a private tenting area; that a complaint was filed, which led the Applicant to receive a violation for the operation of a campground; that the Applicant's property was never intended to be used as a campground; that when the violation was issued, it was the Applicant's daughter's wedding, and people had come down for the wedding; that the property has at all times been used for private use only; that the County does allow for private parties, where guests of the property owner to visit the property; that this is reasoning the "Tenting Area" definition is provided under the definitions by the County; that the Applicant was violated and instructed to seek a Conditional Use to have the tenting area, and under the Code the Applicant would be denied for the request of a campground.

Mr. Robinson stated there is no Conditional Use for a tenting area, however, there is a Conditional Use requirement for parks or campgrounds for mobile campers, tents, camp trailers, touring vans, and the like.

Mr. Whitehouse stated that although the document is a Sussex County document, staff would not add other department documents to the public record unless the Applicant specifically submitted the document into the record themselves.

Mr. Lingenfelder submitted the Sussex County Violation issued to the Applicant into the public record for the Application.

Mr. Lingenfelder stated the Applicant requests a Conditional Use be granted to allow for a private tenting area, as it is defined by the definitions of the Sussex County Code; that the Applicant is the owner of the property located at 20420 Pingue Drive, in Milford; that the Applicant is requesting 11 non-permanent 50' x 40' sites for a private tenting area on the property that the Applicant owns with his wife; that submitted in the packet was a Site Plan that shows the proposed 11 non-permanent site; that the site are pervious surfaces; that there is no crush and run, no stones or rocks proposed in the area; that the area consists of grass in the location for the RVs, mobile trailers, tents, and things of that nature that one would use to place themselves for recreation; that the Applicant is blessed with their own business, which has created the wealth and ability to provide each lot its own utility electrical hookup; that the electrical hookups were provided by a licensed professional electrician, who was approved by Sussex County, as well as the City of Milford; that each lot has been provided with its own pedestal and its own tree; that the provided trees are a tribute to Mr. Pingue's father, and has been planted in memory and commemorate of him; that the Applicant's proposed use began during the COVID-19 pandemic; that Mr. & Mrs. Pingue were in the midst of planning their daughter's wedding; that during the pandemic

