

THE MINUTES OF THE REGULAR MEETING OF AUGUST 11, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 11, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Agenda as circulated. Motion carried 5 - 0.

Motion by Ms. Wingate, seconded by Mr. Hopkins to approve the Minutes of the July 14, 2022, Planning and Zoning Commission meeting as circulated Motion carried 4 – 0. Ms. Stevenson abstained as she was not present for the July 14, 2022, meeting.

OTHER BUSINESS

(S-22-03) Steiner Road Industrial Park

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Lands of Steiner Land LLC and Delstar LLC for the construction of a Concrete Central Mixing and Proportioning Plant and a Building Materials Recycling and Sorting Facility. An existing fifty (50) foot wide Perpetual Cross Access Easement will serve as access for ingress/egress for both parcels. The proposed projects also share the same stormwater management facilities. The parcels are a total of 15.00 +/- acres and are located on the east side of Steiner Road (S.C.R. 320) approximately 1,060 feet south of Lewes Georgetown Highway (Route 9) with approximately (486) feet of frontage on Steiner Road. Tax Parcels: 135-16.00-23.05 & 135-16.00-23.06. Zoning: HI-1 (Heavy Industrial Zoning District). Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

(S-22-16) Village Center - Commercial

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for a Commercial Center to be located on an 11.65-acre portion of a parcel on the corner of Kings Highway (Route 9) and Gills Neck Rd. (S.C.R. 267). The Sussex County Council approved Change of Zone 1802 at its meeting of Tuesday, December 13th, 2016, through Ordinance No. 2480. The Final Site Plan includes one (1) 1,800 sq. ft. commercial building, four (4) 4,800 sq. ft. commercial buildings, three (3) 13,000 square foot commercial buildings, and one (1) 15,000 square foot commercial building, with parking, roads, green areas, and other site improvements. The Applicant has submitted a written request to allow eighty-one (81)

parking spaces to be located in the front yard setback. The Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 335-12.00-3.00 (portion of). Zoning: B-1 (Neighborhood Business Zoning District). Staff are awaiting agency approvals.

Ms. Stevenson stated she did not see a DelDOT Letter of No Objection to the parking within the front yard setback.

Mr. Whitehouse stated the Site Plan is currently considered preliminary; that written approval is not currently required; that written DelDOT approval could be made a requirement for final approval; that the Applicant is working with DelDOT; that staff has had discussions with the project's engineers regarding groundwater and impervious cover; that Mr. Hans Medlarz, Sussex County Engineer, was present if the Commission had any questions and the plan could be required to come back to the Commission to receive final approval upon receipt of DelDOT's written approval.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan as preliminary, with final site plan approval to be by Commission upon receipt of a DelDOT Letter of No Objection to parking within the front yard setback. Motion carried 5-0.

S-22-21 Hete4, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of four (4) single-family dwellings to be located on one (1) parcel of land. This plan includes parking, landscaping, utilities, and other site improvements. The proposal is supported by Conditional Use No. 2262, which was approved by Sussex County Council on November 16th, 2021, through Ordinance No. 2812. This application will be participating in the Transportation Improvement District, and the plan received a Letter of No Objection from the Delaware Department of Transportation on June 6th, 2022. The plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-6.00-686.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals. Should the Commission desire to act favorably, it is requested that all final approvals be made by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Grotto's Pizza Corporate Office (Mixed Use)

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a three-story, 24,308 square foot +/- mixed-use building to function as corporate office space on the first floor for the Grotto's Pizza restaurant chain, twelve (12) varying size apartment units on the second and third floors, associated parking, and other site improvements. The improvements are to be located on the east side of Bay Vista Road (S.C.R. 273(A)) and on the south side of Coastal Highway (Route 1) and lie within the Combined Highway Corridor Overlay Zone (CHCOZ). Staff has also received a request to permit fourteen (14) parking spaces to be located within the front yard setback. The Preliminary Site Plan otherwise complies with the provisions of the Sussex County Zoning Code. Tax Parcel: 334-19.00-170.03. Zoning: General Commercial (C-1) District. Staff are awaiting agency approvals

Mr. Robertson stated he would abstain from participating in the Application.

Ms. Stevenson questioned if the property was considered to be a through lot, being subject to two front yard setbacks and if the Applicant had given right of way to DelDOT.

Mr. Whitehouse stated he determined the front yard to be considered from Coastal Hwy. (Rt. 1); that the front yard setback from Coastal Hwy. is 60-ft.; that the other parking spaces are located over 60-ft. back; that the setback requirement for a corner-front lot is 15-ft.; that the parcel is unusual as it was a larger parcel, which was previously subdivided; that the Applicant would have to provide right of way to DelDOT to obtain a Letter of No Objection; that the current site plan is for preliminary and they have not received all agency approvals yet.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan as preliminary with final approval to be by the Commission upon receipt of all agency approvals, including a Letter of No Objection from DelDOT. Motion carried 5-0.

(2004-17) The Villages at Red Mill Pond South

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend Conditions of Approval for the Revised Final Subdivision Plan for The Villages at Red Mill Ponds South (2004-17) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 24th, 2019. On August 2, 2022, staff received a formal request to amend Condition #11 of the Plan's approval. Due to recent revisions and updates to proposed amenities, the Applicant requests that Condition 11, which states, *"All amenities and recreational facilities shall be constructed and open for use by the residents of the development within 2 years of the issuance of the first building permit"* be amended to June 23, 2023. This standard AR-1 subdivision contains one-hundred and seventy-seven (177) single-family lots on 82.10 acres +/- and is located on the south side of Lewes Georgetown Highway (Route 9). Tax Parcel: 334-5.00-170.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse stated the Applicant did submit a Construction Timeline for the project, which was included within the Supplemental Packet and if the Applicant does not comply with the Conditions of Approval, the Applicant could request further revisions, which could then affect the issuance of the building permits.

Mr. Robertson stated the Commission had previously granted a time extension for the project; that the time extension was not sufficient in terms of when the project would have concluded to when the project got underway, and he questioned if staff had any documentation that a sufficient number of existing property owners are supportive of the time extension request.

Mr. Hopkins questioned how many lots there were and how many Certificates of Occupancy had been issued.

Ms. Scott stated there was an extensive list in support; that there are 177 lots and that there was approximately 70+ signatures in support from existing residents.

Mr. Robertson stated the Applicant currently has a time extension which will take them through January 2023; that currently granting or not granting approval would not impair the Applicant's ability to continue construction and he suggested the Commission defer action, allowing time to obtain all the information and bring the Application back before the Commission for approval.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to table the request to amend Condition 11 of the Conditions of Approval, related to the construction of the amenities and

recreational facilities, to allow receipt of additional information regarding resident signatures and lot ownership. Motion carried 5-0.

(2018-34) Keastone Bay

Request for a Time Extension

The Planning and Zoning Department has received a request for a time extension for the Preliminary Major Subdivision Plan of Keastone Bay (2018-34). Specifically, the applicant has requested a 6-month time extension to the original expiration date of January 23rd, 2023. The proposed deadline would become July 23rd, 2023. Included in the published packet are the minutes from the preliminary review and the statement and justifications provided by Solutions IPEM of Georgetown.

Mr. Phillips stated the preliminary approval is still valid; that the Applicant is still within the three-year timeframe; that the original expiration date is January 23, 2023, and that the Applicant is requesting the expiration date be extended to July 23, 2023.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the request for a time extension from January 23, 2023, to become July 23, 2023, for 2018-34 Keastone Bay. Motion carried 5-0.

Lands of Shirley Ann Gregory

Minor Subdivision off a 30-ft Easement

This is a Minor Subdivision Plan for the subdivision of 9.781 acre +/- parcel of land into one (1) lot and residual lands off a 30-foot ingress/egress access easement. Proposed Lot 1 consists of 1.876 acres and the residual lands consist of 7.905 acres +/- . The property is located on the southeast corner of Old Stage Road (S.C.R. 68) and Coachmen Lane (S.C.R. 454 B). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 532-14.00-17.00. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the minor subdivision off of a 30-ft. easement as preliminary with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Christopher T. & Sandra M. Kirk

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of 2.083 acre +/- parcel of land into one (1) lot and residual lands off a 50-foot ingress/egress access easement. Proposed Lot 1 consists of 1.023 acres and the residual lands consist of 1.060 acres +/- . The property is located on the northwest side of County Seat Highway (Route 9). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 132-13.00-21.03. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the minor subdivision off of a 50-ft. easement as preliminary with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Gordan D. Heathman, Trustee

Minor Subdivision off a 30-ft Easement

This is a Minor Subdivision Plan for the subdivision of 3.078 acre +/- parcel of land into one (1) lot and residual lands off a 30-foot ingress/egress access easement. Proposed Lot 1 consists of 1.699 acres +/- and the residual lands consist of 1.379 acres +/- . The property is located on the east side of Thorogoods Road (S.C.R. 333). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: GR (General Residential District). Tax Parcel: 233-5.00-189.00. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off of a 30-ft. easement as preliminary with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

C/U 2300 MRBP, LLC

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

The Commission discussed the Application which had been deferred since July 14, 2022.

Ms. Wingate had abstained from this Application’s original public hearing on July 14, 2022.

Mr. Mears moved that the Commission recommend approval of C/U 2300 MRBP for a borrow pit based on the record made during the public hearing and for the following reasons:

1. This application is for a borrow pit on 56.93 acres. The total excavated area of the pit itself will not exceed 40 acres.
2. A need exists in the area for dirt, sand, and gravel. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
3. The site is generally surrounded by poultry farms and farmland as well as a few residential properties. It is also adjacent to the open areas of an outdoor soccer field.
4. The site is in the “Coastal Area” according to the Sussex County Comprehensive Plan. A borrow pit is an appropriate use in this Area according to the Plan.
5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
6. As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety, and welfare of the current and future residents of the County.
7. The vegetated buffers will be maintained or established along the boundaries of this land and lands of other ownership.
8. The use is subject to approvals from State Agencies including DelDOT and DNREC.
9. This recommendation for approval is subject to the following conditions and stipulations:
 - A. No materials shall be brought from off the site for processing,

mixing or similar purposes.

