

THE MINUTES OF THE REGULAR MEETING OF AUGUST 25, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 25, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse advised the Commission that the Application for 2022-06 Amelie Sloan Trust was removed from the meeting agenda and the Application would be readvertised for a future Planning & Zoning Commission meeting.

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

Mr. Whitehouse advised the Commission that there was a typographical error in the circulated minutes.

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the July 28, 2022, Planning and Zoning Commission meeting as revised to correct the error. Motion carried 5 – 0

OTHER BUSINESS

Terrapin Island (F.K.A. Salt Cedars) (2020-13)

Final Subdivision Plan

This is a Final Subdivision Plan for a Coastal Area Cluster Subdivision to subdivide 32.13 acres +/- into 42 single-family lots with private roads, open space, and amenities to include community pocket parks, ephemeral ponds, walking trails, and other related improvements. The parcel is located on the east side of Camp Arrowhead Road (S.C.R. 279) approximately 1.1 mile south of Angola Road (S.C.R. 277). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of Thursday, July 8th, 2021. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 234-18.00-31.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Ms. Stevenson stated a concern the Commission had was vehicle headlights shining into the adjacent neighbor's windows along Dogwood Dr.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan contingent that the headlights from cars do not shine onto the dwellings on Dogwood Lane. Motion carried 5-0.

Lightship Cove (2021-11)

Final Subdivision Plan

This is a Final Subdivision Plan for a Cluster Subdivision to divide 51.97 acres +/- into 97 single-family lots. Included in the plan are private roads, open space, sidewalks, and other site improvements. The parcel is located on the southwest side of Fisher Road (S.C.R. 202), approximately 1.55 miles east of

Lewes Georgetown Highway (Route 9). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of December 9th, 2021. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 334-10.00-69.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

(S-22-24) 4 Seasons Park (F.K.A. Country Lawn Care & Maintenance, LLC)

Preliminary Site Plan

This is a Preliminary Site Plan for the 4 Seasons Park (F.K.A. Country Lawn Care and Maintenance LLC) for the construction of a commercial self-storage facility and landscaping business. The Preliminary Site Plan includes twelve “mini storage” structures of varying sizes, a 9,900 square foot covered parking spaces area for the storage of boats and recreational vehicles, and a 6,000 square foot building for use as an office and storage, parking, and other ancillary improvements. The Plan includes three phases with the landscaping business improvements as Phase 1 at the rear of the site, the self-storage facility improvements as Phase 2 in the central area, and Phase 3 as a placeholder for future improvements at the front of the parcel. The parcel consists of 11.66 +/- acres and is located on the north side of Lewes Georgetown Highway (Route 9) approximately 0.4 miles west of Gravel Hill Road (Route 30). Tax Parcel: 135-11.00-32.00. Zoning: C-1 (General Commercial Zoning District) and C-2 (Medium Commercial Zoning District). Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals. Any proposed development as part of proposed Phase 3 will be brought back to the Commission as part of a Revised Site Plan for approval.

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

(S-22-15) Price Automotive, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 22,315 square-foot automobile sales and service center. Included in the plan are 83 parking spaces, areas dedicated for inventory parking, utility and access easements, and other site improvements. This site is located within the Henlopen Transportation Improvement District and will be subject to an agreement with the Department of Transportation. The site is located within a Wellhead Protection Review Area and will be subject to review by the County Engineer prior to final approval. This Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-127.08 Zoning: Commercial Residential (CR-1). Staff are awaiting agency approvals and recommend that the plan be returned to the Commission for final approval.

Ms. Stevenson questioned the proposed parking within the setback area and that she requested no parking be proposed within the 60-ft setback area along Rt. 24.

Mr. Phillips stated the site plan complied with the 25-ft setback requirement for inventory parking and that the site plan did reflect proposed parking within the 60-ft setback requirement.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan as preliminary with final approval to be by the Commission upon receipt of all

agency approvals with the condition that parking spaces are not located in the setbacks along Route 24. Motion carried 5-0.