lockdown, they wanted to have the least amount of delay possible, and began preparing the project for the ability of their friends and family to come to their property to help celebrate their daughter's wedding; that during that time in July 2021, a Sussex County Constable visited the property; that the Constable issued a Notice of Violation, as it was believed the Applicant's were operating a campground for profit; that the Applicant was in shocked, as he was not aware of being in any type of violation; that the Applicant did make every effort to correct any violation, which has led to the current Conditional Use application; that at no point have the Applicants attempted or wished to attempt an operation of a public campground for profit; that the request is only for an 11 site campground; that he would question how much money could be made by an 11 site campground facility, with the knowledge that campgrounds operate more on cash flow and a cash in basis turnaround operation; that when reviewing existing campgrounds within Sussex County, the minimum he could find was a 70 lot campground operation, which was used for profit; that a Preliminary Site Plan was submitted within the packet; that the Site Plan reflects the proposed 11 lots and how they would be laid out on the property; that the submitted photos show the installed pedestals and the planting of the trees; that the proposed tenting area consists of full, green, pervious surface space; that some of the submitted opposition expressed concern to wetlands being located on the property; that the Pingue's property is a knife-slice sliver of property; that according to the Wetlands Delineation Map, the wetland portion of the property is located to the extreme far half back of the property, being mostly located within the wooded area of the property; that the tenting area is proposed toward the front of the property; that the tenting area operation would not encumber or encompass any sort of operation on the wetland area; that the tenting area would not be intrusive to any wildlife within the wetland area; that DelDOT did perform a study of the property, under the proposed use of a private tenting area; that DelDOT determined that the proposed use would have diminutive value on traffic; that traffic was also an expressed concern within the submitted comments in opposition; that the proposed use would have very little traffic impact, as the tenting area is not for public use, but by invitation only; that other concerns mentioned in opposition related to well water issues; that the Applicants do not intend to have any sort of water access to their guests; that it is intended to be a "water on-water off" situation; that most of the vehicles contain tanks and/or bladders, which allow for the carry on of water and the carry off of gray water; that the definition of tenting area does permit for any or all of the following: RVs, campers, tents, tent trailer, camping trailer, or any other camping vehicle or facilities as temporary living or sleeping quarters; that those guests who would utilize tents, would use the facilities provided by the Pingue's residence; that trash disposal would also be provided by the Pingue's personal service; that there would be no water or runoff issues; that the project will not use or provide exposure to the aquifer; that there would be no earth disturbance; that the only disturbance was the installation of the electrical panels; that there has been no stone, or crush and run placed on the site; that the Applicant would request the recommended approval for a Conditional Use permitting a private tenting area, that there would be no for-profit purposes; that the tenting area would not be open to the public; that the tenting area would only be by the invitation of the Pingues to their friends and family; that there have never been any sort of environmental violations of record for the property, nor of the Pingues ever been fined for any type of dumping or wetland destruction; that the Pingues use the property year-round; that the property would remain untouched outside of the planted trees installed electrical pedestals and picnic tables; that the property would still be used for the Pingue's residence and their Sight and Sound security system business; that the campground statue called out under §115-22, specifically, mentions that for purposes similar to what is proposes; that there are regulations to the use of a for-profit, public enterprise; that there is a definition for a tent area, which allows for small communities, such as the Pingue's friends and family; that the proposed tenting area will allow their friends and family a safe place to visit, especially at a time where prices and traffic are escalating; that the proposed use would provide refuge for friends and family to visit, on a tract of land that is over nine acres; that the situation of seeing RVs, trailers and campers, being placed in front yards with extension cords and water hoses, is becoming more frequent; that the proposed use will provide a safe and stable situation; that the Pingues have been blessed with the ability to afford safe electrical

hookups; that he felt they should not be punished for the fact they are able to provide these accommodations for their friends and family; that he believe the County Code does offer a provision for the Pingues to provide their intended use; that the County Code Officer believed that the Pingues were performing a campground; that they have never sought their property to be used as a campground; that the Pingues were cited for the use of a non-permitted campground; that under the Tenting Area definition, he believed the Pingues had the right to perform their proposed use; that after discussions with staff, the Pingues were informed they would not be able to operate a campground, even if they had initially tried to from the onset, due to the campground requirements by Code, and he requested the Commission to allow permission for the Pingues to use their property for the proposed use of a private tenting area.

Mr. Butler questioned what the purpose of the request was, and he questioned if the intention was for year-round camping, what time limits were proposed for each stay, and if the property was zoned for commercial use.

Mr. Lingenfelder stated in his discussions with the Pingues, it was expressed that no long-term stays would be permitted; that all stays would be limited to one week; that the property is zoned AR-1 (Agricultural Residential), and the Pingues operate a mom-and-pop business from the property.

Mr. Robertson questioned if the current business operated with any employees.

Mr. Robert Pingue stated that the property is zoned AR-1 (Agricultural Residential) with two employees or more; that the employees are 1099 employees; that years ago, they were requested to submit a letter regarding the business; that they submitted the letter in 2006 to Sussex County; that Sussex County reaffirmed that the letter was acceptable, and he is following the regulations.

Mr. Whitehouse stated when looking at the building permit history, in 2003 there was a permit pulled for two pole buildings, and in 2007, a permit was pulled for a pole barn; that he questioned if the buildings were still used for non-residential uses and/or for agricultural purposes and if the buildings were replaced or new, being placed in 2003 and 2007.

Mr. Pingue stated the pole buildings are for mixed uses; that they are used for housing equipment and things of that nature; that he is not aware of the pole building permits pulled in 2003, and he questioned if Mr. Whitehouse had the correct property.

Mr. Lingenfelder requested to know the purpose of Mr. Whitehouse's building permit question.