- B. The excavated borrow pit area shall not exceed 40 acres.
- C. Water or a water truck shall be available to control dust from road traffic when conditions require.
- D. The only entrance to the pit shall be a paved road from McCary Road. The entrance shall be fenced or gated to prevent access at unauthorized times.
- E. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
- F. The project shall meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices and Best Available Technologies. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- G. The hours of trucking and equipment operations shall be between the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. until 2:00 p.m. on Saturdays. No Sunday trucking operations shall be permitted.
- H. Although the dredge may operate at any time, the dredge and pumps shall be powered by electric motors. No diesel or gasoline engines shall be utilized for dredging or pumping operations. All pumping operations shall be silent only.
- I. No materials shall be stored on any access roads or within any buffer area.
- J. No stumps, branches, debris, or similar items shall be buried or placed in the site of the borrow pit.
- K. The proposed pit will have a 4:1 side slope down to a 10-foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level, the borrow pit shall have 3:1 slopes. The depth of the proposed borrow pit will not exceed 40 feet.
- L. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance.
- M. The Applicant shall comply with all State and County erosion and sediment control regulations.
- N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be clearly visible to anyone nearing the site.
- O. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
- P. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling or other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer using existing vegetation or native species vegetation. The location and vegetation within this buffer area shall be shown on the Final Site Plan.
- Q. The 57.03-acre parcel shall be divided into three (3) phases of 19 acres each. Phase two will not be started until 75% of Phase one is completed. Phase three shall not be started

until 75% of Phase two is completed. The total excavated area shall not exceed 40 acres. These phases shall be shown on the Final Site Plan.

- R. Five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations.
- S. Equipment within the borrow pit area shall be equipped with BBS-Tek White Sound alarms or a similar system that adjusts to the ambient noise that provides a warning of imminent danger.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2300 MRBP, LLC for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Wingate abstained.

The vote by roll call: Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley - yea

2022-07 Ocean 7 Group (c/o Tauhid Islam)– A standard subdivision to divide 4.3 acres +/- into two (2) lots to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the north side of Lexus Lane, approximately 0.05 mile east of John J. Williams Highway (Route 24). Tax Parcel: 334-12.00-127.11. Zoning: CR-1 (Commercial Residential District).

The Commission discussed the Application which had been deferred since July 28, 2011.

Mr. Mears moved that the Commission grant preliminary approval for 2022-07 Ocean 7 Group (c/o Tauhid Islam), based upon the record and for the following reasons:

1. This subdivision application seeks to approve the creation of a separate commercial lot that is .64 acres in size.
2. This lot is part of a larger site that received Final Site Plan approval by the Planning & Zoning Commission on October 15, 2021, and then received its stamp of approval by the Planning & Zoning Office on February 2, 2022. This existing and approved Final Site Plan identifies the office space that will exist within this lot as well as the surrounding parking areas. But for the subdivision to differentiate ownership of the two parcels, the site plan is not affected by this subdivision.
3. Because the approved site plan and design are unaffected by this subdivision, it will not be noticeable on the site itself.
4. The proposed commercial subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
5. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values. Again, its design is in accordance with an approved Final Site Plan for this location.
6. The proposed subdivision will not adversely impact schools, public buildings, or community facilities.
7. The proposed subdivision is consistent with the approved Final Site Plan for the entire site (including the DelDOT roadway improvement requirements that are in place and to be

constructed) and therefore it will not adversely affect traffic on area roadways or neighboring properties.

8. The subdivision complies with the requirements of Section 99-9C of the Subdivision Code.

9. This preliminary approval is subject to the following conditions:

- A. This subdivision creates one .64-acre lot.
- B. This lot shall be incorporated into the overall approved Final Site Plan for the entire parcel, and it shall be integrated into the site's stormwater management system, parking areas, entrances and drive aisles through cross-access easements and maintenance agreements.
- C. All entrances shall comply with all DelDOT requirements.
- D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to grant preliminary approval of 2022-07 Ocean 7 Group (c/o Tauhid Islam) for the reasons and conditions stated in the motion. Motion carried 4-0. Chairman Wheatley abstained.

The vote by roll call: Mr. Hopkins– yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea

C/U 2309 Rockswitch Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REAL ESTATE OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.38 ACRES, MORE OR LESS. The property is lying on the north side of Coastal Highway (Route 1) approximately 0.14 mile southeast of Deep Branch Road (S.C.R. 234). 911 Address: 12537 Coastal Highway, Milton. Tax Parcel: 235-8.00-62.00.

The Commission discussed the Application which had been deferred since July 28, 2022.

Mr. Mears requested Mr. Robertson read his motion for C/U 2309 Rockswitch Properties, LLC into the record.

Mr. Mears moved that the Commission recommend approval of C/U 2309 Rockswitch Properties, LLC for a real estate service business based on the record made during the public hearing and for the following reasons:

- 1. The site was previously approved as a Conditional Use for a marine sales business at this location. This Application is for a less intensive use as a real estate service business office. There will not be any sales from the site. This Application is consistent with the previous use of the site for business and commercial purposes.
- 2. The Applicant intends to use the existing residential-style structure for a real estate services office.
- 3. The Applicant has stated that this site will only be used for real estate services, property management, and construction management uses and that a majority of the work will occur off-site. This is a low-impact use that is appropriate for this location.
- 4. The proposed use will not generate a significant amount of traffic, and it will not have any adverse effect on area roadways.

5. The proposed use is very limited in nature within the existing residential-style structure, and it will not have any adverse impact on neighboring properties or the community.
6. No parties appeared in opposition to this application.
7. This recommendation is subject to the following conditions:
 - a. The use shall be limited to use as an office within the existing structure for real estate services, property management, and construction management.
 - b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - c. The Applicant shall comply with any DeDOT entrance and roadway improvement requirements.
 - d. No parking shall be permitted in the front yard setback.
 - e. No outside storage of construction equipment, materials, or other items associated with the business shall be permitted. This site shall be used only as an office.
 - f. Any dumpsters or trash receptacles on the site shall be screened from the view of neighboring properties and roadways.
 - g. Failure to comply with these conditions may result in the revocation of the Conditional Use approval.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2309 Rockswich Properties, LLC for the reasons and conditions stated in the motion. Motion carried 4-0. Chairman Wheatley abstained.

The vote by roll call: Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Ms. Wingate - yea

C/U 2310 Milton Community Food Pantry, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A FOOD PANTRY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.966 ACRES, MORE OR LESS. The property is lying on the west side of Union Street Ext. (Rt. 5), approximately 0.24 mile south of Reynolds Pond Road (S.C.R. 231). 911 Address: 12898 Union Street Ext., Milton. Tax Parcel: 235-7.00-18.00.

The Commission discussed the Application which had been deferred since July 28, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2310 Milton Community Food Pantry, Inc. for a food bank based upon the record and for the following reasons:

1. This use is for a community food bank serving the area around Milton and northeastern Sussex County. It is a 501(c)(3) organization that relies upon in-kind donations of canned and packaged goods and monetary donations.
2. The food pantry began on a small scale in 2014. It grew to the point where it currently provides food to approximately 50 families, with an all-volunteer staff of 10-12 people. There is an established need for this service in this area of Sussex County.
3. The food pantry has grown to the point where it needs a centralized building for storage, organization, and distribution. Currently, the food is stored in refrigerators, freezers, and

garages in homes owned by volunteers. There is also outdoor storage at a community church. By having one centralized location, the Applicant will be able to operate more efficiently in an appropriate location.

4. This proposed use satisfies the stated purpose for granting a Conditional Use as it has a public or semi-public character, and it is essential and desirable for the general convenience and welfare of Sussex County and its residents.
5. This use will be limited in nature and will not adversely affect the neighboring properties or neighborhood. It will be a food pantry, or food storage and distribution center. No meals will be offered for consumption on-site and it will be prohibited from becoming a soup kitchen or similar operation. There was testimony in the record from the Applicant that the food pantry will only occur on limited days in any given week, and the process is very organized.
6. The use is limited to the existing dwelling that will be converted to offices and space to organize food donations for distribution and an additional pole building. There are also existing garages on the property that will remain and be utilized for storage. The property will generally maintain its residential appearance at all times except for days when food distribution occurs. The pole building will also be permitted on the site for additional space to store food awaiting distribution.
7. The location along Route 5, just north of Milton, is an appropriate location for this limited type of use. Route 5 is considered a major collector roadway by DelDOT, which makes it an appropriate location for this use.
8. The property is in the Coastal Area according to the Future Land Use Map within the Sussex County Comprehensive Plan. The Coastal Area permits a variety of uses, including commercial uses that are more intensive than this food pantry.
9. There were numerous letters in support of this operation at this location from the Town of Milton, area churches, the Milton Community Foundation, and other organizations and individuals supporting not only the need for this operation but also the proposed location for it. While there was opposition to the location of the food pantry, the stated concerns will be mitigated by the conditions placed upon this use.
10. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a food pantry where donated food is collected for distribution. The food shall be distributed for off-site consumption only. No soup kitchen-type operations or food service for on-site consumption shall occur on the site.
 - B. No loitering shall be permitted on the site, and there shall be signage on the site confirming that loitering is prohibited.
 - C. As stated by the Applicant, food distributions shall only occur one day per week, and shall only occur between the hours of 9:00 am through 1:00 pm. This shall not prohibit the use of the building on other days to receive and organize donations for later distribution or for office use.
 - D. The Applicant shall comply with all roadway and entrance improvement requirements established by DelDOT.
 - E. The Applicant shall not permit parking along Route 5 or stacking of vehicles within the Route 5 Right of Way waiting to access the property. In addition to volunteers directing traffic, there shall be signage placed on the site confirming that no parking or stacking of vehicles shall be permitted along Route 5.

- F. There shall be parking for at least 6 client vehicles on the site in addition to the driveway area and parking for staff and volunteers. These parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself. There shall also be directional signage installed throughout the site to direct the flow of vehicles to and from the site in an orderly manner.
- G. Any security lighting shall be designed so that it does not shine on neighboring properties or roadways.
- H. All dumpsters shall be screened so that they cannot be seen from area properties or roadways.
- I. All donations shall be stored indoors.
- J. One lighted sign, not to exceed 2 feet by 3 feet in size, shall be permitted on the building.
- K. The failure to abide by these conditions of approval may result in the termination of this Conditional Use.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval for C/U 2310 Milton Community Food Pantry, Inc. for the reasons and conditions stated in the motion. Motion carried 4-0. Chairman Wheatley abstained.

The vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – yea, Ms. Wingate – yea, Mr. Mears – yea, Ms. Wingate - yea

PUBLIC HEARINGS

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

2022-11 Hunters Creek – A cluster subdivision to divide 28.78 acres +/- into 95 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 north side of Omar Road (S.C.R. 54), approximately 0.33 mile west of the intersection of Powell Farm Road (S.C.R. 365). Tax Parcels: 134-11.00-102.00 & 103.00. Zoning: MR (Medium Density Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Subdivision Plat, Exhibit Booklet, the Applicant’s proposed Conditions of Approval, the Applicant’s Chapter 99-9C response, the Staff Review letter, the State’s PLUS comments, a letter from Artesian Resources, a letter from the U.S. Army Corp of Engineers, the Environmental Assessment, the Public Facility Evaluation Report, a letter from the U.S. Fish & Wildlife Service, Technical Advisory Committee (TAC) comments, which include a letter from the U.S. Department of Agriculture, a letter from the Division of Public Health and a letter from Delaware Electric Coop, one letter of opposition and no mail returns.