Lauden Investments

Preliminary Site Plan

This is a Preliminary Site Plan for Lauden Investments, LLC (CU 2264) for the adaptive reuse of two existing one-story structures on two adjacent parcels. The plan proposes the reuse of the two existing one-story office buildings, containing 1,600 square feet and 1,540 square feet respectively, as professional medical offices. The proposed use was approved as a Conditional Use (CU 2264) by the Sussex County Council on November 16th, 2021, via Ordinance No. 2813. The Preliminary Plan includes improvements primarily related to the design and configuration of the parking and internal circulation on the site. The parcels are located on the southeastern side of Savannah Road (Route 9B/S.C.R. 443A) approximately 0.77-mile northeast of Wescoats Road (Route 12) and share an entrance. This Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 335-8.18-15.00, 335-8.18-16.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

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

Hickory Ridge Church

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a foyer, a covered porch, and parking for an existing church. The parcel is 4.94 acres +/- and is located on the east side of the Sussex Highway (Rt. 13). The applicant is requesting parking partially located in the front setback due to site elevation constraints. This Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 530-10.00-45.01. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

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

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

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend Conditions of Approval of the Revised Final Subdivision Plan for The Villages at Red Mill Ponds South (2004-17) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 24th, 2019. On June 10th, 2022, staff received a formal request to amend Condition 11 of the Plan's approval. The Applicant requests that Condition 11, requiring "*All amenities and recreational facilities shall be constructed and open for use by the residents of the development within 2 years of the issuance of the first building permit*" be amended. This AR-1 Residential Planned Community contains one-hundred and seventy-seven (177) single-family lots on 82.10 acres +/- and is located on the northeast side of Lewes Georgetown Highway (Rt. 9). Tax Parcel: 334-5.00-170.00. Zoning: AR-1 (Agricultural Residential District). Staff note that this request was previously heard and tabled at the August 11th, 2022, meeting to allow for the receipt of further information by staff. Staff have received the requested information and included supporting documents in the paperless packet. Staff note that:

- Our system indicates that one hundred and ten (110) building permits have been applied for within The Villages at Red Mill Pond South. Of these 110 permits, sixty-eight (68) have been issued Certificates of Occupancy (COs).
- There are one-hundred and seventy-seven (177) lots in the subdivision.
- Per the original Conditions of Approval - *“All amenities and recreational facilities shall be constructed and open for use by the residents of the development within 2 years of the issuance of the first building permit.”* The first building permit for the subdivision was issued on January 17th, 2020, requiring the amenities to be completed by January 17th, 2022.
- There has been one previous request to extend the amenities completion date. The Commission approved this request at the June 23rd, 2022, meeting. The Commission granted a one (1) year time extension, requiring the amenities to be completed by January 17th, 2023.
- The applicant has provided:
 - a construction schedule for the amenities,
 - a letter from the developer indicating that one-hundred and thirty (130) of the one-hundred and seventy-seven (177) lots are still under the developer’s control,
 - a letter of support from the HOA,
 - and a letter of support for the design changes to the amenity plan. This letter includes sixty-six (66) signatures on behalf of eighty-three (83) lot owners.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the request to amend the Conditions of Approval for (2004-17) The Villages at Red Mill Pond South. Motion carried 5-0.

Lands of Timothy & Jessica Tice

Minor Subdivision off a 20-ft easement

This is a Minor Subdivision Plan for the creation of one (1) additional lot and residual lands off of a 20’ wide ingress/egress access easement. Proposed Lot 1 consists of approximately 0.076 +/- acres and the residual lands will consist of approximately 1.16 +/- acres. The property is located on the east side of Charley’s Run, a private road south of Fred Hudson Road (S.C.R. 360). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 134-13.00-86.00. Zoning: MR (Medium Residential District). If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off a 20-ft. easement as preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of RDL Properties, LLC

Minor Subdivision off a 20-ft easement

This is a Minor Subdivision Plan for the creation of two (2) additional lots and residual lands off of a 20’ wide ingress/egress access easement. Proposed Lot 1 consists of approximately 0.58 +/- acres; Proposed Lot 2 consists of approximately 0.39 +/- acres; the residual lands will consist of approximately 0.90 +/- acres. The property is located on the east side of Charley’s Run, a private road south of Fred Hudson Road (S.C.R. 360). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 134-13.00-87.00. Zoning: MR (Medium Residential District). If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off a 20-ft. easement as preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

2022-11 Hunters Creek – A cluster subdivision to divide 28.78 acres +/- into 95 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the north side of Omar Road (S.C.R. 54), approximately 0.33 mile west of the intersection of Powell Farm Road (S.C.R. 365). Tax Parcels: 134-11.00-102.00 & 103.00. Zoning: MR (Medium Density Residential District).