Mr. Whitehouse stated the property is zoned AR-1 (Agricultural Residential); that according to the record made, it appears that building permits have been pulled for other residential or agricultural purposes, but a history of commercial use and he was attempting to work out if there had been a Conditional Use, or any other approvals, granted between 2003 and 2007.

Mr. Pingue stated none of the buildings have been used for commercial use.

Mr. Robertson questioned the uses of the existing buildings.

Mr. Pingue stated he was unsure what buildings the Commission was referring to.

The Commission pointed out each existing building on the aerial map, at which time Mr. Pingue provided the uses of the buildings.

Mr. Pingue stated the existing buildings were utilized for storage, office space, and space for their sound communication business, his wife's art studio, a private residence which was permitted in 2000, a storage trailer, multiple storage sheds, and an old chicken house; that there were no buildings constructed in 2003; that the Constable had informed him that the sheds were required to be permitted; that he applied for permits and paid \$190.00 to bring them into compliance, and when he first purchased the sheds, Sussex County did not require permits because the sheds were under 500 sq. ft.

Ms. Wingate questioned if there is a Conditional Use approval for the Sight & Sound communication business.

Mr. Robertson stated there was a listing submitted into the record reflecting a warehouse for lease, located at 20444 Pingue Drive, Milford.

Mr. Pingue stated there was a time when they had considered leasing the pole barn; that they spoke with a real estate company regarding this; that they were not aware of the fact that leasing was probably not able to happen and at which time they dropped the idea, and this was approximately four to five years ago.

Mr. Butler questioned if the tent site would be hooked up to septic.

Mr. Pingue stated there is no hook-up to septic; that the water will be carried on and carried off the site; that he only installed electric pedestals to provide safe electricity; that the request is only for short-term use, being no more than a week; that the chances of filling all provided slots are slim to none and he follows the regulations of everything.

Ms. Wingate questioned if tents are included in the request, and what amenities would be provided.

Mr. Pingue stated Clean Delaware will come in when they have an event, such as birthday parties for their children or grandchildren.

Chairman Wheatley questioned if it was Mr. Pingue's testimony that there are no for-profit aspects of the proposed Application; that Mr. Pingue would not collect or accept money in return for the use of the tent sites and that the site will not be available to the public.

Mr. Pingue stated Chairman Wheatley's comments were correct, and he is not looking for profit; that the site will not be advertised and is solely for the use of family and friends, at no cost to them.

Chairman Wheatley advised Mr. Pingue that in the Conditional Use process, the Commission has the authority to place a wide latitude of conditions and stipulations on any approval.

Ms. Wingate questioned if the Conditional Use request was only for the yellow highlighted area, containing 11 lots.

Mr. Lingenfelder stated that Ms. Wingate's understanding was correct and was reflected in the provided Site Plan.

Mr. Whitehouse stated that the Sussex County Constable visited the site in July 2021; that at that time it was noted that there appeared to be three residences located on the property, and he questioned the number of dwellings currently existing on the property.

Mr. Pingué stated that currently there are three residences located on the property, belonging to himself, his brother, and his mother, and all three residences were permitted and were approved in 2000.

Chairman Wheatley questioned how three residences could have been approved on a parcel located within AR-1 (Agricultural Residential) and he questioned if all three residences have kitchens.

Mr. Whitehouse stated it was unusual to have very little history for a parcel with three residences located on it, hence the reasoning for his question and he advised the Commission he did not currently have the answer to the question.

Mr. Pingué stated that all three residences have full kitchens in them.

Chairman Wheatley stated the reason the Commission is pursuing the line of questioning is that typically, only one kitchen is permitted on an AR-1 zoned property; that this is how Sussex County decides what a residence is; that multiple residences located on one property is problematic; that there may have been circumstances under which the dwellings were permitted; that the Commission is attempting to figure it out, and that the dwellings are not the subject of the Application request.

Mr. Robertson stated the residences may be grandfather in as legal non-conforming uses, which predated the current Zoning Code; that this current issue is, that the whole premise of the Application is for a private, not for commercial, purpose for a campground; that if there is more than one residence on the property, which may be in violation, how can the Commission guarantee that the sites will not be used for commercial purposes; that there is already a business operating on the site with employees, which is beyond what is permitted and he felt the questioning was entirely relevant.