The Commission found that Ms. Mackenzie Peet, Esq., with Baird Mandalas Brockstedt Federico & Cardea, spoke on behalf of the Application 2022-11 Hunters Creek; that she was representing Applicant, Salt Air Properties, LLC; that the team includes Mr. Robert Plitko, P.E. and Mr. Ray Blakeney, Landscape Architect; that both are with Plitko, LLC, Mr. Tom Ford, Landscape Architect and President of Land Design, Inc. and Mr. Edward Launay, Wetland Scientist with Environmental

Resources, Inc.; that present were Mr. Arnie Dunn and Mr. Bob Sipple, representative of the Applicant, along with Mr. Tom Ford and Mr. Edward Launay; that the Applicant submitted an extensive booklet which had been before the Commission for at least 10 days; that Hunters Creek is a major subdivision, proposing 95 single-family detached homes, on individual lots within the MR (Medium-Density Residential) District; that the project utilizes the Coastal Area's Cluster Subdivision lot size provided in Section 115-194.3 of Sussex County Code; that the project site consists of two parcels located on the north side of Omar Rd.; that Parcel 102 is 5.323 acres +/-; that Parcel 103 is 23.55 acres +/-; that the total site area of 28.7 acres; that the proposed subdivision is within the MR (Medium-Density Residential) Zoning District near other existing subdivisions; that Edgewood Manor Subdivision is located to the east of the site; that Hickory Woods Subdivision is located to the west of the subdivision; that Hidden Acres Subdivision is located on the opposite side of Omar Rd.; that the project is also near the four-way intersection of Powell Farm Rd., Omar Rd., Vines Creek Rd., Atlantic Ave., that the properties located at the that intersection are zoned AR-1 (Agricultural Residential), MR (Medium-Density Residential) and CR-1 (Commercial Residential); that the properties located with CR-1 Zoning are a car parts and marine store and the Goodyear Tire Center; that located east on Atlantic Ave. there is a Good Earth Market; that located at the intersection of Roxanna Rd. and Atlantic Ave. are properties located with the CR-1 (Commercial Residential) and C-1 (General Commercial) Zoning Districts; that commercial uses at that intersection include a furniture store, Creative Concept, Liberty Gas Station, Hockers store and Walgreens; that the PLUS Review Comments were submitted to PLUS on September 22, 2021; that within Exhibit 11 is email correspondence with Mr. Edward Otter confirming the scheduling of the archeological review to the properties; that a follow-up did occur that day, August 11, 2022, to confirm and schedule the archeological review; that within Exhibit 12 is the Coastal Area Environmental Assessment and Public Facilities Evaluation Report; that the site exceeds a 50 unit limitation, which triggered the requirement stated in Section 115-194.3; that within Exhibit 12 there is an assessment of environmental conditions and natural features which was prepared by Mr. Edward Launay; that the Applicant included proposed Conditions of Approval for the Commission's consideration; that the property is located within the MR Zoning District; that the property is located within the Coastal Area; that the Coastal Area is a designated growth area; that the total project area is 28.78 acres more or less; that portions of the acreage will be devoted to lots and streets; that 6.9 acres, or 23.97% +/- of the site will be allocated for open space; that Section 4.4.2 of the Comprehensive Plan discusses the structure of the Future Land Use Plan, being growth areas and rural areas; that the site is located within the growth area, which permits development of single-family homes, while encouraging a cluster option; that the cluster option can be utilized provided significant permanent common open space is preserved and the development is connected to central water and sewer; that Hunters Creek proposes to use the cluster option, as the project proposes 23.97% +/- of open space; that the provided open space is in excess of the 10% open space requirement; that the development is anticipated to be served by central water and sewer; that the project is located within Investment Level 2 according to the State Strategies for Policies and Spending Map; that the plan does integrate the proposed subdivision into existing terrain and surrounding landscape; that there are several existing subdivisions in the surrounding area, also being within the MR Zoning District; that the Applicant has focused on utilizing the additional land as open space being 23.97% of the site; that a 20-ft. minimum forested buffer is provided to adjacent residential properties; that there was a comment of opposition with concerns regarding the buffer; that there are no existing wetlands located on the site; that the site is located outside of the 100 Year Floodplain; that the stormwater management outfall is proposed across Hickory Manor Rd., to the north, with an outfall into wetlands associated with the Black Water Creek; that the wetlands were flagged by a soil scientist, Mr. Tom Noble, with Environmental Resources, Inc., in connection with the proposed development; that there are no known areas which required historic preservation on the site; that the plan minimizes impacts on natural features, however the Applicant/Owner has scheduled a preliminary Archeological Survey; to be performed by Dr. Otter in response to the comments provided

during the PLUS process by the State Historic Preservation Office; that preservation of open space and scenic views are provided within the proposed 23.97% of open space, which exceeds the Code's 10% requirement; that there will be a minimum of tree and soil removal, being only what is necessary to construct the project; that 20-ft. vegetated buffers will be provided adjacent to residential properties; that water service is to be provided by Artesian; that the provided Willing and Able to Serve Letter is located within Exhibit 9; that wastewater services are to be provided by Sussex County's Unified Sanitary Sewer District; that the Sussex County Engineering Department review letter is included in the record; that stormwater management and sediment erosion control were prepared for review and approval by Sussex Conservation District; that the stormwater management facilities will be designed in accordance with Delaware and Sussex County standards; that the plan accounts for safe vehicular and pedestrian movement within the site and to adjacent ways; that the entrance to the site shall be designed per current DelDOT standards; that the entrance to the community, as well as entrance pathways, will be reviewed and approved by DelDOT; that there is a proposed pathway near Hickory Manor Rd. and a pathway that connects to the proposed amenities; that the amenities will be centrally located within the community; that sidewalks are proposed on both sides of the street; that all internal roads will be designed in accordance with the Sussex County standards; that plans for the community will be reviewed by Sussex County; that it is anticipated that the proposed development will cause adjacent property values to remain the same, if not increase values of other properties in the area; that it is the Applicant's intention to construct a quality community that meets or exceeds County and State regulations; that great attention has been made to the detail and aesthetic qualities of the plan, the livability of the community and the amenities provided; that the plan proposes a pool, pickleball courts, walking trails, a school bus stop, and a centrally located mailbox facility; that the existence of the proposed subdivision will not significantly impact agricultural land as it surrounding properties consist of single-family homes, which are located within the MR Zoning District as well; that the development is located within Investment Level 2, which is where growth is anticipated; that as part of the DelDOT review and approval process, the Indian River School District will be consulted to discuss the located of the proposed bus stop; that a series of discussions were held with DelDOT concerning area roadway improvements, specifically regarding offsite transportation improvements and frontage improvements; that much of the discussion is included within the PLUS comments; that the site is located within the MR Zoning District, being within the immediate vicinity of several existing subdivisions; that because of this, the site is therefore compatible with other nearby land uses; that the project is consistent with design, homestyle and land use; that the proposed plan is consistent with the Sussex County Comprehensive Plan; that there was a letter of opposition submitted by Mr. Ralston Linn, who owns a property adjacent to the site; that Mr. Linn had provided concerns to traffic, questioning if traffic studies had been performed for the project; that the DelDOT PLUS comments provide details regarding anticipated improvements to Omar Rd. and Hickory Manor Rd.; that Mr. Ralston also provided concern regarding a landscape buffer, questioning if a landscaped buffer would be provided; that Mr. Ralston has significant tree cover located at the rear of his property; that an additional 20-ft. vegetated landscape buffer will be provided adjacent to his property; that Mr. Ralston also provided comment and concern to tree and wildlife; that the Applicant proposes the removal of trees to be limited to that necessary to construct the project and significant open space has been set aside in addition to the Code requirement.

Ms. Wingate questioned if the development was to be served by sewer; that she stated within the DelDOT comments made, it was recommended to place a right-in and right-out onto Hickory Manor Rd. and if the Applicant were to remove Lot 30, they would be able to achieve two entrances/exits for the project.

Ms. Stevenson questioned what the spacing was provided for, adjacent to Lot 30, where no buffer was proposed and she stated she also agreed with Ms. Wingate, being in support of the right-in and right-

out onto Hickory Manor Rd. and the placement of only one entrance in the situation of a fire, is a dangerous thing.

Mr. Tom Ford stated there will be a sewer connection located on Powell Farm Rd. and Omar Rd.; that it is the terminus point with the grounding fee; that Sussex County Engineering Department has allowed the Applicant to make a connection at that location; that the proposed connection would be achieved by a pump system along Omar Rd.; that there will be a small pump station located on the site; that they propose to have a force main from the site to the sewer connection; that collection will consist of sewer onsite, as well as adjacent property owner, who are aligned along the road; that the collection will also include sewer from St. George's Church, the Millville Fire Department, and two other residences located along the road; that they have had discussions with DeDOT, in great detail, regarding the entrance and exit; that it is his understanding that DeDOT is satisfied with the placement on Omar Rd.; that this decision was made based on the fact Omar Rd. has shoulders; that Omar Rd. has easier approach and exit of the site, in regards to nearby intersections; that they are required to improve Hickory Manor Rd. along the property's frontage; that they will be placing a pedestrian easement along Hickory Manor Rd.; that they will be dedicating to the enlargement of the right-of-way of Hickory Manor Rd.; that they will be improving the width of the travel lanes to 11-ft. on each side; that they will not be putting a shoulder in; that they will be making a connection in the rear of the property for pedestrians; that he believes the site plan reflects a continuous buffer around the project; that the green space reflected on the rendering, between Lot 29 and Lot 30, if not owned by the Applicant; that reflected on the rendering is a driveway, located on the adjacent property, which went into the buffer and he assured the Commission there would be a continuous buffer provided around the project.

The Commission found that Ms. Patricia Schuchman spoke in opposition to the Application; that she lives on Calhoun Rd. within the Hickory Woods Development; that the lots within her development are ¾-acre in size; that all the residents are year-round residents; that six of the homes, located on Calhoun Dr. share a rear property line with the subject site; that she works in Fenwick Island; that she travels to work using Rt. 26 or Rt. 54; that both of the roads are heavily traveled by local residents and tourists; that when she utilizes the backroads to Rt. 54, she passes several new developments along Bayard Rd.; that there is road construction currently to accommodate the new developments; that the back country road is already seeing increased traffic; that Omar Rd. is a less traveled road, being primarily used by residents within the area, as well as joggers and bicyclist; that the development is proposed to be located on a parcel consisting of 28 acres; that 95 houses are proposed; that each lot would be approximately ¼ acre each; that the large development will severely impact travel along Omar Rd., that the increased traffic will jam the already gridlocked traffic along Rt. 26; that she had concerns of future developments along Omar Rd.; that the Omar Rd. cannot handle the amount of traffic seen on Rt. 26 and Rt. 54 and she requested the Commission give consideration to reducing the number of lots, by half, for the project.

