

THE MINUTES OF THE REGULAR MEETING OF AUGUST 24, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 24, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

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

Mr. Whitehouse advised the Commission of revisions required for the Agenda.

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

Motion by Ms. Wingate, seconded by Mr. Collins to approve the Minutes of the July 27, 2023, and August 10, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0.

PUBLIC COMMENT

The Commission found that Ms. Gail Van Gilder, Representative from the DelDOT Scenic Byways Committee spoke on the Byways, the Byways landscape requirements, and the desire to work with the Commission and County Council at future workshops regarding creating ordinances relating to parking within the front yard setbacks and landscape requirements along the Byways.

OLD BUSINESS

Mr. Robertson recused himself from Council Chambers and advised the Commission that Mr. James Sharp, Esq. would present as the Assistant County Attorney in his place for the following Application.

2022-18 Wil King Station

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

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

Mr. Butler moved that the Commission recommend approval for 2022-18 Wil King Station, LLC, based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval for a cluster subdivision on land zoned AR-1 located within the “Coastal Area” and “Low-Density Area” of the 2019 Comprehensive Plan and a standard subdivision within the GR Zoning District. The clustered lots are proposed to have a minimum area of 7,500 square feet per lot and lots in the standard subdivision will have a minimum area of 10,000 square feet per lot.
2. As stated by the Applicant, the proposed subdivision will have no more than 58 lots on 29.10 acres. This is within the permitted density of the site.

3. The location is split between the Coastal Area and Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in these Areas according to the Plan. The proposed project complies with the Comprehensive Plan and Zoning Code.
4. The proposed development will comply with all DelDOT roadway entrance requirements.
5. There will be a minimum 30-foot landscape perimeter buffer around the entire site.
6. The proposed subdivision contains approximately 13 acres of open space, which represents about 44% of the entire site.
7. There are no regulated wetlands on this site.
8. The project will be served by central water and sewer.
9. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
10. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
11. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
12. This preliminary approval is subject to the following:
 - a. There shall be no more than 58 lots within the subdivision.
 - b. The Final Site Plan shall confirm that approximately 44% of the site remains as open space.
 - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision adjacent to lands of other ownership. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. If any existing trees or similar vegetation dies or is removed from the buffer area for any reason, the trees or vegetation will be replanted to meet the standards of Section 99-5 of the Subdivision Code. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify "Limit of Disturbance" to prevent disturbance of the buffer area. The Applicant shall install signs measuring at least eight (8) inches by then (10) inches at the interior edge of the vegetated or forested buffer every 300 feet as measured linearly along the edge of those areas. The signs shall make it clear that these areas are not to be disturbed, mowed, or sprayed. The homeowner's association shall be responsible for maintaining, repairing, or replacing the signs as necessary. The design and locations of the signs shall be shown on the Final Site Plan.
 - f. As proffered by the Applicant, the development shall preserve approximately 7.8 acres of existing forested area. The Final Site Plan shall depict all forested areas that will be preserved.

- g. The development shall comply with all DelDOT entrance and roadway improvement requirements and time periods.
- h. Sidewalks shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path and the trail network planned for the community. A system of downward screened streetlighting shall also be provided.
- i. Amenities including a walking trail, playground, and recreation area shall be constructed and open to use by residents of this development on or before the issuance of the 29th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities. There shall be no walking trail along La Jolla Shores Drive.
- j. The subdivision shall be served by Central Sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- k. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- l. Interior street design shall meet or exceed Sussex County street design standards.
- m. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- n. There shall be no internal street, road, or vehicular access connecting the subdivision to La Jolla Shores Drive.
- o. A post rail fence shall be installed adjacent to the boundary lines with Tax Map Parcel No. 234-6.00-59.01 and 59.18. The fence shall be maintained by the homeowner's association.
- p. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction, site work, or deliveries on Sundays. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- q. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- r. The Final Site Plan and Declaration of Restrictions shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. In addition, there shall be a notice included in these documents stating that nearby lands may be actively hunted and that anyone taking title to a property within the subdivision acknowledges that these activities occur nearby.
- s. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site. In addition, as proffered by the Applicant, there shall be a conservation easement recorded with the Final Site Plan for the undisturbed forest and open space areas.
- t. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site Grading Plan.
- u. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- V. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Mears to grant preliminary approval for 2022-18 Wil King Station for the reasons and the conditions stated in the motion. Motion carried 4-1.

Ms. Wingate stated she disagreed with the motion, as she was not satisfied with the information proving that Wil King Rd. would be able to handle the increased traffic without the DelDOT improvements.

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

2022-19 Grayrock Preserve

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

The Commission discussed the Application which had been deferred since August 10, 2023.

Ms. Wingate moved that the Commission grant preliminary approval for 2022-19 Grayrock Preserve based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval for a cluster subdivision on land zoned AR-1 located within the “Low Density” Area of the 2019 Comprehensive Plan’s Future Land Use Map.
2. The subdivision will have no more than 94 lots on 47.48 acres of land resulting in a gross density that is permitted in the AR-1 Zoning District. All lots will be at least 7,500 square feet in size.
3. This subdivision is in the vicinity of other single-family subdivisions, including Ironhook Harbor, which was approved as a GR-Zoned Subdivision in June of this year with 165 lots. Other developments include County Seat Gardens, Reddenwood, The Vines of Sand Hill, and Sand Hill Acres. This subdivision is also near the elementary school campus of Sussex Academy.
4. There are no State or Federal jurisdictional wetlands that exist on the property.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
6. A portion of the Property is located within an Excellent Groundwater Recharge Potential Area; however, the total impervious cover in that area will be less than the threshold of 35% required by Chapter 89 of the Sussex County Code.
7. DelDot has determined that the subdivision will have a “Minor Impact” on area roadways. In addition, the subdivision will comply with all of DelDot’s requirements, including the payment of an Area-Wide Study Fee, possible improvements to Wilson Hill Road, and other entrance improvements.
8. The subdivision will be served by central water and sewer.
9. The subdivision provides for a total environment and design that are superior to that of a standard subdivision including a substantial amount of open space and buffers and it complies with the design requirements and review procedures for an AR-1 cluster subdivision. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code as follows:
 - a. The cluster design permits greater tree preservation than would occur with a standard subdivision design, with approximately of approximately 16.9 acres or 42% of the forested areas remaining undisturbed;

- b. The cluster design includes approximately 25.11 total acres of open space or 53% of the site. This significantly exceeds the 30% minimum required by Code;
 - c. The large open space area can benefit the environment by maintaining habitat for wildlife and naturally filtering stormwater and roadway runoff;
 - d. The cluster design will result in less mass grading of the entire property than would occur with a standard subdivision with lots spread across the entire tract; and
 - e. The overall design was substantially modified based on preliminary agency comments to eliminate lots within the northwest corner of the property so that there is no interruption of the existing forest in that area.
10. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
11. This recommendation is subject to the following conditions:
- a. There all be no more than 94 lots within the subdivision.
 - b. The developer shall establish a homeowner’s association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. The Final Site Plan and recorded Declaration shall state that agricultural and hunting activities exist on nearby properties. The Agricultural Use Protection Notice and a similar notice about hunting activities shall be included in these recorded documents as well.
 - d. As shown on the Preliminary Site Plan, approximately 25.11 total acres or 53% of the site shall remain as open space.
 - e. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - f. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision in accordance with Section 99-5 of the Subdivision Ordinance. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - g. The development shall comply with DelDOT entrance roadway improvement requirements.
 - h. Street design shall meet or exceed Sussex County standards.
 - i. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
 - j. The subdivision shall be served by Central Sewer.
 - k. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
 - l. Sidewalks shall be installed on at least one side of all internal streets.
 - m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - n. The Applicant shall coordinate with the local school district for a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.

- o. There shall be on-site active and passive amenities including walking trails and children's play equipment. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
- p. There shall be at least 16.9 acres of the existing forest preserved within this development. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and all of the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- q. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site Grading Plan.
- r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- s. The recorded Declaration and Final Site Plan shall provide that the Homeowners Association shall be solely responsible for the application of all fertilizer and similar chemicals or additives throughout the entire subdivision using Best Management Practices.
- t. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- u. The Applicant shall install signs measuring at least eight (8) inches by then (10) inches at the interior edge of the vegetated or forested buffer and along the undisturbed forested areas every 300 feet as measured linearly along the edge of those areas. The signs shall make it clear that these areas are not to be disturbed, mowed, or sprayed. The homeowner's association shall be responsible for maintaining, repairing, or replacing the signs as necessary. The design and locations of the signs shall be shown on the Final Site Plan.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant preliminary approval of 2022-19 Grayrock Preserve for the reasons and conditions stated in the motion. Motion carried 5-0.

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

2022-20 Marvel Subdivision

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

The Commission discussed the Application which had been deferred since August 10, 2023.

Mr. Mears moved that the Commission grant preliminary approval for 2022-20 Marvel Subdivision based on the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a subdivision on land zoned AR-1 located within the Coastal Area according to the 2019 Comprehensive Plan's Future Land Use Map.
- 2. The subdivision will have no more than 44 lots on approximately 40 acres of land. The lots will each be served by individual wells and septic systems.

3. All of the lots will be at least one-half acre in size, and the gross density of the project is .91 lots per acre, which is well below the permitted density in the AR-1 Zoning District.
4. The proposed development will comply with all DeIDOT roadway and entrance requirements.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
6. DNREC has confirmed septic feasibility for on-site treatment and disposal systems, including “pretreatment systems” to protect the Inland Bays Watershed.
7. The proposed subdivision is superior to the typical standard subdivision for the following reasons:
 - a. The subdivision includes 30-foot landscaped buffer instead of the standard 20-foot buffer;
 - b. The subdivision contains open space consisting of approximately 12 acres which is 30% of the site;
 - c. The subdivision provides for sidewalks on both sides of the streets; and
 - d. The subdivision includes an 80-foot setback from the centerline of the channel that runs through the property which results in over 50% of the open space being adjacent to this waterway.
8. A portion of the Property is located within an Excellent Groundwater Recharge Potential Area; however, the total impervious cover in that area will be less than 35% as required by Chapter 89 of the Sussex County Code.
9. The subdivision is consistent with the character and trend of residential development in the area. With the conditions imposed by this preliminary approval, it will not adversely affect the neighboring and adjacent properties.
10. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
11. This recommendation is subject to the following conditions:
 - a. There all be no more than 44 lots within the subdivision.
 - b. The developer or its successor shall establish a homeowner’s association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. The recorded deed restrictions and Final Site Plan shall reference that agricultural and hunting activities exist nearby and include the Agriculture Protection Notice.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - e. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - f. Clearing, disturbance, or altering of existing vegetation throughout the subdivision shall be limited as needed to accommodate the proposed construction

- and for removal of dead and dying trees that pose a threat to public safety on adjacent property.
- g. The development shall comply with DeDOT entrance roadway improvement requirements.
 - h. Street design shall meet or exceed Sussex County standards.
 - i. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
 - j. Each lot shall have its own on-site wastewater treatment and disposal system.
 - k. Each lot shall be served by its own private well.
 - l. Sidewalks shall be installed on both sides of all internal streets.
 - m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - n. The Applicant shall coordinate with the local school district for a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
 - o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
 - p. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site Grading Plan.
 - q. The Final Site Plan shall include an unobstructed area set aside for vehicular access to the subdivision in emergency situations along Vines Creek Road. This area does not need to be improved with paving or stones. Instead, it must be an area outside of any lot lines and free from obstructions so that the development is not isolated in the event that the main entrance from Brasure Road is impassible.
 - r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - s. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to grant preliminary approval of 2022-20 Marvel Subdivision for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

ORD 23-11

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

The Commission discussed the Ordinance which had been deferred since August 10, 2023.