Mr. Lingenfelder stated he disagreed; that he felt Mr. Robertson was making insinuations on things that have not been proven or found to be factual.

Mr. Robertson questioned how Sussex County would police the condition to only be used by friends and family.

Mr. Lingenfelder stated the intended use is for private use; that Sussex County would police the condition the same way the County would enforce any other sort of Code or restriction; that a Code Enforcement Officer would do an investigation to determine if provisions are being broken.

Chairman Wheatley stated that the Commission is concerned about creating situations that would require the County an undue number of resources to administer and that much of the regulation and enforcement in the County is complaint-driven.

Mr. Robertson stated he believed the Commission would get questions from campground operators, as to why they were required to follow certain requirements, and the subject Application did not, because it was private, only to be used by friends and family and the argument would be regardless if for commercial use or private use, there is no distinction because the use is still the same, being tents versus tents.

Mr. Lingenfelder stated the County Code specifically delineates the difference between campgrounds and tented areas and if the County wants to change the definition, then the County can delete the tent area from the definitions.

Mr. Robertson stated there are definitions for tented areas, but questioned if there is a Conditional Use for tented areas, as there is a Conditional Use requirement for campgrounds.

Mr. Lingenfelder stated there is a different definition of a campground, than that of a tented area; that it was the Sussex County Constable who labeled the property a campground, not the Applicant and the Applicant had no other recourse than to go through the Conditional Use process, or be fined \$100 per day until the use was found compliance under the §115-4 for tented areas, which is different than a campground.

Mr. Robertson questioned if the Applicant could or could not comply with the campground requirements.

Mr. Lingenfelder stated the buffer requirements for campgrounds would not allow the site to be used as a campground, and from a liability standpoint, it was their belief that they potentially would be required to be open to the public when that is not the Applicant's intention.

Mr. Collins questioned what size campers would be permitted on the sites.

Mr. Lingenfelder stated any tent, trailer, RV, or camper that could fit within the 50' by 40' site would be permitted.

The Commission found that no one was present in support and four people were present in opposition to the Application.

Ms. Melody Olsen spoke in opposition to the Application. Ms. Olsen stated that she and her husband purchased their property in 1990, when it was farmland at the time; that their property was previously owned by Mr. Huey; that there was fence along the property line adjacent to the Pingue's property; that the posts are not there anymore; that there used to be a hedgerow, located on her side, about 25 ft. deep; that once they purchased the property they began to clean the hedgerow; that once the Pingues purchased the property, they have contested the property line; that while her husband was away on a business trip, she had a friend helping to cut and clean up the hedge row; that at that time, Mr. Pingue came out, cursing at their friend for cutting down his trees; that this was the genesis of the property line dispute; that Mr. Pingue has argued that the property line is not straight; that she had previously sent him a copy of their original survey, a copy of their title, and their insurance document which reflect a straight property line; that he had concern to have close the campground can be located to the property line; that Mr. Pingue seems to do things and then get permits; that she knows landfilling has been performed at the rear of the property, where it begins to level off and become wetlands; that she has seen the dump trucks coming in with dirt; that she has concerns regarding outdoor campfires, noise levels, no fencing to prohibit trespassers, and potential hunting and that Mr. Pingue's son-in-law has previously been found hunting on her property, which she was notified by a camera on her property.

Ms. Emilie Crosser spoke in opposition to the Application. Ms. Crosser stated she lives adjacent to the Pingues; that she also had concerns regarding outdoor fires; that she thought the Application was strictly for tents; that even with the proposal of RVs and campers, it is not ideal for them to be holding bodily fluids or for portable toilets for any length of time; that the proposal raises concern to their ecosystems and their waters; that the adjacent neighbors all have wells; that she had a concern that the wells could potentially be compromised without constant monitoring; that the DelDOT evaluation was performed in March 2022; that Rt. 36 is used by a lot of farm equipment; that in March 2022 there was not a lot of harvesting and planting equipment going back and forth; that the farm equipment could pose a danger with traffic coming and going from a single-lane road; that there is no turn around; that for trailers going

into the site, it could pose a potential hazard, and could create a potential crash onto her property, and she had concern to property value impacts.