The Commission found that Mr. Michael Schuchman spoke in opposition to the Application; that Omar Rd. is nothing more than a small country farm road; that Omar Rd. consists of nothing but farms; that he had noticed tourists are beginning to utilize Omar Rd. as a short cut; that an additional 95 homes will severely impact Omar Rd.; that he requested the Commission to consider the impact the development will have on the neighborhood and he requested, should the application be approved, the Commission consider reducing the number of permitted lots for the development.

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

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

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

In relation to Application 2022-11 Hunters Creek. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

C/U 2311 Phillip Jackson

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.83 ACRES, MORE OR LESS.

The property is lying on the northwest side of Robinsonville Road (S.C.R. 277), approximately 960 feet south of Cedar Grove Road (S.C.R. 283). 911 Address: 18968 Robinsonville Road, Lewes. Tax Parcel: 334-11.00-6.00.

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

The Commission found that Mr. Phillip Jackson spoke on behalf of his Application; that he is the Applicant and the owner of the property; that he owned his property for 38 years; that he is not located 30-ft. to 50-ft from the road; that his property is located along Robinsonville Rd.; that when he first moved to the property, there were eight farmhouses located along Robinsonville Rd.; that within his 38 years at his location, he had never known anyone to have a complaint; that he had moved to the property before purchasing it; that at that time Mr. Joseph Conaway was the Sussex County Administrator; that he had spoken with Mr. Conaway at that time; that Mr. Conaway had questioned if he was still performing tree services (cutting down trees); that Mr. Conaway had questioned him on how large he intended his operation to become; that he replied, his intention was to keep his tree service business to only his son and himself; that after this discussion, Mr. Conaway told him to “Go Ahead”; that from that date in 1984, up until 2021, he never heard anything from Sussex County or his neighbors; that it was a shock to him to hear there was a complaint filed; that his neighbor located on the left, has lived on their property before he moved to his; that the neighbor located to the right is his son; that both of his neighbors to the right and left of him, have property that run approximately ¼ mile; that across the street is The Retreat development; that The Retreat was constructed after he had already moved onto his property; that The Retreat has been in existence for 15 to 20 years; that his current business is to provide tree removal services; that this process does create wood chips from the machine; that he does bring the wood chips back to the site; that at times he gives the wood chips away to people; that majority of the time, the wood chips eventually become top soil; that if large pieces of wood are required to be brought back, he had a contract with a local roll-off trailer; that a roll-off trailer is left at his site, where he places the large pieces of wood; that he only has two trucks, being a tow truck and a bucket truck; that hours of operation are usually 9:00 am until 3:00 pm, weather permitting; that he began tree removal services at the age of 15 years old; that he removed Elm trees that used to be located within the Georgetown Circle and in front of Georgetown Highschool; that there are two other businesses located on his road; that one business is a nice size landscaping business and the other is an arbor care; that the arbor care has about seven to eight vehicles on site and there is also a mechanic located to the left of his property.

Ms. Stevenson questioned if there is any maintenance to the trucks onsite, if there is any storing of chemicals onsite and she questioned how often someone picks up the roll-off trailer storing the larger tree debris.

Mr. Jackson stated his business is strictly tree removal; that there are no chemicals stored onsite; that his trucks are not very old; that currently, they are under warranty; that there is no maintenance to the trucks onsite as they receive maintenance at a shop; that once the roll-off container is dropped off, they have two weeks to fill or they are charged extra; that due to this, it is not often they have the roll-off container dropped off; that the roll-off container is something they just recently began utilizing and he is a local who was born and raised in the area.

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

Ms. Stevenson questioned if the Application use could be considered a home occupation.

Mr. Robertson stated he had looked into a permitted use as a home occupation; that previously the Commission has always treated tree removal services, not as a home occupation; that the presence of employees typically removes the ability for home occupation; that supplies and debris being stored onsite also is not permitted under home occupation and if the Conditional Use is approved the Applicant will no longer have to worry about complaints being filed.

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

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

In relation to Application C/U 2311 Phillip Jackson. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2312 G. Fedale

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE AND SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 0.65 ACRES, MORE OR LESS. The property is lying on the north side of DuPont Blvd. (Rt. 113), approximately 730 feet northwest of Speedway Road (S.C.R. 325). 911 Address: 24207 & 24217 DuPont Boulevard, Georgetown. Tax Parcel: 133-2.00-38.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, Conceptual Site Plan, a letter from Sussex County Engineering Department Utility Planning Division and an email from the Applicant providing additional responses and no comments.

The Commission found that Mr. Matthew Wiley spoke on behalf of the Application C/U 2312 G. Fedale; that he is the General Manager at G. Fedale in Sussex County; that he obtained the building in 2021; that the building was already an existing commercial building; that the building had existed for 15 years; that prior to that it was used for a flower gift shop; that the previous uses had operated in violation to the Code without a Conditional Use; that they have spent over \$400,000 in improvements to the building, as well as the dwelling on the property and they have improved the septic system, siding, and interior renovations.

Mr. Hopkins questioned the number of employees, the number of parking spaces, and if a sign is desired.

Mr. Robertson questioned what the surrounding area was like, if there were any other nearby businesses and if there was any outside storage of materials.

Mr. Wiley stated there were seven employees; that not all seven employees are on the property at the same time; that the employees arrive in and out; that there are about two to three employees present on a regular basis; that there will be approximately 10 parking spaces; that this will allow parking spaces for employees, as well as customers; that there is a sign already existing on the property; that a permit was obtained for the sign; that there is a residential farmhouse located adjacent to the site; that there are no other residential homes or businesses located in the area, all the way down to the speedway; that near the speedway there is another residential dwelling, and no other dwellings or businesses from there; that located across the street are agricultural fields currently owned by Kruger's; that Kruger's Trailers are located across the street; that all storage is kept within the two -car garage and there is no storage outside.

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

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

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

In relation to Application C/U 2312 G. Fedale. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 5-0.

C/U 2313 John Ford

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REALTY OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.57 ACRES, MORE OR LESS. The property is lying on the southeast side of Savannah Road (Rt. 9) approximately 0.16 mile northeast of Wescoats Road (Rt. 12). 911 Address: 1528 Savannah Road, Lewes. Tax Parcel: 335-12.06-49.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Conceptual Site Plan, the Applicant's exhibits and photographs, the Staff Analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found that Ms. Mackenzie Peet, Esq., with Baird Mandalas Brockstedt Federico & Cardea, spoke on behalf of the Application C/U 2313 John Ford; that also present was the Applicant, Mr. John Ford; that Mr. Ford is a real estate broker with Remax Associates Delaware; that the Applicant submitted the Conditional Use application on September 8, 2021, to pursue a Conditional Use of land located within the AR-1 (Agricultural Residential) Zoning District to allow for a realty office to be located on the property; that the property is .57 acres; that the property is located on Savannah Rd. in Lewes, near the intersection of Savannah Rd. and Old Orchard Rd., also known as Five Points; that the property is the former location of the Henlopen Grange No. 20; that Henlopen Grange No. 20 is one of America's oldest farm family fraternal services organizations; that Mr. Ford purchased the property on June 11, 2021, as evidenced in Deed included within Exhibit A; that the site has an existing building and adequate parking area located at the front of the property; that properties

located adjacent to the site are located within the B-1 (Neighborhood Business) and AR-1 (Agricultural Residential) Zoning Districts; that other parcels within the vicinity of the site being within the B-1 (Neighborhood Business) and AR-1 (Agricultural Residential) and MR (Medium-Density Residential) Zoning Districts; that within the memorandum prepared by the staff, there have been eight Conditional Uses approved, within a .25 mile radius of the site, since 2011; that the requested Conditional Uses were for professional offices, hair studios, medical offices and multi-family use; that her firm is located down the street from the site; that the Applicant submitted a supplemental packet on August 1, 2022; that Exhibit A includes the Conditional Use application and DelDOT's Service Level Evaluation Response; that DelDOT's response stated in part that they anticipated fewer than 50 trips to the site daily; that the proposed development's traffic impact is considered diminutive; that preliminary discussions with DelDOT resulted in the anticipation that the existing entrance, off Savannah Rd., will remain the same; that should the Conditional Use be approved, the Applicant will coordinate with all DelDOT requirements; that Sussex County's Engineering Utility Planning & Review Department confirms that the property is to be served by Sussex County sewer; that Exhibit B contains the property sheet and deed information, which confirms that Mr. Ford is the current owner of the property; that Exhibit C includes a survey of the property, which was prepared by Karins & Associates; that the survey shows an existing building, existing entrance off Savannah Rd., existing stairway leading into main entrance of the existing building and the large paved area at the front of the property, which will provide parking for staff and clients; that Exhibit D is a copy of relevant sections of the Zoning Code; that Exhibit E includes the aerials maps showing the existing conditions, surrounding uses, the AR-1 Zoning District overlay and Future Land Use overlay, which confirm the property to be designated a commercial area; that Exhibit F includes an image of the frontage of the property, as well as an image of the adjacent property to the east of the site; that this adjacent property is the location of the Beebe Medical offices and the chiropractic office located across the street; that Exhibit G details the proposed Conditions of Approval; that the Future Land Use Map indicates that the property is located within a commercial area; that the Commercial Area is a designated growth area; that commercial areas included concentrations of retail and services uses, located along arterial roads and highways; that the property is located within Investment Level 1 within the State Strategies for State Policies and Spending Map; that within Investment Level I areas, State investments and policies should support and encourage a wide range of uses and densities which promote a variety of transportation options, foster efficient use of existing public and private investments; that commercial areas should enhance community identity and integrity; that the proposed business is consistent with other uses within the Commercial Area designation, very specifically in the proposed area along Savannah Rd.; that the proposed use is a commercial use, which is permitted as a Conditional Use, when the proposes of the Zoning Chapter are more fully met by the issuance of a Conditional Use permit; that Section 115-171 details the purposes of a Conditional Use, with the purpose to provide certain uses, which cannot be well adjusted to their environment and particular locations, with full protection offered to surrounding properties by rigid application of the district regulations; that these uses are generally of public or semi-public character, being essential and desirable to the general convenience and welfare; that due to the nature of the use, the importance of the relationship to the Comprehensive Plan and the possible impact to neighboring properties and a large section of the County, require the exercise and planning judgement of location and site plan; that the use is of a public character, providing needed realty services to present and future residents in Sussex County; that the use is consistent with surrounding uses located on Savannah Rd.; that other surrounding uses seem to be more consistent with a B-1 Zone, rather than an AR-1 Zone; that the use is consistent with the Future Land Use Designation of a commercial area; that the use will work entirely out of the existing structure; that sufficient parking will be provided onsite, within the existing paved area; that the use is not anticipated to adversely affect neighboring properties, which offer similar office-type uses; that the property to the east is the location of the Beebe Medical Offices; that Beebe's office building entrance faces away from the subject site's entrance; that the back site of the

Beebe's medical office fronts the property; that there is also a fence placed between the properties; that Mr. Ford owns the adjacent property on the other side; that Mr. Ford was granted a Conditional Use previously for the adjacent property, however, the Conditional Use expired; that Mr. Ford purchased the subject property, which is more convenient for the proposed use; that within Exhibit G are the proposed Conditions of Approval proffered by the Applicant; that the conditions provide that the property should be used for realty use; that the use will occur within the existing structure which is to be renovated by the Applicant; that the hours of operation shall be between the hours of 9:00 am and 5:00 pm, Monday through Friday for realty staff; that the hours of operation shall be Monday through Sunday for all real estate agents; that the Applicant intends to place a sign in compliance with the Code requirements; that the Final Site Plan shall designate all parking areas associated with the use and the Final Site Plan shall be subject to the review and approval of the Commission.