Mr. Whitehouse advised the Commission PLUS comments had been received for the Application, and that paper copies of the PLUS comments had been circulated to the Commission, as well as uploaded onto the Online Document Management System.

The Commission took no action on the Application.

OTHER BUSINESS

2021-19 East Gate

Final Subdivision & Landscape Plan

This is a Final Subdivision Plan for the creation of eighty-eight (88) single-family lots to be created out of 36.71 acres +/- . Included in the plan are fully improved streets, stormwater management, amenities, a Landscape Plan, and other site improvements. The Plan was previously approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, April 14th, 2022. The development will be supported by central sewer and water systems, being provided by Sussex County and Artesian. The properties are located on the south side of Zion Church Road (Rt. 20). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcels: 533-11.00-45.05, 45.06, 45.07, & 45.08. Zoning: GR (General Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Final Subdivision Plan and Landscape Plan as a final. Motion carried 5-0.

S-23-15 County Seat RV Resort

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 350-lot campground with various amenities to be located on Lewes Georgetown Highway in Georgetown. The plan includes parking, stormwater management, entrances, and the sanitary facilities needed to support the use. This use was approved by the Sussex County Council as Conditional Use No. 2228 on November 17th, 2020. Specifically, there will be 304 campsites, 46 cabins, 3 bathhouses, a general store, 2 check-in buildings, and amenities that include a baseball field, pool and pool house, basketball and tennis courts, a pavilion, and other accessory structures. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 135-15.00-55.01. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals and recommend final approval to be granted by the Commission as the Conditions of Approval require the submission of drafted deed restrictions to be reviewed as part of the site plan review.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan. Motion carried 5-0.

S-23-17 Rehoboth Marketplace

Revised Final Site Plan

This is a Revised Site Plan for the construction of a proposed 3,062 square foot +/- restaurant, 400 square foot +/- patio, a total of 30 parking spaces, and other related site improvements on a 0.23 acre +/- portion of an existing commercial site containing 8.63 acres +/- . The property is located on the north side of Airport Road, the south side of Coastal Highway (Route 1), and the southeast side of Miller Road (S.C.R. 270A). The property is located within the Combined Highway Corridor Overlay Zone (CHCOZ). The Commission last reviewed this proposal at their meeting of Thursday, April 27th, 2023, which included a request to waive the requirements of the CHCOZ which require a 60-ft front yard setback and a 20-ft landscape buffer (which would have required an Application to be submitted to the Board of Adjustment

for a variance under §115-194.1(A) of the Sussex County Code) as well as to permit the proposed seven (7) parking spaces to be located within the front yard setback. Due to the Commission being the improper body to waive the CHCOZ requirements, the Commission opted to take no action on this Agenda item. After further discussion with Staff, the Revised Final Site Plan has been amended to ensure compliance with Sussex County Zoning Code requirements, including the provisions of the CHCOZ. However, the previous request to permit seven (7) parking spaces within the front yard setback still remains part of the decision by the Commission. Tax Parcel: 334-13.00-325.12. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Revised Final Site Plan as a preliminary, with approval of the waiver from the front yard setback parking requirements, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

S-23-30 Soboczenski Office

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 10,000-square-foot structure to include commercial retail and commercial storage, sidewalks, stormwater management, and parking on two (2) parcels located on the southeast corner of the intersection of Coastal Highway (Route 1) and Hudson Road (S.C.R. 258). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 235-16.00-52.00 & 52.01. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this preliminary plan, it is requested that final approvals be made subject to staff upon the receipt of all agency approvals.

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

S-23-20 Frederick Ford

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 3,325-square-foot service area addition, a 9,600-square-foot truck service building, and other site improvements. The parcel is 23.11 acres +/- and is located on the east side of Sussex Highway (Rt. 13). Staff would like to note that the subject parcel has been involved with auto sales since June of 1986, according to County permit records. The Applicant has submitted a waiver, requesting that interconnectivity to adjoining commercial properties not be required. This site plan was approved by the Sussex County Board of Adjustments on August 21, 2023, for a variance request from the CHOCZ landscaping requirements. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 132-7.00-66.00. Zoning: C-1 (General Commercial) District. Staff are in receipt of all agency approvals and therefore the plan is eligible for preliminary and final approval.

Motion by Ms. Wingate, seconded by Mr. Mears to approve the Revised Preliminary Site Plan as a preliminary and final and to approve the waiver requesting that interconnectivity to adjoining commercial properties not be required. Motion carried 4-0. Mr. Butler abstained.

S-23-28 Jefferson Temple

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 10,000-square-foot masonic temple, a 240-square-foot pavilion area, and other site improvements. The parcel is located on the west side of

Sweetbriar Road and the subject parcel plans to have access from a proposed ingress/egress access easement through parcel 28.01. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-4.00-28.02. Zoning: AR-1 (Agricultural Residential) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this preliminary plan, it is requested that final approvals be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate to approve the Preliminary Site Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

S-23-34 Mitchell Farm Commercial

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 3-story 43,200 square foot office building, parking, and other site improvements. The parcel is located on the southeast side of Kings Highway (Rt. 9) and the subject parcel plans to have access from Black Swan Road. The applicant has requested relief from the requirement for parking within the front yard setback. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 335-8.00-37.02. Zoning: C-2 (Medium Commercial) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this preliminary plan, it is requested that final approvals be made subject to staff upon the receipt of all agency approvals.

Mr. Collins questioned if any DelDOT concerns outstanding for the property.

Ms. Scott stated no agency approvals had been received for the revised Preliminary Site Plan, as the Applicant was still proceeding through the process to acquire agency approvals.

Mr. Collins questioned if there was an issue with parking within the front yard setback.

Ms. Scott stated the Applicant has placed a waiver request from the parking requirements within the front yard setback.

Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

S-21-36 Mayapple Farm (C/U 2249)

Amenities Plan

This is an Amenities Plan for Mayapple Farm, a subdivision containing forty-one (41) single-family homes in a detached condominium regime. It should be noted that the property was the subject of a Conditional Use Application, (Conditional Use No. 2249) which was approved by the Sussex County Council at their meeting of Tuesday, October 26th, 2021, subject to twenty (20) conditions. The proposal consists of a proposed pool complex consisting of 9,037 square feet +/- with a clubhouse to include restroom facilities, a mail center and deck furniture storage area, as well as an in-ground pool with further amenities to include pool furnishings, an outdoor kitchen, twenty-five (25) parking spaces, a kayak pier, and associated landscaping improvements. The proposal is located on the northeast side of Saluda Avenue and the northwest side of Seneca Lane within the Mayapple Farm development. The Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 533-19.00-289.05. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Amenities Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0. Ms. Wingate abstained.

Lands of Morris Heirs

Minor Subdivision Plan off a 30-ft Easement & Lot Line Adjustment Plan

This is a Minor Subdivision to divide 67.71 acres +/- into two (2) Lots. Proposed Lot 1 will consist of 0.805 acres +/-, and proposed Lot 2 will consist of 1.075 acres +/- . The Plan also proposes a Lot Line Adjustment to be relocated to the Top of Bank (TOB) of the existing Tax Ditch (Prong 5 of the Jobs Tax Ditch) which currently bisects the existing Parcels. Also included in this proposal, is the subdivision of the property into four (4) separate tracts of land for purposes of future dedication to the Delaware Agricultural Lands Preservation Program, and these areas have been delineated on the Plans as Tracts 1, 2, 3 and 4. The properties are located on the north and south sides of Sycamore Road (S.C.R. 476). A shared-use maintenance agreement will be established for the use of the shared drive. Tax Parcels: 232-8.00-32.00 & 33.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals to include a Grading Plan for the site (as proposed Lot 1 is less than 1 acre in size.)

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a 30-ft. easement and the Lot Line Adjustment Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals and the submission of a Grading Plan for the site, due to Lot 1 being less than one acre in size. Motion carried 5-0.

Lands of Brian K. Cooper

Minor Subdivision Plan off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one lot off an existing 50-foot access easement. Lot 1 will be 4.003 acres +/-, and the residual lands will be 6.856 acres +/- . The proposed lot will be served by an existing 50-ft access easement. The property is located on the west side of Columbia Road (S.C.R. 76). A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential) District. Tax Parcel: 532-10.00-2.03. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of a Shared Use Maintenance Agreement and all agency approvals. Motion carried 5-0.

Lands of Lawrence A. Asch & Karin E. Asch

Minor Subdivision Plan off a 20-ft Easement

This is a Minor Subdivision Plan for the creation of two (2) lots off a 20-foot access easement. Lot 5 will be 5.000 acres +/-, Lot 6 will consist of 5.000 acres +/- and the residual lands will be 29.989 acres +/- . The property is located on the northwest side of Shawnee Road (S.C.R. 36). A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential) District. Tax Parcel: 130-6.00-2.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of John & Nancy Argo

Minor Subdivision Plan off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus residual lands. The Plan proposes “LOT 1” comprised of (4.368) acres, “LOT 2” comprised of (3.438) acres, “LOT 3” comprised of (4.713) acres, and “RESIDUAL LANDS” of (3.678) acres. All proposed lots and the residual lands are to be served by a fifty (50) foot wide access and utility easement with a shared maintenance agreement. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential) District. Tax Parcel: 230-22.00-34.01. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Paul Lathbury

Minor Subdivision off a proposed 50-ft easement & Lot Line Adjustment

This is a Minor Subdivision Plan and Lot Line Adjustment for the Lands of Lathbury for the subdivision of a 27.08-acre parcel into four (4) proposed lots including residual land. Proposed Lot 1 will consist of 10.00-acres +/-, Proposed Lot 2 will consist of 1.70-acres +/-, Proposed Lot 3 will consist of 1.65-acres +/-, and the Residual Land will contain 13.30-acres +/--. The Plan also proposes a Lot Line Adjustment to include the subject parcel and Tax Map Parcel No.134-11.00-48.00, both of these parcels are under the same ownership. The parcels are located on the south side of Blackwater Road (S.C.R. 374) and propose access through an existing ingress/egress access easement located on Parcel 48.00. A shared-use maintenance agreement will be established for the use of the shared drive. Tax Parcels: 134-11.00-48.00 & 49.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to 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 a proposed 50-ft. easement and to approve the Lot Line Adjustment Plan as preliminary, with final approvals to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Recess
4:37 – 5:05

PUBLIC HEARINGS

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

2020-07 Lands of Elizabeth Main & Andrew MacNamara

A standard subdivision to divide three (3) acres +/- into three (3) single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the west side of Krause Lane, approximately 440 feet northwest of Townsend Road (S.C.R. 303). 911

Address: 29157 Krause Lane, Millsboro. Tax Map Parcel: 234-22.00-3.29. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Subdivision Plat, a letter received from the Sussex County Engineering Department Utility Planning Division, a DeDOT Letter of No Objection, the Staff Review letter, the Soil Feasibility Study, and a copy of the property deed. Mr. Whitehouse stated that zero comments were received for the Application.

The Commission found that Ms. Elizabeth Main spoke on behalf of her Application. Ms. Main stated she and her father reside in the house currently located on the land, and that she is requesting to separate the land as she wishes to build her own house next door.

Mr. Robertson questioned if the proposed lots would be consistent with the neighborhood and if creating two lots would create any adverse drainage or issues to adjacent properties.

Ms. Main stated the proposed lots would be consistent with the neighborhood, that to her knowledge all approvals had been given, so she did not believe any adverse impact would be created to adjacent properties; that a Septic Feasibility Study was submitted on both lots as part of the record, and the lots will be placed on individual wells.

Ms. Wingate stated the road accessing the property is a long road; that she understood the road to be a private road, and she questioned if there was a Maintenance Agreement in place for the future maintenance of the road.

Ms. Main stated the easement does have a maintenance agreement; that everyone who owns property along the road, is responsible for the road along their section of property, and this requirement had been placed within a written agreement along with the deed.