Ms. Lissa McKneely spoke in opposition to the Application. Ms. McKneely stated she resides on a property caddy-cornered from the Pingue property; that she stated she had previously submitted written comment, containing multiple pictures; that she also had concern regarding bathroom waste management; that the road has no shoulders; that the road is an evacuation route; that there are constant chicken trucks and regular boat traffic; that there is no room for error; that if trailers are having to make a left turn, there will be no place for large or small vehicles to move, as there are ditches located on both sides; that she questioned if the Pingues were every cited for dumping; that she submitted photos of the dumping, under Exhibit C of her documents; that the dumping has occurred within the protected wooded buffer for over three years; that a vehicle can now be driven over what used to be wooded and what used to be wetlands; that she never contacted Sussex Conservation District; that she has been well aware of their previous parties, yard sales and other functions; that she believed it was House Bill 264, that increased the buffer area from 50 ft. to 100 ft.; that the Pingues have general disregard for the welfare of adjacent neighbors; that they all share natural resources, such as their wells; that she felt the Pingue property is sucking up the well water, leaving little for the rest of them; that the Pingues have a swimming pool, and are now requesting 11 sites; that she PVC had been delivered to the site; that she was concerned the PVC could potentially be to supply water; that she believed the PVC was buried at the same time the electric was installed; that there is a lack of consideration for they neighbors; that the Pingues have a history of taking everything right to the limit, which is a good indicator of what will happen is the Conditional Use is approved and she feared the current request is a stepping stone for a larger use.

Mr. Lucius Webb spoke in opposition to the Application. Mr. Webb stated he is a realtor; that he has pondered the activities coming and going from the site, the business factors, and the six mailboxes; that there are several residences located on the property, besides the main house that the Huey's grew up in; that he is a native of Sussex County; that he is concerned about the laws and the rules; that if the Applicants are approved, he too, would like to have a private family campground; that a public campground is something owned by the State or Federal government; that a private campground is something like Campgrounds of America, and one cannot keep a campground private, for just your family; that your family has friends, and their friends have friends.

Ms. Wingate questioned how many children the Pingues had.

Ms. Melissa Pingue stated they have four children, three grandchildren, and stepchildren; that they have family who live on the property; that they do not have random people living on their property and that they also have nieces and nephews who often visit.

Chairman Wheatley questioned what the trucks of dirt were for.

Mr. Pingue pointed out areas that were low fitting on the property. Mr. Pingue stated he placed dirt to smooth the field area out; that the wetlands are located further in the rear of the property, being close to 100 ft. or better away from the filled area; that he and his family member shoot and sight their guns to the rear of the property; that they did have dirt brought in to use as a backfill; that there are concrete blocks and then 15 ft. of dirt, with 2"x12" stacks that are 18 ft. high and 20 ft. wide; that this provides for a backstop, and they can sit in safely without bothering anyone.

Mr. Lingenfelder stated the area was constructed to provide for a private shooting range, not for public use, and that the Applicants were agreeable to no campfires; that they also have a survey which they are

happy to supplement for the record; that his clients have already taken copious amounts of expenses; that fencing the very long property would be an extreme expense for the Applicant and they would make every effort to ensure there would be no trespassing.

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 C/U 2357 Pingue Properties, LLC. Motion by Mr. Butler to defer for further consideration, leaving the record open to allow the Planning & Zoning staff to acquire information relating to the history of the three dwellings on the parcel and for a period of 10 days from the announcement of the report receipt for additional public comment, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

ORD 23-11

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02. The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that the Ordinance request is to amend the Future Land Use Map element of the Comprehensive Plan from a Low-Density Area to a Coastal Area. Mr. Whitehouse stated that the Commission previously considered a Conditional Use application for the property at a previous public hearing; that at the time, the Commission deferred the Conditional Use application to allow for the Ordinance to be introduced to the County Council and proceed through the process; that the Application was submitted to PLUS; that the PLUS comments had not yet been received by staff, and he was happy to provide the Commission a verbal update with what happened during the PLUS meeting if not presented within the Applicant's presentation.