The Commission discussed the Application which had been deferred since August 11, 2022.

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

C/U 2311 Phillip Jackson

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.83 ACRES, MORE OR LESS. The property is lying on the northwest side of Robinsonville Road (S.C.R. 277), approximately 960 feet south of Cedar Grove Road (S.C.R. 283). 911 Address: 18968 Robinsonville Road, Lewes. Tax Parcel: 334-11.00-6.00.

The Commission discussed the Application which had been deferred since August 11, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2311 Phillip Jackson, for a tree service based on the record made during the public hearing and for the following reasons:

1. The property is a 3.83-acre parcel located on Robinsonville Road. The Applicant testified that the use has been occurring on the property for decades without issue. The Applicant testified that his neighbors on either side of the property have no objection to the ongoing use of tree services. The approval of this Conditional Use will confirm the legality of the existence of the Applicant's tree service.
2. There are other small businesses out in this area including a mechanic and landscaping company. This small business will continue to be consistent with those other uses.
3. The Applicant has stated that his business is mostly conducted offsite. This is primarily a location for keeping the applicant's equipment when it is not being used offsite and for storing logs and wood chips until they can be hauled away.
4. There will be no retail sales from the property, and the proposed use is limited. With the conditions imposed by the County, the use will not adversely affect neighboring properties, roadways, or traffic.
5. This is an agricultural-type use, and it is consistent with the underlying AR-1 zoning of the property.
6. The business provides a service to a wide variety of Sussex County residents, farmers, and businesses. It has a public or semi-public character that will benefit the residents, farmers, and businesses of Sussex County.
7. No parties appeared in opposition to this Application.

8. This recommendation is subject to the following conditions:
 - A. This use shall be limited to a tree service business. No other business shall be conducted from the site, and no vehicles associated with any other business shall be parked on the site.
 - B. No retail sales shall be conducted from the site.
 - C. No dyeing of mulch or other materials shall occur on the site.
 - D. A small, lighted sign shall be permitted. It shall not exceed 8 square feet per side.
 - E. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - F. The applicant shall comply with any DelDOT requirements, including any entrance or roadway improvements.
 - G. The Final site plan shall clearly show all areas set aside for the temporary storage of logs, timber, or woodchips.
 - H. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2311 Phillip Jackson for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/U 2312 G. Fedale

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

The Commission discussed the Application which had been deferred since August 11, 2022.

Mr. Robertson read Mr. Mears’ prepared motion per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2312 G. Fedale, for an Office and Showroom based upon the record made during the public hearing and for the following reasons:

1. This site has a history of small business uses. It was previously occupied by Shore Electric for the past 15 years, and a flower and gift shop prior to that. This use will be consistent with the prior usage of this property.
2. The property is located along Route 113, which is one of the main highways in Sussex County. This location is appropriate for this business use.
3. The applicant has stated that this site will only be for office and showroom purposes. Although the applicant owns and operates a roofing company, all of the construction work will occur off-site.
4. The proposed use will not generate a significant amount of traffic, and it will not have any adverse effect on area roadways.

5. The proposed use is very limited in nature, and it will not have any adverse impact on neighboring properties or the community.
6. No parties appeared in opposition to the application.
7. This recommendation is subject to the following conditions:
 - A. The use shall be limited to use as an office and showroom.
 - B. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - C. The applicant shall comply with any DelDOT entrance and roadway improvement requirements.
 - D. Parking areas for all vehicles and equipment shall be shown on the Final Site plan and clearly marked on the site itself.
 - E. All dumpsters shall be screened from view of neighboring properties and roadways.
 - F. All security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
 - G. Failure to comply with these conditions may result in the revocation of the Conditional Use approval.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2312 G. Fedale for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/U 2313 John Ford