Ms. Stevenson stated the grange sign was difficult to see around and she requested the new sign not be placed in that same location.

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

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

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

In relation to Application C/U2313 John Ford. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/Z 1973 Osprey Point Preserve, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS. The property is lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274). 911 Address: N/A. Tax Parcels: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Exhibit Booklet, a copy of Ordinance No. 2475 regarding C/Z 1759, the Conceptual Site Plan, letters from Environmental Resources, Inc., the Siting and Design Study submitted by the Applicant, the Applicant's Operation and Maintenance Plan, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, a letter from the Old Landing Woods Homeowners Association, one mail return, 27 written public comments; that the majority of the written comment is in opposition to the Application and that some of the comments were duplicates. (1:56:27)

The Commission found that Mr. David Hutt, Esq., with Morris James, spoke on behalf of the Application C/Z 1973 Osprey Point Preserve, LLC; that also present were Mr. Mike Horsey and Ms. Kathleen Horsey, the Principals of Osprey Point Preserve, LLC, Mr. Vine Luciani, Professional Engineer with GMB, Ms. Cheri Hochstedler, Senior Designer with GMB, Mr. Edward Launay,

Professional Wetland Scientist with Environmental Resources, Inc.; that the Application was designed as a Change of Zone; that no one was requesting to Change the Zone to the property of Osprey Point; that the Application request is to amend the RPC, which was approved as part of the Osprey Point community; that Osprey Point is located between Old Landing Rd and Arnell Creek; that an RPC can be an additional overlay to an existing zoning district; that Chapter 16 of the Zoning Code described the permitted uses within the RPC District; that Section 115-119 states that permitted uses include, within subsection B, commercial uses of convenience and necessity to the development as a whole; that such uses and accessory off-street parking and loading spaces, incident to such commercial uses, not to exceed one acre for each 100 dwelling units within the planned development; that there is a ratio of commercial uses set forth in the Code provision, being one acre to every 100 units; that within Ordinance 2475 it states there are 217 approved single-family units; that under the RPC Code, Osprey Point is permitted to have 2.17 acres of commercial use; that the current proposal was for 1.85 acres of commercial use; that the current proposal is 3/10 acre less than the permitted ratio; that there is no Change of Zone request to the underlining MR (Medium-Density Residential) Zoning District, with an RPC overlay; that if the current Application request were to be approved and adopted, the current zoning designation would stay the same; that the only change being proposed is to add conditions to the RPC related to the proposed commercial style use of a minor marina, with a café, restaurant, with a bar and beach area, with leasing of non-motorized watercraft; that these watercrafts would include paddleboards, kayaks and canoes; that an example of a similar situation would be Americana Bayside, being another MR-RPC (Medium-Density Residential-Planned Community) which has a number of commercial uses, such as restaurants; that an example being 38 Degrees restaurant within Americana Bayside; that with the RPC Section of the Zoning Code, commercial uses of convenience and necessity are allowed at a specified ratio; that the restaurant and marina request is a light commercial use of convenience and necessity; that this convenience and necessity is not only for the residents of Osprey Point, but also the surrounding communities; that directly across from the Osprey Point Development is the Love Creek fishing access area; that in that area there is a boat ramp with parking places, allowing people to access Arnell Creek; that the proposed use would also be of convenience to the communities, subdivisions and homes along Old Landing Rd; that surrounding communities include, Old Landing Community, Rehoboth Bay Community, Saw Grass North, Saw Grass South, the Woods at Arnell Creek, Cedar Valley and many more; that Mr. Horsey met with two adjacent communities within a community outreach which was performed; the community outreach meetings occurred in April; that it was explained what the purpose was and how access would be achieved through the proposed facility located on Old Landing Rd.; that the proposed facility would not require residents of Old Landing Rd. to rely on Rt. 1 to access the water or to grab a meal; that each of the community outreach meetings there was generally 50 to 100 people in attendance; that generally at these two meetings there was support for the proposed concept; that there was a third meeting which occurred the weekend before the public hearing; that Osprey Point is currently under construction; that prior to becoming Osprey Point, the property was known as the Old Landing Golf Course; that the Old Landing Golf Course did include a restaurant; that the original Applicant for Osprey Point, was Mr. Robert Marshall, who was the current owner at the time; that Mr. Marshall's family had owned the property for over a century; that when the public hearings occurred for the original application for original approval of Osprey Point; that at the time, the property was split-zoned; that there had been a small portion zoned MR (Medium-Density Residential); that the majority of the property was zoned as AR-1 (Agricultural Residential); that the original Osprey Point application, being C/Z 1759, sought to change all of the AR-1 zoned portion of the property to MR; that in addition to the Change of Zone request, the original Osprey Point application sought the RPC (Residential Planned Community)

overlay to allow for a mixture of homes, that included single-family homes and townhomes; that the original Osprey Point application was filed July 2014, which sought approval for 350 units; that these units consisted of 170 single-family homes, with 180 townhomes; that though the public hearing process, the original Osprey Point application was modified at least twice; that the result of the application for 350 units, was reduced to 217 units, with all units being single-family homes; that the application was approved under Ordinance No. 2475, as it was adopted by County Council on November 15, 2016; that at that time, there was not a commercial component sought for the initial application; that since then, every site plan and rendering since 2014 has included two piers that show 24 boat slips, with a general note stating the plan was subject to Site Plan and DNREC approval; that after receiving approval in 2016, the Applicant went through Site Plan approval process; that the Final Site Plan was approved in 2017; that on the approved Final Site Plan the two piers with 24 boat slips are shown; that the ownership of the project did change over time; that revisions were made to the Final Site Plan and a Revised Site Plan was submitted reviewed and recorded in 2020; that the piers and 24 boat slips were still included and shown on the revised plan; that the Commission reviewed the Final Amenities Plan in November 2021; that on the Amenities Plan the marina is shown on the plan; that after receiving final approval for the Amenities, the focus turned to develop a formal plan for the marina; that when looking at the site and the history of the property, the concept of a marina and restaurant began to take shape; that the property is zoned MR; that the Future Land Use Map designates the property within the Coastal Area; that all surrounding properties are located within the Coastal Area; that there is public water and sewer available to the site; that access to the marina would be through Osprey Point Community; that instead of having two piers crossing the wetland areas, the Applicant is proposing one pier crossing the wetlands; that the one pier will create a U-shape pier which will hold the 24 boat slips; that there is a 3,259 sq. ft.; that there is a proposed pool with a bar; that there are two beaches shown on the plan; that located to the left is a community beach; that this beach would be exclusive to the residents of Osprey Point; that there would be a locked access to this beach; that on the opposite side there is a beach which will be accessed by the restaurant customers; that there is a proposal for a launch for non-motorized watercrafts; that these watercrafts would be along the line of kayaks and paddleboards; that there are 82 parking spaces proposed; that these parking spaces exceeds the parking requirements by the Zoning Code; that upon Final Site Plan review by the Commission, the Commission requires approval by various State agencies, such as Fire Marshal's Office, Sussex Conservation District and DelDOT; that the proposed Application will have additional agency requirements; that several of these agency requirements will have their own public hearings; that there will be a public hearing held by DNREC for the approval of a Minor Marina; that DNREC approval is required in relation to the easement into the area of subaqueous lands; that for a restaurant to have a liquor license, there are certain requirements which must be met before the Office of Alcoholic Beverage Control Commission (DABCC) will grant approval, which may also involve a public hearing; that if this Application is successful, it will have been well vetted by numerous agencies; that Mr. Launay and his firm at Environmental Resources, Inc. was in charge of the required permitting process involved with the proposed project; that there is a written summary submitted in the project booklet of what the permit process looks like; that the application submissions to DNREC and the U.S. Army Corp of Engineers were also included into the project booklet; that the property, as well as surrounding properties, are located within the Coastal Area based on the 2045 Future Land Use Map; that the Coastal Area is designated a Growth Area; that a common theme throughout the Comprehensive Plan is the population growth and the impact the population growth will have on Sussex County; that the population growth of Sussex County raises concerns regarding traffic; that a Service Level Evaluation Request was submitted to DelDOT; that DelDOT's response indicated that