The Commission found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present was Mr. Anton Balakin on behalf of the Applicant. Ms. Peet stated that on March 23rd, 2023, the Applicant appeared before the Commission to present its request for a Conditional Use of land for the conversion of an existing pole building, currently existing on the property; that the Applicant request to convert the existing pole building into two multifamily units, with each unit to be rented on an annual basis; that after the public hearing, the Applicant learned, despite an understanding to the contrary, the Application could not proceed without an amendment to the Future Land Use Map; that former Commissioner Kim Hoey-Stevenson, motioned at the meeting of April 20, 2023, to defer a decision to allow for the Applicant to pursue the required Future Land Use Map amendment; that since the public hearing on March 23, 2023, the Applicant has worked with the Planning & Zoning office to seek an amendment to the Future Land Use Map that designates the property from Low Density to Coastal Area; that as part of the request, the Application was also put through the PLUS process; that they anticipate to receive the PLUS comments within the next month, and should be received prior to the public hearing scheduled for September 19, 2023, before County Council; that the property is 2.144 acres, being located along Saddle Ridge Way in Lewes; that the property is located on the west side of Beaver Dam Rd., being approximately .5 mile north of Hopkins Rd.; that the property is accessed from Beaver Dam Rd.; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the property is located adjacent to other properties located within AR-1, GR (General Residential) and MR (Medium-Density Residential); that the area is largely developed with residential units in a number of surrounding communities; that §115-22 of the Code provides that multifamily dwelling structures may be permitted as Conditional Uses; that the Code

requires, in part, that multifamily dwelling units in AR-1, the applicable zoning district are located in designated growth areas, including Town Center, Developing Area, or Coastal Area, as described within the land use element and shown on the Future Land Use Plan, provided in the Comprehensive Plan, specifically; that due to this, the Applicant seeks a Future Land Use Map amendment from Low Density to Coastal Area; that the Coastal Area is a designated Growth Area, which will permit the use of the existing pole building as a two unit multifamily dwelling, with the intent of renting each unit on an annual basis; that she believed it was common knowledge that in Sussex County, especially in the Rehoboth and Lewes area, people are seeking rental properties; that the proposed use is only for two units, however, it is proposed for an already existing pole building; that the property is extremely well manicured; that there is certainly a demand for the Applicant's proposed use; that the use will otherwise comply with the requirements of the Code; that the request is supported by the Conditional Use Plan that was submitted as Exhibit B, as part of the Future Land Use Map Application submission; that the Conditional Use Plan provides significant vegetative buffers and open space; that the existing pole building makes up a very small portion, being approximately 7% of the site; that the undeveloped and forested area make up 70% of the site; that the remaining areas of the site are comprised of the pervious gravel driveway and parking area, which make up the remaining 23% of the site; that as part of the Conditional Use submission, the Applicant proffered Conditions of Approvals, which proposed to limit the use to two units within the Conditional Use area; that the proposed conditions proposed that the Developer will provide for the perpetual maintenance of the streets, roads, stormwater management, etc.; that the common areas will contain a stormwater management system, that will meet or exceed the requirements of the Code; that all entrances will conform with the DelDOT requirements; that the project will be served by central water and sewer; that any hours of construction improvements be limited in nature; that for the Conditional Use application, there was a four-signature petition from the surrounding property owners submitted in support of the Application; that Mr. Anton Balakin owns other property adjacent to the site as well; that the property is currently located within the Low Density area according to the Future Land Use Map of the Comprehensive Plan; that the Applicant is requesting to amend the Future Land Use Map to allow the property to be located within the Coastal Area; that the Coastal Area permits for a range of housing types, including multifamily units, such as what it is proposed; that the plan confirms that Sussex County's base density of two units per acre is appropriate in the Coastal Area; that the proposed use is less than that of the allowable base density; that the proposed two units would be located on 2.144 acres; that the Applicant is not proposing medium to higher density for the project, however the plan does support medium to higher density development, in the Coastal Area, where central water and sewer are available, sufficient commercial uses and employment centers are located, where the use is in keeping with the character of the area, located along a main road, and/or is located along a major intersection, where there is an adequate level of service, or where other considerations exit that are relevant to the requested project and density; that the Comprehensive Plan also encourages the preservation of natural resources or open space in the Coastal Area; that all of which is encouraged by the proposed plan, and evidenced within Exhibit B; §4.4.2.1 of the Comprehensive Plan entitled, Growth Areas, provides that the County should consider the following to help determine where Growth Areas should be located; that consideration should be given to the proximity to incorporated municipality or municipal annexation, the location on or near a major road or intersection, the character and intensity of the surrounding development, including proposed development, the location relative to major preserved lands, location of water bodies, location of agriculture, protected easements, the areas environmental character, the areas ranking according to the Delaware Strategies for State Spending map, and the presence of existing public water and sewer; that for the proposed project, the County is to provide public sewer service within give years; that the proposed Future Land Use Map Amendment to the Coastal Area would be consistent with the area and the Comprehensive Plan, because multifamily units are permitted in the area; that AR-1 is an applicable Zoning District in the Coastal Area; that the use is less than Sussex County's base density of two units per acre; that the use is therefore compatible with the nearby residential communities; that the use proposes the maintenance of existing and proposed