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

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

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

Mr. Robertson stated he had prepared a motion, which he read into the record per Ms. Wingate's request.

Ms. Wingate moved that the Commission grant preliminary approval of 2020-07 Lands of Elizabeth Main & Andrew MacNamara, based upon the record made and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density, single-family residential development. This three (3) lot subdivision on three (3) acres, results in an overall density that is significantly less than the allowable density within the AR-1 Zoning District.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. No parties appeared in opposition to this Application.
5. The proposed subdivision will not adversely impact schools, public buildings, and community

facilities.

6. The proposed subdivision will not adversely affect traffic on area roadways.
7. A waiver of the buffer, grading, and street design requirements is appropriate since this is a small subdivision creating three, one-acre lots.
8. This preliminary approval is subject to the following conditions:
 - A. Only three (3) lots shall be permitted. Any further subdivision shall require an additional public hearing.
 - B. A maintenance agreement for the shared roadway shall be included on the Final Site Plan and recorded as a separate document with regard to all three of these lots.
 - C. The subdivision shall be subject to any entrance and roadway improvements required by DelDOT.
 - D. The Final Site Plan for the Subdivision shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to grant preliminary approval for 2020-07 Lands of Elizabeth Main & Andrew MacNamara for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/U 2446 Tijmen van den Bosch

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR GREENHOUSES AND EMPLOYEE HOUSING BUILDINGS TO BE LOCATED ON A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 166.19 ACRES, MORE OR LESS. The properties are lying on the south side of West Newton Road (S.C.R. 582) and the west side of Adams Road (S.C.R. 583), at the intersection of West Newton Road (S.C.R. 582) and Adams Road (S.C.R. 583). 911 Address: N/A. Tax Map Parcels: 131-6.00-1.00 & 18.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Exhibit Booklet, which included Applicant videos, the Preliminary Site Plan, a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Analysis, a copy of the PLUS Review comments, and a copy of the property deed. Mr. Whitehouse stated that four letters of support and zero comments in opposition were received for the Application.

The Commission found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Mr. Tijmen van den Bosch, CEO of Bosch Growers; that also present were Mr. Tijmen van den Bosch and Mr. Wouter van den Bosch, CEOs of Bosch Growers, Ms. Susan van de Merwe and Ms. Sarah van de Merwe, Senior Associates of Project Development with Blue Forest Environmental Development, Mr. Justin Lukoff, Head of U.S. Sales with Havecon (the greenhouse developer), and Mr. Jamie Sechler, P.E. with Davis, Bowen & Friedel. Ms. Peet stated that Bosch Growers is a sixth generation, family-owned business, founded in 1854 in the Netherlands; that Bosch Growers specializes in greenhouse grown fruits and vegetables; that Bosch Growers specializes in cultivating green bell peppers, and annual blackberries currently; that Bosch Growers is now seeking to grow strawberries in Sussex County, on a tract of land being approximately 102 acres, located in Bridgeville; that the site is zoned AR-1 (Agricultural Residential); that the site is adjacent to other properties also zoned AR-1, LI-1 (Limited Industrial), as well as other properties zoned Heavy Industrial, Commercial and Heavy

Commercial; that there are agricultural, industrial and commercial related uses within the vicinity of the site; that the site is located within the Developing Area of the County's Future Land Use Map, and adjacent to other properties designated the same, as well as areas designated as municipalities, low density and industrial; that as confirmed by the Town of Bridgeville's letter of support, the site is in the Town's short and long term annexation area, where heavier commercial areas, such as manufacturing and agricultural industry is designated; that the Town's support letter states "*the proposed Application fits well within the surrounding properties as the area is already primarily composed of larger scale commercial, industrial and agricultural uses, and is also designated as such in the Future Land Use Map and in our Comprehensive Plan*"; that additionally within the Town's support letter, it is noted the site is identified as a Future Growth Employment Area as well; that the Applicant anticipates investment of upwards of \$100 million in the proposed facility, to be developed in two phases; that the project poses that two greenhouses, at approximately 29 acres, permitted residential and/or guest housing, as well as employee housing, (for persons permanently employed on the premises in compliance with the AR-1 District permitted uses), storage tanks and one main operational building; that employee housing is contemplated as part of the use, but only if the local workforce cannot fill the anticipated 80 to 100 jobs; that an effort to capture all contemplated uses, in connection with the greenhouse operation, they attempted to describe the use as comprehensively as possible; that she requested to submit the proposed Conditions of Approval into the record, which contained a condition which stated, "*the use shall consist of commercial scale greenhouses, together with accessory, operational and support uses and facilities, including, but not limited to, substations, employee housing facilities for persons permanently employed on the premise (either resident or migrant), functional support buildings, such as a pack house, irrigation ponds, water tanks, storage tanks, research and development areas, any and all heat power and/or energy generating or producing technologies, including but not limited to, renewable and carbon neutral technologies.*"

Ms. Peet requested to present two of three submitted exhibit videos to the Commission, which reflected aerial imagery and interior imagery of an existing greenhouse used to produce blackberries.

Ms. Peet continued her presentation stating that the site is located within the AR-1 (Agricultural Residential) Zoning District; that the purpose of the AR-1 District is provided within §115-19 of the Code; that permitted uses within that section does permit for commercial greenhouses, provided that the lot area is five acres or more; that §115-20B of the Code expands upon permitted uses on farms of five acres or more, allowing for buildings to be permitted on lands for agricultural purposes; that §115-21 of the Code also provides for permitted accessory uses on a farm of five acres or more, such as accessory structures for sale or processing of farm products raised on the premise, accessory (open or enclosed) storage of farm materials, products or equipment; that accessory farm buildings include, but are not limited to, barns, stables, sheds, tool rooms, shops, bins, tanks, silos and dwellings for persons permanently employed on the premise; that this is what the Applicant has attempted to capture within the use approval that the Applicant is seeking; that many of the uses contemplated for the site are permitted uses within the AR-1 district; that due to the scale, scope and size of the proposed use, as well as the aggregate industrial type business, it was determined by the Planning & Zoning Department that it was necessary to permit the proposed development as a Conditional Use; that the Future Land Use Map indicates that the site is located an Developing Area; that properties adjacent to the site are designated the same, as well as low density municipalities and industrial; that Developing Areas are considered to be Growth Areas in the County's Comprehensive Plan in contrast to rural area; that Growth Areas are encouraged for the County's most concentrated forms of new development, including commercial development; that Developing Areas are considered to be newer, emerging growth areas, and are often located adjacent to municipalities, much like the subject site; that proximity to the municipality's Future Land Use designation is significant, in the fact that the County strongly favors directing development towards municipalities that desire the development, like the Town of Bridgeville

in this instance; that for the reasons stated, and for many more, the proposed use is consistent with the Future Land Use and Comprehensive Plan, which was noted within the PLUS comments as well; that the site is located within Investment Levels 1 & 2; that §115-171 of the Code, details the purpose of Article 24 on Conditional Uses as to provide for certain uses which cannot be well adjusted to their environment in 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, are essential and desirable for the general convenience and welfare, but because of the nature of the use, the importance of the relationship to the Comprehensive Plan and the possible impact, not only on neighboring properties, but on a large section of the County, require the exercise of planning judgement on location and site plan; that the proposed use is of semi-public character, as it had been demonstrated for the record within the submitted exhibits, as well as the submitted letters of support; that the proposed use is consistent with the surrounding uses, as stated within the Town of Bridgeville's support letter, which states the use will seamlessly integrate with Bridgeville and other like kind Agri-Industry uses nearby; that public sewer is available to the site; that the site will be served by private on-site wells; that access to the site will be from Adams Rd. ; that DelDOT's Service Level Evaluation Response confirmed that the traffic impact is considered to be negligible; that the greenhouses are designed to be elevated from the ground and soil below, by shallow support structures and foundations; that by doing this, it helps limited the impact on the land beneath, while also minimizing disruption to the surrounding environment; that many greenhouses are designed to be easily disassembled and moved; that this allows for the restoration of the site to its original condition once the greenhouse reaches the end of its life cycle, being approximately 20 years; that when considering the scale and size of the proposed use, the semi-public development will harmoniously fit into its surroundings and will offer numerous benefits, including job creation, economic development, community engagement and environmental responsibility; that the Bosch's request has received support from Representative Jesse Vanderwende, Secretary Michael Scuse of Delaware's Department of Agriculture, Senator David Wilson, and Ms. Bethany DeBussy, Town Manager of Bridgeville; that the support is evidenced by submitted letters of support, and she requested to conclude with reading a portion of Senator Wilson's submitted letter, which stated, *"This is an exciting opportunity for Sussex County and for the State of Delaware. Bosch Growers has an excellent reputation. The technology and growing strategies they will bring to our State, in terms of greenhouse production, will be beneficial to our agricultural community. The knowledge and expertise they will bring to our State will also have a direct impact academically by establishing partnerships with Delaware's colleges and universities."*

Mr. Collins questioned what the housing aspect of the development would look like, and the number of housing units proposed.

Ms. Peet stated employee housing, for residents or employees, who are going to be permanently employed on the site, is permitted by the Code; that employee housing is only going to be developed if the local workforce cannot fill the job positions; that at this time, there is no specific design, however, it would be permitted by the Code.

Mr. Robertson advised the Commission that if the Applicant were to propose the employment housing, Preliminary and Final Site Plan review and approval by the Commission would be required.

Ms. Wingate stated the greenhouses were impressive and she felt the proposed use is a great opportunity to bring a lot more employment opportunities for the area.

Mr. Mears stated the Commission loves to support agriculture. Mr. Mears questioned the height of the greenhouse structures, as he was shocked at how tall they appeared in the presented video, and he questioned if the produce would benefit Sussex County, or if the produce proposed to be exported.

Ms. Peet stated the height was approximately 20 ft.; that all structures would be Code compliant with all height requirements; that the produce is proposed to benefit Sussex County, and there had been discussions regarding some sort of farm stand to be located on the site, which would be a permitted use in the Code as well.

Chairman Wheatley stated the project seemed to propose a tremendous amount of roof water; that he questioned what would happen to the roof water runoff, the purpose of the illustrated pond, how the buildings will be ventilated, and if there is an ability to capture solar energy with the facility.

Ms. Peet stated the site is a Zero Water site; that all water runoff from the roof will be collected and then repurposed on the site; that she believed the Applicant is describing the project as a Zero Water facility; that the Netherlands, as well as many others outside of the United States, look for more environmentally friendly type uses and she felt the Applicant and their business incorporates a lot of environmentally friendly practices similar to that.

Mr. Jamie Sechler, with Davis Bowen & Friedel, Inc. present on behalf of the Application. Mr. Sechler stated all the roof drainage will be captured; that the columns of the building are hollow, and the roof acts as a piping system; that the water will be reclaimed, and the stormwater facilities will be lined and raised slightly; that all of this is to be used as irrigation for the plants; that the buildings will be using geothermal; that additionally, the buildings will have windows that will automatically open and close to adjust the temperature inside the building; that the buildings will be very technically involved and greener than what is seen in the United States.

Mr. Justin Lukoff, Head of U.S. Sales with Havecon (the greenhouse developer), stated they have achieved, on a small scale, the ability to capture solar energy with their facilities, however, it is not proposed for the proposed facility.

State Senator David Wilson, of the 18th District, spoke in support of the Application. Senator Wilson stated the project is proposed within his district; that he is a firm believer in supporting agriculture; that we are inviting more people to the County every year, and it is time that we figure out a way to feed the people; that he is excited; that the proposed Application is a great opportunity for agriculture and the State of Delaware, primarily Sussex County; that the proposed Application is going to bring employment to the area; that there are not many facilities that reclaim water; that the proposed use will not have a major impact on the drainage system; that he felt it was a win for everyone in Sussex County and the State of Delaware; that Bosch Growers have a reputation, for their business that has operated since 1854; that the owners would not come from the Netherlands to make such a large investment if they were not serious and sincere about the business they are doing and he requested the Commission give serious consideration to the proposed Application.