the traffic impact for the proposed project to be negligible; that another theme throughout the Comprehensive Plan is improving access to Delaware's waterways; that many people come to Sussex County because of the location to the water; that the proposed use will offer another way to access Arnell Creek; that throughout Old Landing Rd. one can see the population growth; that along Old Landing Rd. there are not a lot of places for people to access the water; that in some of the opposition, there are comparisons to Paradise Grill; that Paradise Grill is significantly larger than the proposed project in land mass and structure size; that within the proposed conditions, the first condition relates to the acreage of the project with a minor marina, pier for non-motorized watercraft vehicles and restaurant; that the second condition relates to the beach area, or sandbox area, to the left be only accessible to the residents of Osprey Point; that the next condition states proposed times of operation be Sunday through Thursday having a closing time of 10:00 pm; that on Friday and Saturday the closing time would be 11:00 pm; that Condition D states there will be no outdoor music after 9:00 pm; that Condition H states that the Applicant will supplement the natural buffer, creating a privacy fence buffer between the marina restaurant parcel and the adjacent properties, specifically being Parcel 39, Parcel 1.01 and Arnell Rd.; that there is a current buffer, consisting of existing trees; that the Applicant intends to utilize the existing buffer, while supplementing areas where there is no buffer with a privacy fence and landscaping; that the Site Plan shows a parking area in that general direction; that there are multiple conditions proposed, relating to the marina; that the proposed conditions are additional requirements to the requirements issued by DNREC; that some of the proposed conditions were constructed from direct requests from adjacent neighbors; that activities not permitted at the marina would include, repairing of boats, fueling of boats, no over-night docking other than those for seasonal slip rental and no pump-out stations located on the dock and/or pier; that the boats will only be serviced by a portable cart as needed; that the project must receive approval from DNREC and the DABCC; that currently the lots of Osprey Point are being developed; that pursuant to the Delaware Uniform Common Interest Ownership Act, a public offering statement is required when lots are marketed for sale within new construction; that within the provided offering statement, there is a direct statement which indicates the marina, restaurant and café are possibilities for the project; that the offering statement also includes a rendering of the proposed project for future residence; that there is a letter from NVR confirming their support of the Application, as well as confirming the Public Offering Statement for Osprey Point includes a statement regarding the potential development of the site; that the proposed project would be for the convenience of not only the residents of Osprey Point but also the thousands of residents along Old Landing Rd.; that the proposed project would allow residents to have a place to dine, get a drink, a location to access a kayak or paddleboard without the requirement to access Old Landing Rd. or Rt. 1 and with the proposed conditions, the project will promote the welfare, orderly growth, convenience and prosperity of the County and he requested Mr. Launay speak on behalf of his findings.

The Commission found that Mr. Edward Launay, with Environmental Resources, Inc. spoke on behalf of the Application; that he is a professional wetland scientist and environmental consultant; that there is a number of various marinas, community and commercial, within and outside of the State of Delaware, including port facilities, that he has been involved in obtaining State, federal and local permits for; that he has worked with DNREC and the U.S. Army Corp of Engineers, in respect to the subject marina, his entire career; that his firm was involved in the original application for Old Landing Golf Course, which was previous operated by Mr. Marshall; that at the time of the original subdivision there was a desire to think about the best location for a small marina; that he deals with several sets of regulations; that there are subaqueous land regulations; that there are subaqueous lands permitted lease that will be associated with the marina part of the facility; that DNREC does not consider the

restaurant and other parts of the facility; that there are things that need to be on the land as part of the marina facility; that they first had to decide where a suitable site would be located for a small or minor marina, within the State of Delaware, being on a single piece of property; that a minor marina is any pier or dock, that has more than four boats, up to 25 boats, on one piece of property; that anything larger than this would be considered a major marina; that under the State's marina regulations, and the required marina permit, there are different areas which would be require different levels of investigations based on the size of the facilities; that subaqueous lands are the underwater lands of the estate, being either private or publicly owned, that are beyond the mean high water line; that the marina regulations, in combination with the State's subaqueous land regulations, set guidelines on how far a dock/pier can extend out into the waterway, how wide a dock/pier can be; that there is a third component being some of the wetlands that border the shoreline of the Old Landing Golf Course were federally regulated; that federally regulated areas are regulated under different criteria; that there were State Map regulated wetlands that were subject to DNREC's jurisdiction; that all wetlands are under the jurisdiction of the U.S. Army Corp of Engineers; that DNREC's jurisdiction only extends only to the wetlands found on the State Wetland's Map; that the presence of these different jurisdictional wetlands played a factor of where and how they were able to do things; that when heading upstream Arnell Creek, the area of wetlands between the existing golf course and the edge of the creek increases wider, becoming a less desirable site for a marina; that the original locations were selected in the attempt to minimize the extent of State and federally regulated wetlands that the dock/pier would be required to cross to arrive to the water's edge; that once at the water's edge, they had to consider the location of navigable water; that the proposed facility will be very close to the mouth of Arnell Creek; that the water depths increase toward the east and southeast; that toward the other direction the creek becomes more shallow; that across the creek is a recreational boating area maintained by DNREC, which has its own boat launch area; that Arnell Creek is not a deep body of water; that Arnell Creek is approximately three feet at the low water level; that in regards to navigability and siting of a marina, DNREC has a policy that requires one and a half feet of water at the mean low water; that on a normal tide range, the creek has approximately a 6/10-ft. to 8/10-ft. between mean low and mean high water level; that they also considered locations where the required buffer could be located between adjacent property lines and the marina pier location, while still complying with the DNREC regulations; that the buffer is more than exceeded by where the buffers are located; that the proposed location is the existing location of the golf house and restaurant was; that the existing golf house and restaurant location is being redeveloped; that the proposed facility is going to be open to the public and the future residents of Osprey Point; that the facility is located within an open space component; that there is confusion to the two areas, located along the shore line, being referred to as beach areas; that he would encourage the Commission to consider those areas as more of a sand box area; that there is a shore line; that in some locations of the shoreline the water is very close to the edge of the shoreline; that in these areas there is little wetland vegetation between the uplands and the water; that where those locations are wider or narrower will not be impacted in any way; that originally they had proposed two separate piers; that now they have a U-shaped docking pier, with two separate docking piers being connected by a connecting pier, with only one access across the land; that this was proposed to minimize the crossing of the wetlands; that due to this the State and federally regulated wetland areas will not be impacted; that landward of the wetland boundaries there would be a retaining wall, which would not be very high in height, by raising the land in the area; that landward of that area would be a boardwalk with an access area, which is part of the recreational facility; that the landscape would tie into the landscaping located at the front of the restaurant area; that as part of the marina regulations, there are certain things which area required to be part of the marina facility; that there is a small

building proposed, which is intended to be the Harbor Master's Office; that the Harbor Master will be in charge of the marina; that this would be the area for signage and emergency numbers for the marina facility; that a marina is also required to have an emergency spill kit, which will also be located in the Harbor Master building; that within the State of Delaware for all marinas, there must be a holding tank for sewage coming off all vessels; that typically this is handled by the placement of a marina pump out port; that a tank is wheeled down to the dock; that the holding tank would be pumped; that the tank is wheeled back to land; that when the tank becomes full, the operator will contact a licensed hauler who will dispose of the waste; that this is a requirement by the law; that also included in the packet is the required Operation and Maintenance Plan; that it is a draft maintenance plan, which had been filed with DNREC; that there will be restrooms facilities within the marina, located at the restaurant; that there is also shared parking space, which is a component of any marina; that the marina will be required to have a fire protection system; that the fire protection system will be required to be reviewed and approval by the State Fire Marshall's Office; that there are details and permits regarding this which was included within the submitted packet; that located within the parking area, there will be a fire department connection; that located at the marina docks will be a dry system; that there will no water in this system, until the time it is required to be used; that at both legs of the docking piers there will be two fire department connections; that this is a requirement by DNREC; that the marina will be accessed by a small pier; that the pier will be three foot wide; that the pier will be elevated; that the pier will go across approximately 40-ft. of wetlands; that the pier will then widen out, leading to an additional pier which connects with the two piers which will hold the docks; that there will be a total of 25 slips provided; that the slips spaces will be 12.5-ft wide by 24-ft. long; that between every other dock there will be a 3'x12' finger pier; that this is a typical arrangement for a marina designed for smaller vessels; that the proposed facility is designed for pontoon boats and smaller vessels; that due to the water depths coming up from the shallow parts of Love Creek and the end of Arnell Creek, smaller vessels are the type to navigate there; that smaller vessels are the type to use the State boat ramp across from the property; that as part of the proposed design, there was a survey performed by a professional land surveyor within the State of Delaware, to determine water depths; that the surveyors information was submitted within the packet, as well as, submitted to DNREC; that if one proposes a new marina facility, there must be enough water in compliance with DNREC polices; that any dredging for channels which were previously constructed is considered maintenance dredging; that there typically was a previous depth which was authorized for maintenance dredging to be performed; that the type of permit required for maintenance dredging activity is routinely issued; that DNREC is not issuing permits to anyone wanting to dredge for random reasons; that at the proposed location, DNREC will not authorize a permit for new (not being for maintenance purposes) dredging; that they propose an additional pier, designed for launching canoes and kayaks; that they placed the pier at the proposed location because it has a very short distance of wetlands to cross; that those wetlands are regulated by the U.S. Army Corp of Engineers; that within this location there are no DNREC State regulated wetlands in the area; that there will be a pier, with an aluminum ramp to follow that; that there will be an 8'x8' or 20-ft to 24-ft floating dock; that there will be a yak port, which is a PVC cradle that helps people effectively launch; that they propose the marina, the shed for fire protection, parking, pump out capability and proper signage, which are the elements of the marina which constitute the proposal as a marina in DNREC's perspective; that these elements are the requirements DNREC will be looking at in terms of the application; that the restaurant facility is what the Planning & Zoning Commission is needing to consider; that the Application was submitted to both the U.S. Army Corp of Engineers and DNREC in December 2021; that the application was submitted to DNREC by his office, Environmental Resources, Inc, on December 23, 2021; that since that time the Application was

reviewed; that there was noticed offered to the public; that public comments had been received; that after public comment is received, DNREC will decide if a public hearing is required; that he has been informally told that there will be a required public hearing for the project; that the public hearing date will be announced with a public notice; that the public will have the opportunity to provide comment in regards to the marina portion and kayak launch; that there is no dredging permit; that he does believe DNREC would ever grant a permit for the proposed purpose in Arnell Creek;

Mr. Hutt stated that Condition M of the original Ordinance it stated “*as proffered by the Applicant, there should be a 25-ft. non-disturbance buffer from all federal non-tidal wetlands; that “ there shall be a 50-ft. non-disturbance buffer from all State tidal wetlands as required by County Code”*”; that he questioned Mr. Launay, as to how the Application complies with Condition M. and he questioned if a dock or a pier was considered to be a disturbance to wetland areas within the County Code.

Mr. Launay stated that Sussex County does have a Buffer Ordinance which requires a 50-ft. buffer from State regulated wetlands; that listed further in the Code, there are permitted uses for amenities, such as a dock or a pier to be located within the buffer area as stated under the old Code; that under the newly adopted Buffer Ordinance, there are provisions within the new Code that allow for anything which requires a State or Federal permit, being water associated; that he considers the beach area, the walk way within the uplands along the waterfront, as being parts of a recreational amenity associated with water; that there have been different interpretations with each change of Planning Directors for Sussex County as to what is considered a recreational facility within the 50-ft. buffer; that there are some things, which were approved in the past as recreational facilities, which will not be permitted under the new Buffer Ordinance; that previously it was understood that no structures were permitted within the 50-ft. buffer area; that no trees or bushes were allowed to be cut within the buffer; that currently there is no required buffer within County Code from federally regulated wetlands; that immediately landward of the wetland buffers is a golf course; that the area is not natural land; that it is rather a redevelopment of a golf course; that they have proposed to limit any disturbance of the buffers and the restaurant would be required to be located landward of the buffers; that he stated a dock or a pier would not be considered as a disturbance to wetlands areas per the current County Code, as well as the newly adopted Sussex County Buffer Ordinance and the restaurant building would be considered a disturbance, being subject to the 50-ft. buffer requirement.