open space areas and vegetative buffers; that public utilities are available to the site; that access to the site is located off an easement, being located off Beaver Dam Rd.; that through DelDOT's Service Level Evaluation, provided that the use will generate fewer than 50 trips per day; that the Office of State Planning commented regarding the sites location within Investment Level 4, and the properties location not being immediately adjacent to other Coastal Area designated properties; that the property is located within Investment Level 4, however, the surrounding area is developed along Beaver Dam Rd. with residential properties; that the request is to use an existing structure on the site; that the Applicant is attempting to use, what he considers to be, the best use for the property; that when review the Future Land Use Map in general for Sussex County, there are other isolated pockets of Coastal Area throughout the County, being surrounding by, adjacent to, or within the vicinity of the Low Density Area; that an example of this would be a property located down the street, at the Conley's Chapel Rd. and Beaver Dam Rd. intersection; that there are also properties located in the Selbyville area, owned by Mountaire, and properties on and near Camp Arrowhead Rd.; that she noted, Chairman Wheatley previously mentioned concern regarding a potential flood of similar request beginning, if the project were to receive a recommendation of approval; that the subject property is unique; that the property is situated in the residential area, with an existing structure on the site; that the property is located within the immediate vicinity of other properties that are classified as being within the Coastal Area, located across Beaver Dam Rd.; that she understood, there is a separation of properties located within Low Density, but she requested the Commission focus on the intended use, being for a two unit rental within the existing pole building; that the property provides significant open space and vegetative buffers, all of which are in character, not only with the AR-1 Zoning District, but the Coastal Area as well; that in the event the Applicant would ever want to seek a use outside of the scope proposed, and otherwise not permitted within AR-1, the Applicant would be required to make a new Application and appear back before the Planning & Zoning Commission and/or County Council; that a new land use submission would require the Applicant to proceed through the Site Plan process and any other approvals; that the Conditional Use request will be subject to the Conditions of Approval, and for all the reasons provided on the record and at the previous Conditional Use hearing, which she requested to incorporate by reference, the Applicant requests the Commission recommend approval of not only the Conditional Use request, but also the current amendment to the Future Lands Use Map from Low Density to Coastal Area.

The Commission found that no one was present in support of or in 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 ORD 23-11 requesting to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

ADDITIONAL BUSINESS

Mr. Robertson advised the Commission that a joint workshop will be scheduled in September and requested the Commission to give thought to topics they may want to bring up for discussion.

Meeting adjourned at 7:49 p.m.