Chairman Wheatley questioned the level of employment proposed for the project.

Ms. Peet stated that 80 to 100 jobs are anticipated to be provided by the proposed use.

Mr. Rob Rider, President of O.A. Newton, and the Manager of Newton Farms, presented in support on behalf of the landowner. Mr. Rider stated they have had the land in their family for 70 to 100 years; that they had several similar opportunities presented to them; that when they met with the Bosch family, there was an instant connection; that the Bosch family are sixth generation; that their family is fifth generation; that there is not much in terms of future farming in their generations; that they feel this Application is an ode to their family heritage, in terms of agriculture, and it will also present many great opportunities for the locality.

The Commission found that there was no one present in opposition to the Application.

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

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

In relation to C/U 2446 Tijmen van den Bosch. Motion by Mr. Butler to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

2022-10 Raley Farm

A cluster subdivision to divide 358.84 acres +/- into six-hundred and forty-six (646) single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the south side of Avalon Road (Route 302A) and the north side of Zoar Road (S.C.R. 48), approximately 0.28 mile east of Gravel Hill Road (Route 30). 911 Address: 26433 Zoar Road, 24358, 24268 & 24272 Lawson Road, Georgetown. Tax Map Parcels: 234-15.00-3.20, 3.21, 9.00, 10.00, 11.01 13.00, 14.00 & 15.00. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Subdivision Plan, the Applicant's Exhibit Booklet and presentation, a copy of the PLUS comments, and the Applicant's response to the PLUS comments, the Applicant's Environmental Assessment and Public Facility Evaluation Report, a copy of the Applicant's Chapter 99-9C letter and response, the DelDOT Traffic Impact Study (TIS) response letter, a letter from Delaware Electric Co-op relating their ability to serve, the Staff Analysis, the Technical Advisory Committee (TAC) comments which include a letter from the Sussex County Engineering Department Utility Planning Division, a letter from DNREC Division of Watershed Stewardship, another letter from Delaware Electric Co-op, a letter from U.S. Fish & Wildlife, and a letter from the Delaware State Fire Marshal. Mr. Whitehouse stated in total the Application had received 35 comments and that any comments received that day had been circulated to the Commission and would be uploaded to the online electronic document management system the next day.

The Commission found that Mr. Jon Horner, Esq. spoke on behalf of the landowner, Sussex Land Holdings, LLC, and the developer, DE Land Devco, LLC; that also present were Mr. Jamie Sechler, P.E. with Davis, Bowen & Friedel. Mr. Horner stated the Applicant submitted an Exhibit Booklet for review, which had been before the Commission for at least 10 days, as well as proposed Conditions of Approval which he recently submitted; that the proposed project is known as Raley Farm; that the project proposes to divide 350.8 acres more or less into 646 single-family dwelling lots as a cluster subdivision within the AR-1 (Agricultural Residential) Zoning District; that a portion of the site currently estimated to be approximately 162.998 acres (45.42%) of the site will be open space, subject to final engineering and agency approval; that the project is located on the north side of Zoar Rd., the west side of Lawson rd. and the south side of Avalon Rd.; that currently the property is a vacant and agricultural use; that there is some residual farming structures, which would be removed if the project is approved; that if the project is approved, there will be 646 single-family dwelling lots, which will result in a density of 1.8 units per acre; that the AR-1 Zoning permits for two units per acre, which would allow for 717 units to be permitted on the property; that the proposed use is below the permitted density; that the proposed use is consistent with the Comprehensive Plan, and other neighboring uses, which are primarily residential and agricultural in nature; that there are other residential planned communities (RPC) in the nearby and adjacent areas, which include Liberty, Weatherby, Independence, Avalon Woods and Pine Lane; that the proposed cluster subdivision is superior in design to a standard subdivision; that the project proposes significant amounts of open space and landscape buffers to protect environmentally sensitive areas on

the site, including mature forest, and a stormwater management system that will act as an amenity and natural companion; that many public comments were submitted with concerns regarding the removal of mature trees and traffic; that in 2015, prior to his client having any involvement in the property, the property was heavily logged as part of the prior owner's business; that he understood the property to have been historically used as a borrow pit, as well as for lumbering and timbering operations; that aerial imagery from 2015 reflects that almost the entirety of the site was cleared; that only the areas of mature trees remained at that time; that at the time the Application went through its PLUS review, the project proposed 701 units; that the proposal of 701 units would have required units to be placed within an area of mature woods; that his client walked the site, further review and evaluating the different trees, their size, caliber, and age; that during this process his client identified the most environmentally sensitive areas on the site; that there are no State or federally regulated wetlands on the site; that the plan was revised, resulting in a reduction of almost 50 units, with the sole reason to preserve the primary environmentally sensitive feature on the site; that the preservation of the trees is consistent with the intent of the Cluster Subdivision Ordinance; that the removal of mature trees is extremely limited for the site; that a small area will be removed as it is required for the construction of the entrance; that the large contiguous track would be preserved for the use of the residents; that many other comments focused on the rural nature of the roads; that the Raley Farm application is intended to be a senior, 55 plus age, restricted community; that if the project were to propose the by-right, 717 non-age restricted units, the traffic count would be approximately 6,180 daily trips; that with the reduction of density, and the age restriction, the daily trips decreased to 2,893 daily trips; that this equals a reduction of almost 3,300 daily trips; that Mr. Sechler will speak in detail about the plan and the DelDOT requirements that will greatly improve the roads and serviceability in the area; that credence and thought was given to the plan in order to minimize the impact on the roads, rather than maxing out the density with a non-age restricted community, which would offer a much greater impact than the currently proposed plan; that the project complies with the Sussex County Code §115-19 and the Comprehensive Plan by proposing a low-density, single-family residential development; that specifically Code §115-20 of the AR-1 District, permits single-family detached homes to be located on individual lots; that all community signs will conform with the Code §15-159.2; that the parcel is located within the AR-1 Zoning District, with a minimum lot area of 7,500 sq. ft.; that all proposed structures will comply with the height, area and bulk requirements of Sussex County Code §115-25 for cluster subdivisions with central sewer; that subject to final engineering, all proposed lots will have a minimum of 7,500 sq. ft. and a maximum of 27,994 sq. ft., and the average lot size of 10,175 sq. ft.; that the proposed subdivision is consistent with the Comprehensive Plan, regarding the Future Land Use Map, which permits development of single-family homes and encourages a clustering options, provided that significant permanent common open space is preserved and the development is connected to central water and sewer; that the plan proposes 45.42% open space, subject to final engineering; that central water and sewer will be provided by Artesian; that the project complies with the design requirements stated within Chapter 115-25(E) of the Code; that these reasons are stated in the prepared materials by Davis, Bowen & Friedel; that the housing types are limited to single-family, detached dwellings; that a forested buffer area with a minimum width of 30 ft. will be provided around the entirety of the property; that the plan was recently supplemented; that there was an engineering error on the buffer, where it was reflected as 20 ft. in certain spots, however, he confirmed the plan was always to provide a 30 ft. buffer, which was updated on a revised plan; that a 30 ft. landscape buffer was also placed within the proposed Conditions of Approval; that no proposed lots will have direct access to State maintained roads, as required by Code; that all lots are configured outside of regulated wetlands, as there are none located on the property; that Artesian will provide central water and sewer; that the project complies with the Code for cluster subdivisions; that that the Code requires homes to be clustered on environmentally suitable portions of the tract; that according to the language, superior design requires the design to be superior in the reasonable judgement of the Planning Commission to that of which would be allowed under the regulations for a standard subdivision option; that no buffers along the exterior and no open space or amenities would be required

in a non-cluster subdivision; that when looking at the proposed cluster design, it can be seen that preservation of large tracts of open space has been provided, including environmentally sensitive features, like the pond, will be used as an active open amenity for the community; that the pond will over kayaking and fishing uses; that when compared to that of a standards AR-1 subdivision which does not have the requirements of buffering and the preservation of environmental features, it is clear that the current design is superior; that the Code states homes shall be clustered on environmentally suitable portions of the tract; that the site contains no regulated wetlands, so the mature woodlands are what were identified; that the homes have been located away from the environmental sensitive features; that the Code requires that open space meet the official definition of open space contained in §115-4; that the open space is beneficial to the residents; that the open space is congregated in large open areas at the front of the property, including the large existing pond, which is intended for kayaking and fishing; that there are other fragmented open space areas provided as well; that a large mature forest area, which is intended to act as an amenity for the community and to be usable by residents is provided; that the open space requirement is 30% of the site; that the plan proposes over 45% open space for the site; that the plan provides just under 50% of the required open space being contiguous based on the Code definition; that the Code requires a pedestrian trail system, which is provided on the plan, as well as sidewalks on one side of the road; that plan complies with §115-193(E) in regards to wetland buffers, as there are no wetlands located on the property; that stormwater management will be done on site in compliance with the State of Delaware regulations; that the stormwater management system will be privately maintained by the Developer until the Homeowners Association takes over; that the stormwater management and stormwater drainage will be in accordance with the Sussex Conservation District and Sussex County Engineering requirements; that removal of healthy mature trees shall be limited, and scenic views are being preserved; that the design limits back to back lots and provides gaps between lots; that the process of achieving superior design, first began with identifying lands that should be preserved; that this was performed by identifying mature trees; that they then designed the project around those areas; that next they located the roads and lots based on the developable area; that they then installed sidewalks; that the plan is consistent with the design requirements of the Cluster Subdivision Ordinance; that the Applicant's submission reflects in great detail the compliance with the Chapter 99-9C requirements; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape; that there is a 30 ft. landscape buffer proposed; that no wetlands are located on the site; that none of the lots are located within the 100 Year Floodplain; that there are no historical preservation areas on the site; that the design proposes minimal impact on natural features; that the plan preserves large tracts of open space and preserves scenic views; that there will be a minimization of tree, vegetation, and soil removal; that there will be a minimization of grade changes, as disturbance on the site will be limited to what is required to develop the property; that the mature trees are being saved; that screening of objectional features from neighboring properties and roadways will be provided by the required buffer; that water and wastewater will be provided by Artesian; that runoff will be directed into a stormwater management system via a closed road section storm drain network; that stormwater management will consist of best management practices and discharge in accordance with the State of Delaware and Sussex Conservation District standards, preventing surface and groundwater pollution; that post development runoff will receive better treatment than pre-development conditions; that the plan is designed in a way to minimize erosion and sedimentation changes in groundwater levels, increased rates of runoff and potential for flooding; that the system will be adequately sized to treat and collect runoff in compliance with the Code; that it is anticipated that the proposed community will cause current property values to remain the same, if not increase the value of properties in the area; that the community is not expected to have any adverse impact on the schools; that with the proposal of a 55 plus community, it is applicable that the intended types of residents will typically no have school aged children; that he believed the community would have a positive impact due to the tax base increasing, with the lack of similar corresponding young students; that a large amount of open space provides for active and passive uses for the residents, making the open space consistent with Chapter 6 of the Comprehensive Plan; that there are two proposed

access points, located along Lawson Rd. and Avalon Rd.; that the stormwater management system will act as an amenity, and for all the reasons stated, the plan is consistent with the Comprehensive Plan.