Mr. Mears questioned if the boat slip rentals were exclusively for the residents of Osprey Point or for public rental as well.

Ms. Wingate questioned if overnight docking was prohibited; that she did understand that residents would be provided a notice when considering purchasing a lot and she questioned if the marina were approved for 25 boat slips, would it be permitted for other boats to pull up in the shallows and walk to the restaurant.

Ms. Stevenson questioned if the marina was for kayaks and paddleboards or for motorized watercraft vehicles as well; that she questioned where people from Osprey Point would launch their boats from the property; she questioned if the sandbox area would be placed on top of wetlands and she stated her questions regarding outdoor entertainment, hours of operation and lighting were answered in the provided letter.

Mr. Hopkins questioned where the location of the three-foot at low tide area was; that he questioned the depth of the water at the State’s boating launch area; that he questioned if the areas darker in shade on the rendering referenced deeper waters than other areas in the lighter shade; that the questioned

how depth is calculated; that he is concerned if someone where to place a propellor into the water at three feet, will it churn the silt; that he questioned if there would be suspended mud within the three foot depth area; that he questioned where the three foot depth areas are located in relation to the proposed areas the boat slips will terminate; that he questioned if the depths would be able accommodate a pontoon boat with people, a motor and fuel; that he questioned what the minimum depth required is for kayaking; that he questioned what the ratio for parking spaces was for commercial restaurants; that he questioned how many customers would be anticipated for the restaurant by land and by water;

Mr. Robertson stated there is a proposed condition stating there shall be no outdoor music after 9:00 pm; that the condition, regardless of what the Commission requires, will also be governed by the OABCC as it must be applied for as part of obtaining a liquor license; that he questioned if the DNREC approval is required because the marina is opened to the public versus an amenity for only the residents of the Osprey Point RPC or would DNREC's approval have been required all along and he stated if the marina was always a proposed amenity for the RPC and approved on the Final Site Plan, the project would have still been required to go through DNREC but would not have required this extra step through the Planning & Zoning Commission.

Mr. Hutt stated the intention is for the slips to be transient boat slips, associated with arriving and departing from the restaurant; that it is anticipated that some slips will be for seasonal use; that the restaurant owners intentions were that most slips be for customers of the restaurant; that stated in proposed Condition 3, it states that other than seasonal rentals, overnight docking is prohibited; that currently there are no residents within Osprey Point Development; that the homes are currently being constructed; that the permitted motorized watercraft vehicles would be permitted to access the marina; that the kayaks and paddleboats would be permitted at the launch area located at the other end of the property from the marina; that there is no proposed boat ramp at the marina; that he would imagine residents would be able to access a boat ramp in the nearby area; that he does not believe anyone has performed a calculation of anticipated patrons by land and water; that a pontoon boat is one of the most common boats found in the Inland Bays as they are not deep waters; that the more restrictive regulation for the end time of outdoor music is what the Applicant will comply with;

Mr. Launay stated that if DNREC provides authorization for the marina, they will issue a Subaqueous Land Permit; that with that granted permit there will be a Subaqueous Land Lease; that the lease will encompass the physical area of the marina; that the waters which are subject to the flow of the tide are free and navigable to anyone; that the State regulations state that someone cannot throw out an anchor, leaving their boat for an extended period of time; that a boat cannot be left, where it could become an impediment to other watercraft vehicles coming and going from the marina; that if someone were to get out of their boat, it potentially would not be a pleasant walking experience due to the hard sandy bottom of the creek; that there is a boundary of State wetlands and landward of that area there is a boundary of Federal wetlands under the jurisdiction of the U.S. Army Corp of Engineers; that he previously had testified that three feet landward of that area, the intention is to place a low profile, mild, sheet pile wall; that the wall will contain any sand or land disturbance to prevent anything from crossing over from the land into the wetlands; that he does not predict that people will be inclined to walk through a salt marsh; that the only wetland impact will be from the short portion of the pier that connects to the marina pier; that the pier will impact both State and Federal wetlands; that there is another small impact to the Federal wetlands at the location of the kayak launch; that he has a sounding survey that was performed to approximately the middle of the Arnell Creek; that he does not have a sounding survey for areas past the middle of Arnell Creek; that the depth he measured were

2.8-ft. to 2.5-ft; that in the middle of Arnell Creek the depth will become deeper; that there is a State Boat Ramp located across from Osprey Point; that he has seen an estimated 24-ft. long boat launch from the State boat ramp during normal low tide; that there is a good component of silt, with a more sandy bottom; that depth is calculated by the distance from the bottom floor to the top of the water; that the normal tide range in the subject area is approximately 0.8-ft.; that listed on the permit drawings, there are depth reported; that the permit drawing depths are a corrected at 0.2-ft.; that mean low waters are actually 0.2-ft. lower than the depths shown on the permit drawings the Commission has; that at higher tides there will be an additional .5-ft or higher; that if someone were to drop a propellor in a particular area at low tide, which would be approximately 2.5-ft, it will be in the mud; that a Bathymetric survey is a study of the bottom, which relays the depth; that the Bathymetric survey is taken from the boundary between the physical water and the physical soil that composes the bottom; that as part of the permit drawings, there was a full size plan submitted showing the extent of the sounding survey performed, all depths and all marina piers; that the depths will vary when moving inland, where it becomes more shallow; that at the other end of the marina, that is where the most depth is located; DNREC's standard requirement is at least 1.5-ft of depth at mean low water; that they meet the minimum standard in the dock area locations; that there will not be any dredging, so they are attempting to access the best water they can; that there is a limitation on where things can be placed; that when placing a pontoon boat in the water, with people, a motor and fuel it would be close to the 1.5-ft requirement; that every boat and every motor is different; that people experienced in navigating the Inland Bays are knowledgeable on how to tilt the motors to navigate through shallow waters; that he believes a canoe or kayak should be able to navigate in shallower water, however it would depend on the size of the person; that at the area of the kayak launch, he estimated the depth to be 2.4-ft at mean low water; that he does not anticipate any issues in the launch area; that he stated the intended use for the marina would not have mattered and the marina would have required the same set of permits and approval from DNREC.

Mr. Whitehouse stated that required parking is based on the square footage of the restaurant; that there are different requirements for restaurants versus retail centers; that he believed the requirement to be one parking space per every 50 sq. ft. assigned for patron use and not all of the restaurant square footage would be used for the calculation, as it is not all for patron space.

Ms. Cheri Hochstedler spoke on behalf of the Application; that she is a Senior Designer with GMB; that the Code requirements for restaurants and bars state one parking space for each 50 sq. ft. assigned for patron use, plus one parking space for two employees on the largest shift; that the 3,259 sq. ft. for the restaurant is not entirely patron use; that the kitchen space and bar area have been subtracted out of the calculation; that the patron use area is 2,767 sq. ft., that would equate to 56 parking spaces; that they have calculated the requirement of 13 parking spaces for 26 employees; that the total amount of required parking would be 69 parking spaces and they are proposing 82 parking spaces.

The Commission found that Mr. Robert Nadig spoke in opposition to the Application; that he is a resident of Old Landing Woods; the he was speaking on behalf of the Old Landing Woods Homeowners Association; that they are opposed to the Application; that the Application request does change the Osprey Point plan dramatically; that the proposed project will change the characteristics of the community; that it will change access points within the community; that the proposed project will have a different impact on the community than what was originally approved; that Old Landing Woods Development was the first development to be created off of the Old Landing Golf Course; that he was present at the previous public hearings; that the original Application, there was not request for commercial use; that he considers the marina and restaurant amenity to be a developers amenity; that

the proposed project will attract people off the bay, Rt. 1 and Old Landing Rd.; that the proposed use may be convenient for some, however he questioned if the proposed use is a necessity for the Osprey Point Development; that the acreage of 1.85 acres does not include the acreage of the marina; that about three acres of the 200 unit development is being commercialized; that three acres would equal 50% of the project, being more than is permitted for the proposed use; that he did not agree with the notice provided for the public hearing; that the legal advertisement mentioned a restaurant and marina, but did not mention commercial use; that they feel the Application should be rejected based on the negative impact it will have to surrounding communities; that they feel the proposed use will be taking over Arnell Creek; that the proposed use will discourage the boating that typically would be found in that area of Arnell Creek; that current boating disturb and destroy the subaqueous land; that the proposed use will exacerbate this; that boats routinely get stuck in Arnell Creek; that there is a boating safety concern with the proposed use; that the project may be smaller than Paradise Grill, but is still substantial for a 200 unit community; that the surrounding communities are quiet; that they are concerned about the bars and the nightclub; that the concept plan shows the large doors where dining can be inside or outside; that it is proposed to have no outdoor music after 9:00 pm; that they may still have music on the inside; that the plan is only a concept plan, so it could change to be anything; that surrounding residents have children who will need to go to bed; that he feels the proposed project will be taking advantage of the investments other people have made in terms of their properties; that the original restaurant of the golf course has not yet been torn down; that the current restaurant closes at dusk; that it was not intrusive to surrounding properties; that the proposed use is asking people to come to party with a marina, beach bar, tiki bar and pool bar; that the proposed use is directed for outside commercial use, not for the residents of Osprey Point; that he believes the proposed access to the restaurant to be a new access; that there were easements which were required to be obtained to create access off Old Landing Rd.; that the main concerns are the boating safety, the impacts to the wildlife and the watershed, the increase in boat traffic for the commercial purpose, that the offloading of sewage should not be part of a recreational amenity or in the location of where one would be; that there will also be a risk of gasoline and oil, which are not risks for the area currently; that the partying and the noise will substantially change the area; that he feels the calculation for commercial use is flawed in the amount the Applicant is requesting; that Osprey Point is an RPC; that Osprey Point has been compared to Americana Bayside; that Americana Bayside is 8,000 units versus Osprey Point at 200 units; that the consensus in his community were in opposition; that there was no one at the hearing in support of the Application and he does not feel approving the Application would set a very good precedent for the future.

Mr. Robertson stated this was the first Application that utilized the large metal Public Notice sign with the QR Code to scan and that the QR Code redirects directly to the application packet on the Sussex County website.