The Commission found that Mr. Jamie Sechler, a Professional Engineer with Davis, Bowen & Friedel, Inc. spoke on behalf of the Application. Mr. Sechler stated they had previously met with DelDOT; that they conducted a Traffic Impact Study (TIS) to the area and roadways around the site; that they are required to upgrade Lawson Rd. and Zoar Rd. to local standards by adding shoulders and widening the lane widths along the site's frontage; that they are also required to add left and right turn lanes for the entrances on Lawson Rd. and Avalon Rd.; that they will be repaving and widening the entire length of Lawson from Zoar Rd. to Avalon Rd.; that the intersection of Zoar Rd., Hollyville Rd., and Harmons Hill Rd. is a weird intersection; that part of their required improvements are to add extra turn lanes at that intersection to provide for safer navigation; that they did conduct a Traffic Impact Study as part of the superior design; that a by-right subdivision would equal roughly 6,200 trips per day; that based on the age restriction of the community and the reduction of almost 80 homes, the estimated vehicle trips are now 2,900, being 3,100 trip per day less than what would have been permitted by-right; that weekday peak hours in the morning were approximately 450 trips; that the current 160 trips are now estimated and this equals about 300 less vehicle trips per peak hour in the morning and the evening.

Ms. Wingate questioned if there was any opportunity for the sewer to tie into the Inland Bays, creating an opportunity for the neighbors to have central sewer service.

Mr. Sechler stated they had discussions with Mr. Hans Medlarz, County Engineer, who stated the area is within Artesian's service area; that Artesian will be providing the area; that there will be a pump station located on the site, that will tie into an Artesian central system; that there is no onsite sewer water, as it is all provided by public services and there will be a force main connected into the County system.

Ms. Wingate stated she believed the neighbors would be happy to see some of the debris cleared up on the site; that the site has beautiful ponds; that she was happy to see the site designed in a way to save the trees and that currently there is a lot of junk on the site, including an old boat and trailers.

Mr. Mears requested confirmation that the Applicant has revised the plan's design to save the environmentally impacted areas and to save the trees remaining on the property from the logging operations and he questioned how the proposed reduction impacted the estimated daily vehicle trips.

Mr. Horner stated Mr. Mears' statements were correct; that logging had previously occurred on the site, predating the Applicant's involvement with the property; that when they evaluated the site to establish the most valuable environmental resources, they found the areas that had been logged were essentially less mature due to being recently cut; that they established the area with the most mature trees and clustered the design away from that area; that the vehicle trips were mostly reduced by the imposed age restriction, however, the reduction in the density certainly had an impact on density as well; that 717 lots is the maximum permitted density for the site; that they are proposing 646 lots, which is below the permitted density and that on the plan submitted to PLUS they had proposed 701 lots, however in an effort to preserve the environmentally sensitive area, there was a loss of 50 lots.

Mr. Collins questioned what percentage of preserved land is provided by the stormwater ponds and the existing water; that he stated the plan seemed to be preserving a lot, however, he believed the plan was preserving things that were already required to be preserved; that he questioned how long ago the clear-cutting of trees took place and how much substantial growth of the trees had occurred.

Mr. Horner stated the existing body of water, being the area of the borrow pit, is not required to remain by Code; that the borrow pit could be filled; that they had viewed the area as open space that could serve as an amenity; that the existing borrow pit base pond, oftentimes can be used for stormwater management; that Sussex Conservation District had requirements on the grade, slope of the grading and shelving; that the large pond area is beautiful, and could really serve as an amenity after cleaning up the area; that the pond could have been filled in, but as part of the cluster ordinance to identify the beautiful, scenic, environmentally sensitive features, they did not fill the pond and clustered the design away from that area; that the presented aerial imagery of the tree clear cutting on the site was from 2015; that he would not say the trees had regrown substantially, when compared to the mature trees, which are massive in size; that the tallest tree within the regrowth area is approximately 15 ft. to 20 ft.; that it has been said that not all forest are created equal; that the Cluster Subdivision Ordinance specifically states that it will not prevent the development of wooded parcels; that they felt the best way to address the preservation of trees, was to reduce the number of units; that it is rare that an Applicant reduces their density in an effort to preserve mature trees and this is the reasoning he is confident in stating the plan is superior in design by providing preservation that would not be required by the Code and existing precedent.

Mr. Butler questioned if the site was replanted in Pine trees after the clear-cutting or if the site is mostly natural growth and mentioned the benefit of the plan offering two entrances and the widening of the road.

Ms. Sechler stated he was unsure if the site was replanted, but he did not feel the site looked as if it was replanted; that currently the site is comprised of brushy undergrowth, that is almost impossible to walk through.

Mr. Robertson questioned if both entrances are proposed to be full DeIDOT entrances, and not just for emergency access; that the proposed conditions did not mention the community being age-restricted, and questioned clarification regarding the sewer service.

Mr. Horner stated both entrances are proposed to be full DeIDOT entrances, and they would certainly proffer a condition for the age restriction of the community.

Mr. Sechler stated Artesian will service the community, but a force main will pump to the County system.

The Commission found there was no one present in support, and 12 people spoke in opposition to the Application.

Mr. Kenneth Archer spoke in opposition to the Application. Mr. Archer stated he resides next to the development; that most people in the area are elderly and on a fixed income; that when housing developments are placed, the property values increase; that he felt, this takes from the residents born and raised in Sussex County and shoving them aside; that a reassessment will be performed next year; that the money was never in Sussex County; that the people moving to the area had garbage bills equal to current resident's property taxes; that he felt the increasing development is destroying Sussex County and he is opposed to the proposed subdivision.

Mr. Robert Haug spoke in opposition to the Application. Mr. Haug stated he resides along Avalon Rd.; that the schools are failing; that the roads are failing; that he felt there is not yet proper infrastructure for the proposed number of houses; that Liberty development is being placed down the road, as well as another development from the site; that he believed there was a creek that runs behind Avalon Rd. and

there are wetlands located on the west side of that and he requested ensure the subdivision is developed correctly.

Ms. Susan Laone spoke in opposition to the Application. Ms. Laone stated she was very concerned about the entrance proposed along Avalon Rd.; that the road is currently tar and chip and very narrow; that she questioned why traffic was being dumped to Avalon Rd. when there are Lawson Rd. and Zoar Rd.; that it seemed that the plan is preserving an area where there are power lines, and the Applicant has no choice but to leave green; that she had concern that there would be no buffer along Avalon Rd. between the development and the road; that a buffer would provide the existing residents a remedy from the noise and light created by the development; that when she researched the site, it mentioned potential toxic areas from tire dumping, and toxic waste; that she questioned if any of this had been remediated, and if it had, who performed the remediation and when; that she had concerns regarding the different poisons potentially going into her aquifer; that 600 plus homes would be drawing from her same water; that the areas police, fire and emergency personnel are already strained; that everyone will travel to Millsboro for shopping; that Millsboro traffic is already bad and she did not feel the area had the necessary infrastructure.

Mr. Horner stated they had a Phase 1, Environmental Site Assessment done on the property; that the assessment showed RECs (Recognized Environmental Conditions), reflecting the presence of tires on the site; that the tires have been removed and remediated; that the only other REC was the presence of the chicken houses and historical agricultural uses; that they are currently undergoing a Phase 2 Environmental Site Assessment; that everything will be remediated at appropriate levels prior to any sort of development; that it is not anticipated that there is any environmental concerns with the property; and currently it is mostly existing agricultural or historical agricultural uses, which always identify as a potential risk due to chemicals and runoff from previous animals.

Mr. Steven Friend spoke in opposition to the Application. Mr. Friend stated he resides along Avalon Rd.; that his main concern is regarding the road; that before the road became tar and chip, it was a dirt road; that the road is not going to handle the proposed traffic; that he is not opposed to development; that the infrastructure must be completed first, prior to developing a project as the one proposed; that he anticipates DelDOT will eventually install round-a-bouts and he stated the population is increasing and development is needed, however we have to do it right.

Chairman Wheatley questioned what discussions had been had with DelDOT for the project.

Mr. Sechler stated they had conducted the Traffic Impact Study; that they had a pre-submittal meeting to discuss proposing entrances off the lower classification roads; that Zoar Rd. is a higher classification road, which is why the two entrances are located on Lawson Rd. and Avalon Rd.; that the proposed turn lanes and locations have been well discussed with DelDOT on multiple occasions; that the entire site frontage along Avalon Rd. will be upgraded with road and shoulder widening; that Lawson Rd. will be upgraded with shoulders across the site frontage and they are improving the entire length of Lawson Rd. from Zoar Rd. to Avalon Rd.

Mr. Ed Givens spoke in opposition to the Application. Mr. Givens stated he resides along Rt. 30; that he currently owns property located adjacent to the site, where there are 30,000 Loblolly Pines; that his biggest concern is the drainage; that he had seen his five-acre parcel completely underneath two feet deep water; that Zoar Estates has a stormwater pond that is at least five acres; that he has seen their pond completely filled and overflowing; that his Loblolly Pines are currently 32 years old; that he would hate to lose that income due to the proposed development; that he felt the development will raise the lots, creating water runoff to flood the area adjacent to his property; that there is a ditch that runs through the

property of Raley Farm and he questioned what would happen to the existing ditch if the development were approved.

Mr. Sechler stated with Sussex Conservation District and DNREC they are required to model the pre-development existing conditions and post-development proposed conditions; that the post-conditions are required to meet or exceed the pre-conditions; that for example, if there is currently 10 cubic feet of water going toward the Pines, when they design the entire site, they will have create runoff less than 10 cubic feet; that if they cannot improve the current conditions, they will not get approval to develop the project; that there are a couple ditches located on the site; that some of the ditches will be filled in; that the water will be relocated to other areas, being infiltration or wet stormwater facilities located on the site; that when they do the overall plan, there are analysis points of where the water leaves the site; that all of those areas are modeled for the two, the 10 and the 100 Year Storm Events; that within all three events, they must show less flow going to those analysis points for post-conditions than what currently exists today.

Ms. Barbara Street spoke in opposition to the Application. Ms. Street stated she and her husband live east of the site and have lived there for 30 years; that her road was a small country road, and she was not happy to see DelDOT make the improvement of widening the road and 646 homes are a lot of homes when compared to Pine Lake and Avalon, who have a lot more space and trees around them.

Ms. Tonya Buell spoke in opposition to the Application. Ms. Buell stated she resides along Lawson Rd., adjacent to the site; that the current traffic is horrible; that her grandchildren live with her and catch the school bus at the front of their property, and that her grandchildren are upset that the farm is going to be destroyed.

Mr. Paul Laone spoke in opposition to the Application. Mr. Laone stated he resides along Avalon Rd.; that he questioned how far up Avalon Rd. the road will be widened to provide for access to the subdivision; that he questioned what the procedure would be to construct the road widening; that he questioned if people will lose their property in order for the road widening; that Avalon Road is filled with tax ditches, which are essential; that he questioned if the tax ditches will be re-routed for the road widening and he is concerned if the tax ditches are lost, it will exacerbate the flooding issues.

Mr. Sechler stated he was not familiar with the right of way that Mr. Laone was referring to regarding the tax ditch; that typically, most tax ditches in Sussex and Kent County in Delaware, have anywhere from 50 ft. to 120 ft. right of way; that he did not anticipate the need for realignment as far as swales not located on the site; that the current right of way along Avalon Rd. is not sufficient; that the project will be transforming a right of way to DelDOT; that more than likely, where their road is along Avalon Rd., the edge of pavement will remain the same and most improvements will be shifted towards the subdivision, as to not impact the neighbors; that is not to say that some may not be affected with the ultimate design or the installation of pipes and when looking at Avalon Rd., he did not foresee a future issue.

Mr. Horner stated that the only way they could acquire another property owner's lands was to obtain consent and permission to do so and to compensate them for it; that if additional property were required and an agreement could not be reached, they would be required to return to DelDOT to discuss a design deviation or other design options.

Mr. Matthew Dickens spoke in opposition to the Application. Mr. Dickens stated he resides along Avalon Rd., directly across from the proposed development; that the majority of his concerns had already been mentioned; that if Avalon Rd. and Lawson Rd. are not paved or re-paved it will be a huge

mistake; that currently cars can barely pass each other without running off the side of the road; that based on their numbers, there would be about 2,000 movements per day on Avalon; that currently there are 500 to 600 movements per day; that Rt. 30 has about 4,000 movements per day and when considering the traffic of Rt. 30, Avalon Rd. and Lawson Rd, assuming 50% usage of the entrance, he did not feel the numbers worked.

Mr. Sechler stated as part of the Traffic Impact Study, the required improvement is to upgrade the frontage along the roads of Avalon Rd., Lawson Rd. and Zoar Rd.; that additional, a required off-site improvement at the intersection of Zoar Rd., Hollyville Rd. and Harmon Hill Rd.; that to upgrade the entire length of Avalon Rd. would be very costly, and is not part of their requirements per the Traffic Impact Study that was conducted.

Ms. Mary Jo Johnson spoke in opposition to the Application. Ms. Johns stated she resides along Simpler Branch Rd.; that she is concerned about the heavy equipment that will be required to take the tar and chip roads and questioned who will provide regulation over the construction vehicles.

Mr. Keith Doughty spoke in opposition to the Application. Mr. Doughty stated he resides along Snow Rd., adjacent to the site; that most new developments seem to have separate construction entrances from the final entrance locations, and he would like to understand the plan of how water runoff will be controlled during the construction phase.

Mr. Sechler stated typically, the construction entrance will be located where one of the main entrances is proposed for the first and second phases; that they try to build from the back, so subsequently, there likely will be another construction entrance later in the development; that the additional location is not known yet, as it is determined later in the design process; that Sussex Conservation District and DNREC have a list of items, including silt fencing, matting, dust control, and concrete pour areas; that everything is already included in the details of what those agencies require; that there are CCR inspectors and Sussex County inspectors who visit the site weekly to check the site for compliance and issues and he would anticipate that the main entrance, being the first entrance, to be from the location along Lawson Rd., nearest to the pond and amenity area.

Mr. Horner stated that a project of this size will take approximately 10 years, or more, for all the homes to be constructed; that after final approval, he estimated the building of the homes for being between eight to 12 months; that with a project of this size site work will not be performed in advance as the cost would be too high to carry vacant lots for that long and there will be a fairly long period of time associated with the construction of the project.

Mr. Larry Strauss spoke in opposition to the Application. Mr. Strauss stated he resides within Pine Lake; that he questioned where all the existing wildlife will go, and that he often sees deer and large flocks of turkeys on the property and questioned if there would be a traffic signal placed at the intersection of Avalon Rd. and Zoar Rd.

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

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

In relation to 2022-10 Raley Farm. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

C/U 2379 Lewes Saddle Ridge Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.97 ACRES, MORE OR LESS. The properties are lying on the north and south sides of Saddle Ridge Way and the west side of Beaver Dam Road (S.C.R. 23), approximately 0.57-mile northeast of Hopkins Road (S.C.R. 286). 911 Address: 30857 & 30862 Saddle Ridge Way. Tax Map Parcels: 234-6.00-6.02, 6.03 & 6.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Applicant's Preliminary Site Plan, a copy of the Jurisdictional Determination request letter, a copy of a letter from Environmental Resources, Inc., a copy of the property deed, the DelDOT Service Level Evaluation Response, a copy of the Applicant's Decommissioning Plan, a letter received from the Sussex County Engineering Department Utility Planning Division, and a copy of the Staff Analysis. Mr. Whitehouse stated a total of 75 comments had been received for the Application; that all submitted comments appear to be in opposition and that some comments appear to be duplicates.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Applicant; that also present were Mr. Zac Meyer, Director of Development with Soltage, LLC, and Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates.

Mr. Fuqua stated both the current Application hearing and the following hearing involve applications requesting solar array facilities on behalf of the same company, Soltage, LLC; that he requested the Commission's permission to incorporate the general information provided in the first hearing, into the record for the second application hearing, in order to avoid repeating himself; that both the current Application, as well as the following Applicant, are companies owned by Soltage, LLC; that Soltage, LLC is a renewable power producer that develops, finances, and operates solar energy facilities throughout the United States; that they have developed more than 100 solar energy projects with more than 400 milliwatts of energy generating capacity; that community solar facilities are a fairly new concept for Sussex County; that within the last 18 months there has been a large number of community solar array applications filed in Sussex County; that the ability to request these applications was created by legislation passed by the Delaware Legislature in September 2021; that the legislation authorized community solar facilities to create renewable energy projects, with participation of the public that results in reduced energy costs to the people that subscribe to the project; that the bill creating community solar was signed by Governor Carney at a private solar array facility that was owned by Soltage, LLC, located just outside of Wilmington; that the Conditional Use application proposes a community facility on a 7.03 acre parcel of land that is owned by Beaver Dam Enterprises, Inc.; that the land is being leased to Soltage, LLC; that the site is located on Parcel 6.04; that the site is located 550 ft. west of Beaver Dam Rd.; that the solar facility will occupy approximately 6.26 acres of the 7.03 acres site, being the area that would be enclosed within the security fence; that the Application listed Parcel 6.02 and Parcel 6.03, being the parcels closer to the front; that those parcel will only involve an existing private driveway that straddles the boundary of the parcels; that the drive will provide the access road back to Parcel 6.04 from Beaver Dam Rd.; that the solar facility in its entirety is to be located only on Parcel 6.04, being a total of 7.03 acres; that the site borders a 4.81 acre parcel to the north, that is designated as Parcel 6.03; that the site also borders a portion of the forested buffer belonging to the Ridings of Rehoboth subdivision; that the Ridings of Rehoboth stretch of buffer is approximately 560 ft. in length; that this area also borders five properties within the Ridings of Rehoboth development; that to the west and the south of the site, the land is adjacent to an eight acre parcel called Iron Horse Ranch, owned by Mr. & Mrs. Danny Wilson; that that project only borders the Ridings of Rehoboth along the northern buffer; that the lands to the east, being Parcel 6.01, 6.02 are wooded; that Parcels 6.01, 6.02

and 6.03 are either owned by Beaver Dam Enterprises, a lessee, or the Applicant's LLC; that the site is being leased to Soltage, LLC; that the lease is for a 20 year term; that the lessee would have a three or five year option to extend the lease, with a four or five year option to extend the lease by mutual agreement of the parties; that the site and the surrounding lands are all zoned AR-1 (Agricultural Residential); that the site is designated as being within the Low Density area according to the Future Land Use Map section of the Comprehensive Plan; that solar array facilities are consistent with the Comprehensive Plan; that the utility elements, being Section 7, of the Comprehensive Plan provide that the County should encourage the development of renewable energy from a utility level standpoint in order to realize the potential for more prevalent uses of renewable energy; that a stated goal of the plan, being Goal 7.03.3 is to encourage the use of renewable energy options such as community solar facilities; that Parcel 6.04 comprised of unimproved grasslands; that little ground disturbance is proposed, except for the removal of a small area of trees that would interfere with the solar array operation; that there is a small sliver of non-tidal wetlands located in the extreme southeastern corner of the parcel; that the wetland area has been delineated; that the delineation was confirmed by an approved jurisdictional determination issued by the U.S. Army Corp of Engineers; that there will be a buffer of 25 ft. from the wetland line, which is to remain undisturbed; that access from the site will be provided by the existing private drive located from Beaver Dam Rd.; that after project construction is completed, there is very little traffic proposed for the site; that they estimate two vehicle trips per month, making traffic very minimal; that the only traffic to the site would be for periodic equipment maintenance and inspection, and routine property maintenance and grass cutting; that there are no employees proposed for the site; that the site equipment will be monitored remotely; that the DelDOT Service Level Evaluation response indicated that the traffic impact would be diminutive and no further study was required; that any entrance improvements required by DelDOT would be provided by the Applicant; that the project anticipates one unlit sign to be located at the entrance, which will no exceed 32 sq. ft. in area; that the solar array would be enclosed within a security fence; that they had proposed a six foot fence, however, the Applicant would have no issue providing whatever height standard the Commission saw fit; that the fence would have an emergency key box at the entrance gate; that the project would consist of ground mounted, fixed solar panels; that the panels would be oriented to maximize the panels exposure to sunlight; that the panels would convert the sunlight into electrical power; that the power generated by the array will be managed by inverters and other equipment that will be located on an equipment pad; that the equipment pad will be located away from the residential development surrounding the site; that the energy generated will be interconnected with the Delmarva Power lines existing overhead on Beaver Dam Rd. by an underground electric line; that the project is located within the Delmarva Power service area; that the site will be seeded with a pollinator seed mix, which will allow for slow growing, environmentally friendly ground mix; that no security lights are planned, except at the entrance gate; that if any security lighting should be required, the Applicant understands the lighting should be downward oriented; that there is no sewer or water impact with the facility or the operation; that there are no odors, dust, smoke or heat associated with the facility; that the only sound generated is minimal, being a low hum from the inverters; that there is minimal to no glare from the solar panels; that the solar panels are designated to absorb sunlight, not to reflect sunlight; that there will be a landscape buffer surrounding the site, as well as existing trees that already surround the site; that the site is located outside of the 100 Year Floodplain, being located within Flood Zone X, as designated by the FEMA Flood Zone Maps; that all stormwater management will comply with all State and County requirements, and will be reviewed and approved by the Sussex Conservation District; that to a large extent the site will remain pervious; that the solar panel equipment are on poles at are in the ground; that there is no paving on the site other than where the pad is located; that a forested buffer is proposed along the property line, and the areas adjacent to Parcel 6.03; that a buffer would also be located along the property boundary adjacent to the Ridings of Rehoboth development's forested buffer, as well as along Parcel 6.00, back to the point where it meets the wetland buffer; that it is proposed there would be no buffer on the other two parcels, being Parcel 6.01 and 6.02, as they are existing wooded parcels which would not require a buffer; that the proposed

buffer design has been modified and replaced with a denser design; that the buffer would consist of continuous Evergreen trees; that the Evergreen trees would be at least six feet in height when planted; that the trees would be planted in a staggered arrangement to effectively create a visual buffer; that the buffer will be 20 ft. wide; that for every 100 linear feet, there will be a minimum of 15 trees; that all of the trees would be guaranteed for a period of 12 months; that the facility is anticipated to generate 1.77 megawatt hours of electricity, which is the equivalent of the annual power needs of approximately 250 homes; that the anticipated production life of the facility is 35 to 40 years, which corresponds to the lease term; that as part of Final Site Plan approval, a Decommissioning Plan will be provided to the Planning & Zoning Commission, providing that upon the expiration of the lease, or earlier termination of the lease, all of the equipment materials will be removed from the site; that all equipment will be properly disposed of and that the site would return to a physical condition, similar to how it exists today; that the Decommissioning Plan also provides a security in the form of a Decommissioning Bond, to guarantee that the cost of restoration would be available; that the estimated amount in terms of the security, would be part of the Final Site Plan review and approval by the Planning & Zoning Commission; that there were many letters expressing questions and concerns received for the Ridings of Rehoboth development; that there were a couple individual emails received; that a large majority of the emails seemed to have been facilitated by the homeowners group, which they referred to themselves as the “Solar Farm Task Force”, and then the drafted email was resent to the Planning & Zoning Department from multiple residents within the community; that the Applicant did attempt to communicate with the Ridings Homeowners Association; that the HOA is not under any obligation to communicate with the Applicant; that if there had been some communication, he believed the Applicant would have addressed at least some of the mentioned concerns; that the Applicant did provide by email, the project summary, the narrative summary, the Preliminary Site Plan, and information regarding Soltage, LLC to the development’s community manager; that the community manager e-mailed back from stating he would forward the information to the Ridings of Rehoboth’s HOA; that the Applicant subsequently submitted additional information, however, there was no further communication following that; that there was never any type of formal contact or communication made; that Mr. Meyer did acquire the name of the HOA President, Mr. Hempler, and was able to contact him by phone; that they had good conversation; that within the submitted Exhibit Booklet, there are letters from the adjacent property owners for Parcel 6.00, 6.01, 6.02 and 6.03, being all of the surrounding properties, other than the Ridings of Rehoboth’s buffer; that those submitted letters express no objection to the project; that the Ridings of Rehoboth buffer, that borders the site, is about 560 ft. in length; that along the property lines there is an existing wooded buffer, with the exception of two areas; that there is a partial gap in the woods to rear of one lot, and another gap to the rear of a different lot, where there appears to be a fence installed; that he cannot confirm if landscape used to exist in those areas or if the landscaping has been removed; that there is a significant amount of existing woods; that the project proposes a buffer to be located adjacent to the existing woods; that the County recently enacted a Solar Farm Ordinance in April 2023; that the Application, lease, work and prepared design were performed long before the Ordinance was adopted; that the Application was submitted in June 2022, being 10 months prior to the Ordinance’s adoption; that due to this, the Ordinance is not applicable to the Application; that a submitted opposition letter stated that 40% of the Ridings of Rehoboth homes are located as close as 50 ft. to 200 ft. from the solar farm; that the statement is inaccurate; that the only portion of the Ridings of Rehoboth that borders the subject property is the 560 ft. section previously mentioned; that they identified the closest homes as being the five homes which have provided support letters; that the closest distance between a dwelling and a solar array panel is 187.9 ft.; that the recently adopted Solar Ordinance requires 200 ft.; that the Preliminary Site Plan was prepared 10 months before the new Ordinance was adopted or even proposed; that to his knowledge there are only two dwellings that are located less than 200 ft. from the solar array panels; that another point of objection raised stated that normally solar farms are located in isolated, rural areas, not near residential areas; that the statement may be true for large industrial style solar facilities, which require large acreage for farmland for the array fields; that in contrast, the current