The Commission found that Ms. Nancy Dellavecchio spoke in opposition to the Application; that she lives within the Old Landing Development; that she is opposed to the marina; that she moved here in 2016; that since 2016 she has seen a decrease in accessibility into the water due to the tides; that the past weekend the tides were so low she could not take her 24-ft. pontoon boat out; that she does not understand how Arnell Creek will be able to enable the number of boats the proposed project are anticipating; that over the years, it has gotten worse; that at the mouth of Arnell Creek there is beach land; that she had witnessed many boats get stuck in that area; that this was a clear indication there is not enough water in that area; that she questioned the testimony given of the presence of three feet of

water; that she fears the proposed project will terminate her access to the water and she does not feel the proposed project will improve the quality of living for residents on Marshall Rd.

Mr. Mears stated there was a full moon the week prior which creates extreme low and extreme high tides.

Chairman Wheatley stated the Applicant testified that there was a depth of three feet in their particular site location and the Applicant did not testify there was a depth of three feet further up the creek.

Mr. Robertson stated Mr. Launay testified that a maintenance dredging permit could be requested, but DNREC would not permit dredging to establish a marina or pier system.

The Commission found that Ms. Donna Voigt spoke in opposition to the Application; that she lives within the Seagrass South Community, located across from Osprey Point; that Mr. Horsey did go to different communities to discuss the future plans; that the majority of the residents of Sawgrass are in opposition to the proposed project; that she had previously spoken to DNREC's Wetlands & Subaqueous Lands Division regarding the marina application; that she spoke with the project manager regarding her issue to the depths of the area; that the charts reference 1.9-ft.; that she does not understand where the two to three foot depth is being derived from; that the depths are shallow, limiting the type of vessels that can come and go from the area; that she had concerns that the painting, waxing and washing of boats would be permitted at the marina; that she had many concerns that she submitted to DNREC; that she requested to submit her questions to DNREC into the record; that noise is a big concern; that the sound concern is not only from the amplified sound, but also from the increase in patrons and increase in traffic; that in the Traffic Impact Study, DeIDOT was focused mostly on the four-way stop intersection at Warrington Rd. and Old Landing Rd.; that the four-way stop is on the Capital Transportation Plan; that action will not be taken until 2025 and not to be completed until 2030; that there have been multiple accidents within the small stretch of road which borders Osprey Point; that adding alcohol to a curvy road is not a good idea; that she feels having music seven days a week until 9:00 pm is torturous; that the Sawgrass community occasionally has bands; that the bands typically play from 4:00 pm until 7:00 pm; that the Sawgrass community does not have a restaurant, however they bring in food trucks; that everything within Sawgrass is done by 8:00 pm; that they scheduled these events about once a month; that she also is concerned about the hours of operation; that early morning deliveries will be made, as well as trash trucks; that within the original approval, the roads were stated to be maintained by the Homeowners Association; that she questioned, if that condition has not changed, have the new owners of Osprey Point been notified that they will be required to maintain roadways for a commercial business; that DNREC does have a permanent swimming advisory restriction in Arnell Creek due to the high bacteria level within the Inland Bays; that she has never seen any boats launch from the proposed launch area; that she has only seen people fish in that area; that she did not recall seeing a proposed marina or docks on the initial plan for C/Z 1759; that in Ordinance 2475, for C/Z 1759, Condition M states *as proffered by the Applicant there should be a 25-ft. non-disturbance buffer from all Federal Non-Tidal wetlands, a 50-ft non-disturbance buffer from all State-Tidal wetlands as required by County Code* and she had not found in the County Code or Conditions of Approval, stating commercial use would not apply to the buffer conditions.

Mr. Robertson stated on page 83 of page 221 of the electronic packet, it referenced the various sounds or "depths" which were derived in different intervals; that there is not a three-foot depth shown on the GMB drawing and the report document was dated December 2021; that Dr. Launay testified that regardless of the Commission or County Council's decision may be, the project will still have a public

hearing before DNREC for approval as well and he believed the marina and docks were shown on the original Site Plan.

Chairman Wheatley stated the buffer question was addressed during the Applicant's presentation and testimony; that the County Code has provisions that allow exceptions to the required buffers; that the Applicant is seeking to take advantage of those provisions and that these provisions do not differentiate between private and commercial use.

The Commission found that Mr. Al Bradley spoke in opposition to the Application; that he lives within Old Landing, along Arnell Rd.; that he requested to submit photos into the record showing the multiple boats which were stuck in Arnell Creek; that the photos range from 2019 until current; that he does not see sand in the area; that he has only seen mud; that where there is mud, there are stuck boats; that he has concern to the result of flooding of the marsh lands; that the marsh lands are important for the wildlife; that they have experienced flooding of two to four feet onto their property; that the more that it built and the more land that is paved the more likely flooding will be an issue; that the proposal on the rendering looks nice but he does not understand how the Applicant will be able to accomplish it; that the area of Old Landing is a quiet area and the area does not need anything similar to Paradise Grill; that there is overflow parking located adjacent to the end of Arnell Rd.; that he has concerns regarding traffic; that Arnell Rd. is small, dead-end road with no sidewalks; that he was told Arnell Rd. would stay a dead-end road; that Arnell Rd. is the only emergency exists; that he does not want to see Arnell Rd. become a road extension into Osprey Point and they would like to see the dead-end road remain as an escape from the areas known to flood.

The Commission found that Ms. Lia Koyner spoke in opposition to the Application; that she lives on Arnell Rd.; that her dock is adjacent to the proposed marina; that on the rendering they have blocked out her house and her yard as she lives directly adjacent to the project; that the trees referenced in that area as an existing buffer, are her trees on her property; that there is a dilapidated fencing in that area which is falling down; that there really is not a buffer in that area; that her house will be located directly adjacent to the proposed parking lot for the restaurant; that placing a path for a length of 40-ft. within the wetlands is not the best way to save the environment; that placing a walkway on an existing asphalt road and placing a parking lot behind the restaurant is the best way to protect the wetlands; that any boardwalk with children, adults and alcohol is going to cause pollution; that pollution is going to end up in the wetlands or in her yard; that she is unsure what landscape the Applicant plans to place, but she feels the landscaping should be big and bulky, with a giant fence; that she requested the Commission go to chart.noaa.gov/pdf/12216.pdf; that the website will reference the average depths of Arnell Creek; that the website states the average depth is two feet; that she is 5'2"; that she can walk the subject areas of Arnell Creek; that there are deeper waters in areas that have been dredged; that her kayak has gotten stuck in some areas; that the provision allowing amenities to be placed, taking away the wetlands; that she believes this provision was intended for amenities solely for the residents of the development; that the proposed use is going to attract way more than the area is ready to handle; that she feels the wetlands should be protected; that the Applicant testified the proposed use will serve thousands of homes, but that the proposed use would not cause any extra traffic; that many nearby communities and properties already have pools and amenities; that the people coming to the project will be arriving by vehicles; that she is concerned the fines will not be large enough to enforce the project to abide by the set conditions; that the water was present before any of the homes were constructed; that the water is hard to police and protect and she questioned how the proposed project would be policed.

The Commission found that Mr. Steven Barbato spoke in opposition to the Application; that he lives on Arnell Rd. adjacent to the project; that he represents Old Landing Three Homeowners Association; that they agree with all the concerns and complaints previously stated; that he submitted a letter into the record, written by Mr. Launay on December 23, 2021; that the letter specifically stated at the marina, the mean low tide is 1.6-ft to 2.8-ft; that there is no mention of a three-foot depth; that he questioned if someone will verify the stated depths; that he felt Mr. Hopkins asked a good question, however he felt it was answered incorrectly; that when boating in Arnell Creek, the engine must be trimmed up all the way; that when an engine is trimmed up, there is not much control; that often boats must stop and assess the waterway before heading out of Arnell Creek; that if there is increased boat traffic, it will cause increase the danger; that the darker shades do reference deeper areas in the water; that there are two deep spots; that the water is shallow in the channel; that he does not believe the proposed project will offer convenience and necessity to the development and area

Mr. Mears stated that Mr. Launay previously testified that the depth at mean low tide is 1.6-ft to 2.8-ft.

Chairman Wheatley stated he believed the bathymetric survey was the data that confirmed Mr. Launay's findings to be true.

The Commission found that Mr. Steven Koyner spoke in opposition to the Application; that he lives on Arnell Rd, adjacent to the project; that the Applicant spoke about the two areas that allow patrons to walk through the wetlands; that the Applicant did not talk about the proposed boardwalk; that the proposed parking lot of 82 parking spaces are located adjacent to existing homes; that some of the residents work from home; that he appreciates that outdoor music will end at 9:00 pm; that he is concerned about music being proposed every day; that typically the parking lots at bars are loud with people at 10:00 pm to 11:00 pm; that this patron noise would be located adjacent to residential homes; that the proposed boardwalk is approximately 200-ft. along the wetlands; that the Applicant does not need the boardwalk; that he would request the Commission reject the plan as is; that he requested the Commission have the Applicant remove the boardwalk; that he stated the property is large, with a lot of space between the restaurant and Old Landing Rd, that is not located adjacent to homes; that he requested the Commission make the Applicant move the parking lot and he would request the Commission condition the bar to close at 9:00 pm, as it will take two hours to get everyone to vacate the premises.

The Commission found that Ms. Anita Broccolino spoke in opposition to the Application; that she lives in Old Landing Woods; that she agrees with everything that had already been said; that she constantly has people ask if they can access Osprey Point from Old Landing Woods, while walking her dog; that if a commercial restaurant is placed it will attract a lot of people attempting to cut through Old Landing Woods to get to the marina; that if the restaurant was for residential use, it would be better; that she is concerned about safety; that often people get stuck in Arnell Creek and walk up knocking on residents doors, at times late at night; that there previously was a 10 to 12 year old boy, who got stuck in Arnell Creek; that emergency personnel had to rescue him; that with the presence of a bar, there will be people drunk; that the driving lanes are one way in each direction; that the congestion has been increasing in the area over the years; that there are many other developments in the area, which have been around for years, that have never needed a restaurant that would remain open until 9:00 pm to 11:00 pm; that she is concerned about the noise the project will generate; that there have been accidents and deaths along Old Landing Rd.; that she questioned if the Traffic Impact Study took into account the additional 217 homes; that she questioned if there would be 350 additional vehicles; that the commercial restaurant and marina would then add on top to that additional traffic;

that she and her neighbors feel safe and they currently do not have to worry about patrons getting drunk and wandering into their yards.

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

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

In relation to Application C/Z Osprey Point Preserve, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Hopkins and carried unanimously. Motion carried 5-0.

Meeting adjourned at 9:45 p.m.

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