Application is for a community solar facility; that community solar facilities are new in Delaware, as it was only authorized by Delaware Legislature in September 2021; that community solar is for public benefit, to encourage renewable energy, reduce fossil fuel use, and is a goal of the Sussex County Comprehensive Plan; that Mr. Meyer will speak to a site that Soltage, LLC is currently developing in Wicomico County, which is adjacent to a residential development; that the requested to refer to Conditional Use No. 2346, which was a solar farm application, located along the northside of Dorothy Rd., south of Laurel and north of Delmar; that the site was 27 acres in size, with residential lots located adjacent to it; that the site had a moderate size residential subdivision located directly across Dorothy Rd. and a large residential development, Country Grove, located just west of it; that the Commission did recommend approval of C/U 2346, and it was approved by County Council on June 20, 2023; that within the decision, both the Commission and County Council’s findings were that the information in the record found that solar facilities do not have a negative impact upon adjacent property values, and with the conditions imposed, the use would not have any adverse impact on the neighborhood; that he felt those statements have been consistent in most solar applications the Commission has dealt with so far; that a propose community solar facility is a passive use, as there is no negative impact, no noise, and no traffic; that there are other agricultural uses the land could provide; that under the Sussex County Zoning Ordinance, an AR-1 (Agricultural Residential) District cluster subdivision is permitted; that the solar farm use will be present for 35 to 40 years, and then be removed, returning the site to an open field; that the proposed community solar facility is authorized and subject to the laws of Delaware, specifically being Title 26 of the Delaware Code, which regulates generating facilities and renewable energy; that the facility would be operated in compliance with the State law; that in conclusion, the proposed solar facility meets the purpose of a Conditional Use, since it is of a public character, it is essential and desirable for the general convenience and welfare, and it is consistent with the goals of the County’s Comprehensive Plan; that this was created by Delaware Legislature; that it was not created to harm people or to cause problems; that the use is a safe operation and a passive use; that there are no nuisances associated with it; that the use will not interfere with other people’s uses; that there are only five homes within the Ridings of Rehoboth that are considered within close proximity to the site and/or border the site; that the two closest dwellings are almost 200 ft. away from the solar array. Mr. Fuqua requested to submit proposed findings and conditions for the record.

The Commission found that Mr. Zac Meyer, Director of Development with Soltage, LLC, spoke on behalf of the Application. Mr. Meyer stated they are committed to being good neighbors; that they have projects all over the county, being within 16 states and counting; that he, himself, had developed a number of those projects; that his line is always open to anyone, being the Commission and the public; that he did have some good conversation with Mr. Hempler; that the general purpose of community solar is to bring the benefits of solar energy and their associated guaranteed savings to people who want it, but cannot place solar on their own property; that this includes low and moderate income residents; that the Delaware Community Solar Program requires that 15% of the projects output be dedicated to low income residents, and this will be the case for the proposed project as well; that the residents within the Ridings of Rehoboth may sign up if they wish; that many opposition letters mentioned concerns regarding lithium ion batteries; that the project does not propose to have any batteries on the site; that they understand, should they every wish to place a batter on the site, they would be required to return before the Commission through a separate Conditional Use request; that Soltage, LLC does not use solar panels that contain cadmium for the proposed type of project; that as part of the application for C/U 2342, a the property value study was performed in 2022 by technical advisory firm, CohnReznick; that “these studies found little to no measurable or consistent difference in value between the test area sales and the control area sales, attributed to the proximity to existing solar farms”; that the study noted that “solar energy uses are generally considered a compatible use”; that the study also stated, “our conclusions, also consider interviews with over 45 county and township assessors who have at least one solar farm in their jurisdiction and in which they have determined that solar farms have not negatively

affected adjacent property values”; that “it is noted proximity to the solar farms has not deterred sales of nearby agricultural land and residential single-family homes, nor has it deterred the development of new single-family homes on adjacent land”; that “this report also includes two, before and after, analysis, in which sales that occurred prior to the announcement and construction of the solar farm project were compared with the sales that occurred after the completion of the solar farm project for both adjoining and non-adjoining properties”; that “no measurable impact on property values was demonstrated”; that this study was conducted within Delaware, Maryland and New Jersey; that in relation to electromagnetic fields, he requested to defer to the experts by quoting a publication from North Carolina State University, from 2017, by Tommy Cleveland, entitled “Health & Safety Impacts of Solar Photovoltaics”; that “at times we were exposed to much higher ELF [Extreme Low Frequency] magnetic fields. For example, when standing three feet from a refrigerator, the ELF magnetic field is six milligauss, and when standing three feet from a microwave oven, the field is about 50 milligauss. Researchers in Massachusetts measured magnetic fields at photovoltaic projects and found the magnetic fields dropped to very low levels of 0.5 milligauss or less, and in many cases, to less than background levels, which is 0.2 milligauss at distances of no more than nine feet from residential and inverter, and 150 ft. from utility-scale inverters. Even when measured within a few feet of the utility-scale inverters, the ELF magnetic fields were well below the International Commission on Non-Ionizing Radiation Protections. Recommended magnetic field level exposure limit for the general public, which is 2,000 milligauss.”; that the same report later states, “Anyone relying on a medical device such as a pacemaker, or other implanted device, to maintain proper heart rhythm may have a concern about the potential for a solar project to interfere with the operation of his or her device. However, there is no reason for concern because the EMF [Electromagnetic Field], outside of the solar facilities fence is less than one thousandth of the level at which manufacturer’s test for EMF interference, which is 1,000 milligauss.”; that the solar panels are silent; that the only noise from the facility would come from the inverter transformer pad, which is the small rectangle, which was previously pointed out, and was intentionally placed further away from adjacent residential properties; that the only noise is the sound created by the fan which cools the transformer; that the fan noise should not be heard by any resident within the Ridings of Rehoboth, as it has a lower sound level than a typical air conditioning unit associated with residential central air conditioning; that some of opposition letters mentioned concerns regarding electric shock and arc flash; that they will comply with the National Electric Code requirements, appropriate protections and warnings; that these regulations are regarding the fence and the warnings; that these requirements are not solar specific; that these are required for any electrical equipment, such as combiner boxes, disconnect switches, or transformers, being the standard equipment that is located all around us, in our homes, on telephone poles and ground located transformers; that he developed a project, which recently began construction in Wicomico County, Maryland; that the project is another community solar facility; that distributed generation, being small to mid-scale projects, are commonly located within residential areas around the country; that there are hundreds; that the project he recently developed within Wicomico County, Maryland is located adjacent to eight or more residential properties and dwellings; that the particular project is located south of Hebron on Quantico Rd.

Mr. Butler questioned the types of panels proposed for the project.

Mr. Meyer stated the project is proposed to use Crystalline Silicon, which is used in the majority of community solar projects.

Ms. Wingate stated her only question was the proximity to the closest home within the Ridings of Rehoboth, which was answered at 187.9 ft.

Mr. Fuqua stated the closest dwelling is the lot where the fence is located to the rear lot; that the closest solar array is located 197 ft. to the corner of the house; that there is an accessory structure or accessory

pad located on the property; that the closest solar array is located 187 ft. from that structure and/or pad.

Mr. Collins questioned how the project would be impacted if the small, wooded area was required to be retained.

Mr. Fuqua stated the trees would adversely impact the way the sun goes across the arrays, interfering with the flow of the sunlight; that the trees are isolated trees located in the middle of the field; that are not significant and not considered mature.

Mr. Butler stated in his experience, the solar panels shed a lot of water, and he questioned if there would be any potential for flooding onto adjacent properties.

Mr. Fuqua stated the only water impacting the adjacent neighbors, would be the same water that would currently hit the field without the project being there; that currently the site is an open field with no stormwater management review; that the project will have to comply with the stormwater management requirements, therefore there should not be any issues, and if anything should be an improvement.

The Commission found there was no one who wished to speak in support and five people who wished to speak in opposition to the Application.

Mr. Thomas Chucta spoke in opposition to the Application. Mr. Chucta stated he is a current resident of the Ridings of Rehoboth; that he had concerns regarding drainage, as there is already a lot of water coming from the site currently; that they recently invested approximately \$60,000 to pitch the roads differently; that the noise created by the inverters is subjective; that he had concerns as to the potential noise of the inverters impacting the hearing of animals in the area and they had a town meeting with two fireman, who stated fires caused by batteries could clear a mile radius.

Mr. Richard Zilg spoke in opposition to the Application. Mr. Zilg stated he is a current resident of the Ridings of Rehoboth; that based on the research the community performed, the proposed project will impact more than just the five adjacent homes; that the World Health Organization recommends that no residences should be within a 1.25-mile radius of any solar farm due to the dangers of electromagnetic fields, potential contaminants, noise and other factors; that an article within The Journal of Energy Policy mentioned that in New Jersey, being second in solar for the Country behind California, there was a reduction of 5.6% in property values in relation to the proximity near solar farms; that properties located within ¼ mile saw a reduction of 2.5% and 1.5% reduction in properties located within a half mile; that approximately 1,000 homes are located within 1.25 mile of the proposed site; that he expressed concerns to the exposure of cadmium from the cells; that the silicon cells do contain cadmium, lead and copper; that when he researched the solar farms approved previously by the Commission, none of the solar farms appeared to be proposed in a residential area similar to theirs; that the Ridings of Rehoboth wraps around the solar farm on three sides; that New Jersey has approximately 90 solar farms; that those solar farms are located on landfills, brownfields, parking lots and military bases, with the remainder located predominantly located in rural areas; that in his research he could not located any previously approved solar farms that were approved to be located on anything less than 20 acres; that he questioned if the power grids can take on any additional solar installations; that Clean Energy USA, a solar installation provider, advised that both Delmarva Power and Delaware Electric Cooperative are eliminating the installation of new solar connections because the grid is being overloaded; that there is an existing drainage problem with water runoff from the site; that the clearing of vegetation will exacerbate the runoff issues; that any herbicides uses to clear the land, could potentially run off onto the adjacent properties; that he is concerned about the potential dust, odor and disturbance caused during construction of the project; that the Ridings of Rehoboth derive no benefit from the proposed solar farm, only being

left with any problems the project may create, and he requested the Commission deny the application until additional evidence, based on similar conditions, can be obtained.

Mr. Meyer stated they would welcome subscribers in the Delmarva Power and Light territory, as the proposed project is an interconnected project with Delmarva Power; that they are able to service the Ridings at Rehoboth, as well as any other home located within Delmarva Power and his territory; that he is required by State law to reserve 15% of the project to assist low-income residents; that he offered the residents of the Ridings at Rehoboth an exclusivity period for them to sign up; that the project will sell out with subscriptions; that he does understand the concern of not benefitting from an adjacent project; that they already have an Interconnection Agreement, that is pending signature, with Delmarva Power and Light; that they already conducted an Interconnection Study, which took many months to complete and Delmarva Power confirmed, that subject to Soltage, LLC paying for certain upgrades, which benefits the surrounding grid, they are permitted to interconnect with Delmarva Power and Light.

Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates spoke regarding stormwater management for the project. Ms. Oltman stated that the design is required to be approved by Sussex County Conservation District (SCD); that they would proceed through the Conservation District's protocols, limit of disturbance requirements, and erosion control requirements during construction; that the site is labeled as agricultural; that every site has a runoff curve number, which reflects the amount of water that comes off the site; that pavement has a very high runoff curve number; that the runoff curve number decreases with a meadow mix, which would be considered the lowest; that the current agricultural topsoil will be removed, and a meadow mix would be implanted; that their calculations identify a better runoff curve number and better infiltration rate on the site with the project and should help the existing water issues.

Ms. Bernadette Bennett spoke in opposition to the Application. Ms. Bennett stated she is a resident of the Ridings at Rehoboth; that she understood that solar is new and it will enhance the existing energy resources; that she purchased her dream home after retirement, in a lovely rural area, where she can enjoy the natural resources and beauty; that she does not approve of being subjected to the intrusion of this proposed industrial, commercial grade electrical grid solar farm; that she had lived within the Ridings at Rehoboth for 13 years; that the proposed use is a commercial enterprise; that the area is a residential agricultural area; that a solar farm has no business being located in a residential, low density, area; that many communities are located within a mile of the site; that with the concerns expressed by health authorities, she has concerns; that she questioned the Commission how they would feel if it was their children or their elderly parents living next to a solar farm and she stated solar is new, and no one yet knows the long term impacts.

Ms. Bennett requested to read an opposition letter written by Ms. Carol Brumley, a resident of the Ridings at Rehoboth, who was unable to attend the meeting. Ms. Brumley's letter expressed concerns regarding drainage issues and requested a denial of the Application.

Mr. Frank Himpler spoke in opposition to the Application. Mr. Himpler stated that Soltage, LLC did not reach out to the Ridings at Rehoboth's Homeowners Association, but rather, the property management company; that the provided information was not communicated back to the HOA; that the first contact he had with Soltage, LLC, was when Mr. Meyer called him; that after considering all of the relevant information, he requested, should the Commission approve the solar farm, that an increased vegetated buffer be placed along the fence lines that border the north and east side; that he proposed the vegetated buffer be comprised of 12 Evergreen trees and 10 shrubs per 100 ft.; that he believed the vegetated landscape buffer would mitigate any concerns regarding possible impacts to the Ridings at Rehoboth's property values and health effects and he stated the information provided by Mr. Meyer with Soltage,

LLC was helpful.

Mr. Whitehouse did question if Mr. Himpler had any knowledge of the reasoning for the gaps shown in the Ridings at Rehoboth's landscape buffer.

Mr. Himpler stated the landscape buffer gaps predated his homeownership; that anecdotally, he was told that the area was removed by the homeowner, and he did not have any historical background on the property with the vinyl fence.

Chairman Wheatley stated the Ridings at Rehoboth's landscape buffer is part of the lands belonging to the HOA; that the landscape buffer is not lands belonging to the individual property owner; that the property owner destroyed property that did not belong to them and unfortunately, the HOA will be responsible for restoring the landscape buffer.

Mr. Himpler stated his comments were on behalf of him as a homeowner and not on behalf of the HOA board for the Ridings at Rehoboth.

Ms. Wingate requested to share information gathered by Planning & Zoning staff upon her request. Ms. Wingate stated there have been 13 solar farm applications that have completed the complete process through the Planning & Zoning Commission and County Council; that of the 13 applications, all 13 were approved; that two applications were approved within .25 mile of a village (like Roxana or Lincoln); that four applications were approved within ¼ mile of a subdivision; that two applications were approved within ¼ mile of town limits; that three approved applications share boundaries with subdivisions; that only two or more are located ¼ mile or more away from a residential community and that there are more solar farms located closer to subdivisions than she realized.

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

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

In relation to C/U 2379 Lewes Saddle Ridge Solar 1, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

C/U 2380 Dagsboro Thorogoods Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.81 ACRES, MORE OR LESS. The property is lying on the east side of Thorogoods Road (S.C.R. 333), approximately 0.41-mile northeast of Dagsboro Road (Rt. 20). 911 Address: 30561 Thorogoods Road, Dagsboro. Tax Map Parcel: 233-5.00-187.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Preliminary Site Plan, comments received from the Sussex County Engineering Department, comments from the Historic Preservation Office, the Staff Analysis, the Applicant's Exhibits, a copy of a letter from DelDOT, a copy of the Applicant's Decommissioning Plan, the PLUS Review comments and a copy of the property deed. Mr. Whitehouse stated that three mail returns and zero comments had been received for the Application.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Applicant; that also present were Mr. Zac Meyer, Director of Development with Soltage, LLC, and Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates.

Mr. Fuqua stated that the current Application was similar to the last Application, as it is requesting a Conditional Use for a community solar facility; that the Applicant is a company that is owned by Soltage, LLC, which is also the owner of the Applicant company of the prior Application; that due to this he requested to incorporate the relevant information presented for the previous Application, into the record for the current solar Application; that the subject parcel is owned by Ina W. Cordrey Trustee, and is being leased to Soltage, LLC; that Ms. Ina Cordrey had passed away, and Mr. Jack Cordrey is now one of the Co-Trustees of the property; that Mr. Jack Cordrey is the previous Chairman of the Alcoholic Beverage Control Commission; that the parcel is designated as Parcel No. 187, being a corner property on the south side of Thorogoods Rd.; that the property has approximately 1,100 ft. of road frontage; that the site is a short distance east of Rt. 20 and Rt. 113; that the Tax Map listed the acreage of the parcel as 28.81 acres; that Soltage, LLC did perform a survey, which confirmed the acreage to be 30.36 acres; that facility will occupy 26.23 acres of the 30.36-acre site, which will be the area located within the proposed security fence; that there is a mixture of residential, agricultural, and industrial uses and woodlands in the area; that to the west of the site, fronting along Thorogoods Rd. there is a residential property located on the corner, as well as residences located along Thorogoods Road, running west; that being that area, there is farmland and woodland; that to the rear of the site, the site borders forested areas; that on the east of the site, railroad tracks run along the entire eastern boundary of the site; that railroad tracks are former Conrail Tracks, which are now operated by Maryland Delaware Railroad Company; that to the north, across Thorogoods Rd. from the site, there are residential uses and some industrial uses, such as Dagsboro Materials, River Asphalt and Thorogoods Concrete Plant; that the subject site is zoned AR-1 (Agricultural Residential); that the site is designated as being within the Coastal Area under the Future Land Use Map of the Comprehensive Plan; that the land across from the site is zoned AR-1 (Agricultural Residential) and H-1 (Heavy Industrial); that almost all of the land on the north side of the road is designated as Industrial under the Future Land Use Map designation; that the Application was reviewed as part of the PLUS process; that a PLUS comment letter, dated December 16, 2022, was submitted into the record; that the letter stated there was no objection to the Application; that the site is located within Investment Level 2 and 3, which are areas where growth is anticipated by both State and County land use plans; that the land is being leased to Soltage, LLC; that the lease would be for a 25 year term with two, five year options to extend the term, and one, five year mutual option; that the site is mostly cleared, agricultural lands; that there is a wooded area, with a deteriorated cement home and several deteriorated cement agricultural use-type outbuildings located toward the center of the site; that the intention is to demolish and remove the buildings from the site; that the buildings are surrounded by a wooded area, which is to be cleared as not to interfere with the solar array operation; that there is a old, small, family cemetery on the site; that the cemetery will be excluded from the leased area and from the solar facility; that the Applicant retained the firm of Richard Grubb and Associates to perform an Archaeological Survey of the cemetery to confirm the exact boundaries of the cemetery; that this was performed by ground penetrating radar; that the boundaries of the cemetery will be established and fenced; that there will be an eight foot wide access path from the western side of the property to access the cemetery; that the access would not be for the use of vehicles; that Mr. Daniel C. Parsons, Sussex County Historical Preservation Planner had inquired about the cemetery, but also about potential historical significance regarding the house; that Mr. Parsons requested the opportunity to investigate the house located on the site, and he was granted permission; that Mr. Parsons had already performed his investigation prior to the current public hearing; that no portion of the solar array area will be located within the Hundred Year Floodplain; that no wetlands will be impacted by the proposed facility; that access to the site will utilize the existing access road of the property; that the access road would enter the site, and would intersect with the service road, being the straight road, located in the middle of the property; that generated traffic would be minimal; that the site would be limited to periodic inspections and routine maintenance; that DelDOT, similar to the previous Application, indicated a diminutive traffic impact; that the entrance would be built to build out requirements; that there would be a 30-ft.

buffer surrounding the perimeter of the property; that a landscape buffer would be placed along Thorogoods Rd, and around the turning corners of the property on the east and west; that the landscape buffer is proposed to be spruce trees at 20 ft. intervals, as shown on the Site Plan; that the remaining areas are located adjacent to existing woodlands or the railroad tracks, therefore they do not believe there is a need for a landscape buffer in those areas; that the only residents that would be directly affected by the project are located within the northwest corner; that the Applicant is willing to enhance the buffer in that area adjacent to the residence; that along the road nearest to the industrial site, they did not feel it was necessary to provide a thickened buffer next to a solar field; that similar to the previously provided information, there will be one unlit sign at the entrance of the site; that the sign will not exceed 32 sq. ft.; that the facility will be enclosed with a six foot chain-link fence, with an emergency key box; that the area will be seeded with the seed mix previously mentioned; that the site will be properly maintained; that the facility will utilize a single axis tracking system, being the type of panels that move with the sun; that the equipment transmits the current generated to be interconnected with Delmarva Power at Thorogoods Rd., where it will then connect to the grid; that the pad is internal; that there is no sewer or water impact; that the project will have to comply with all stormwater management regulations; that a Decommissioning Plan will be prepared and submitted as part of the Final Site Plan review, along with the financial security as will be deemed appropriate from the study performed to remove the equipment; that the facility will operate in compliance with Title 26; that the facility is proposed to generate 3.5 megawatts of electricity, equaling an annual power required for approximately 700 homes; that the production life of the facility would be 35 to 40 years, corresponding roughly to the lease, and he requested to submit prepared proposed findings and conditions, similar to the previous Application.

The Commission found that one person wished to provide comment on the Application.

Mr. Oliver Burton spoke with a neutral comment regarding the Application. Mr. Burton stated that his property is the only residential property located adjacent to the site; that his only concern was regarding the proposed buffer; that following the presentation, he now understood the landscape buffer is proposed to be 30 ft., and now that his question has been answered he had no 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 C/U 2380 Dagsboro Thorogoods Solar 1, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Robertson advised the Commission that a joint workshop with the County Council had been scheduled for September 21, 2023, but the time was still to be determined.

Meeting adjourned at 7:58 p.m.

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www.sussexcountyde.gov.