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

The Commission discussed the Application which had been deferred since August 11, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2313 John Ford, for a real estate office based upon the record made during the public hearing and for the following reasons:

1. This site is along Savannah Road where a variety of conditional uses have been approved. It is close to Wescoats Corner, where several commercially zoned properties are located. It is within a section of Savannah Road where other professional and medical offices and other small businesses exist. Most of these are located within a structure that has existed for years, or they have a residential appearance. This use will be consistent with the way that this area of Savannah Road has developed.
2. The applicant intends to use the former Grange Building for a real estate office.
3. This site will only be for sales and office uses and a majority of the real estate work will occur off-site.
4. This small business use within the existing structure will not generate a significant amount of traffic or adversely affect area roadways, neighboring properties, or the community.

5. No parties appeared in opposition to the application.
6. This recommendation is subject to the following conditions:
 - A. The use shall be limited to use as a real estate office within the existing structure. Any modifications to the floorplan of the existing structure shall be shown on the Final Site Plan
 - B. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - C. The applicant shall comply with any DelDOT entrance and roadway improvement requirements.
 - D. Any security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
 - E. Any dumpsters shall be located at the rear of the property and screened from view by neighboring properties and roadways.
 - F. The Final Site Plan shall designate all parking areas, and these shall be clearly marked on the site itself.
 - G. Failure to comply with these conditions may result in the revocation of this Conditional Use approval.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2313 John Ford for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/Z 1973 Osprey Point Preserve, LLC

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

The Commission discussed the Application which had been deferred since August 11, 2022.

In relation to C/Z 1973 Osprey Point Preserve, LLC. Motion by Mr. Mears to defer action and hold the record open for receipt of the DNREC decision regarding the Marina, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

PUBLIC HEARINGS

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

2021-31 Black Oak (F.K.A. Glenwood)

A Cluster subdivision to divide 77.24 acres +/- into one hundred and thirty-one (131) single-family lots to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the northwest side of New Road (S.C.R. 266), approximately 0.61-mile northeast of the intersection of Nassau Road (S.C.R. 266B) and New Road (S.C.R. 266). Tax Parcel: 335-7.00-6.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's preliminary subdivision plan, a copy of the Applicant's Chapter 99.9 C response, a copy of the draft HOA documents, a copy of the Applicant's exhibit booklet which includes the PLUS comments and Applicant's response to the PLUS comments, a copy of the Applicant's Wetland Delineation Report and Soil Survey, a sewer capacity letter, a copy of the subdivision name approval from the County, a copy of the response from DelDOT, a letter from Fish and Wildlife Service, a copy of the Applicant's Environmental Assessment and Public Facility Report, the Applicant's Phase I archeological investigation, TAC comments including Division of Watershed Stewardship and Sussex County Engineering, a copy of a letter from the Delaware Fire Marshall, a copy of a letter received from the Department of Agriculture, a copy of a letter received from Sussex County Engineering Department Utility Planning Division, and a Staff review letter. Mr. Whitehouse noted that seven letters in opposition have been received. Mr. Whitehouse thanked colleagues in DelDOT for attending this meeting to respond to questions.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, Glenwood Lewes, LLC; that also present are Ben Gordy on behalf of the Applicant, Zac Crouch from Davis, Bowen, and Friedel, and Ed Launay from Environmental Resources, Inc and Ed Otter of Ed Otter, Inc.; that this is an application for a AR-1 cluster subdivision to be called Black Oak; that the property is comprised of 77.23 acres and is located on the north side of New Road west of the City of Lewes; that this property was previously subdivided in 1996 and that subdivision of ten lots on the south side of the property is not part of this application; that to the northwest and northeast portions of the site, Black Hog Gut and Prettyman Branch; that the Ashburn Subdivision is located to the east of the site; that to the east of the Ashburn Subdivision, is the Tower Hill Development, which was approved in 2018; that the Nassau Station and Sand Dune Village is located across New Road from the site; that there are four undeveloped lots fronting New Rd. located to the west of the site; that the property is zoned AR-1 (Agricultural Residential); that single-family dwellings, located on individual lots, are permitted; that the AR-1 Zoning District also permits Cluster Designed Subdivisions, with a minimum lot size of 7,500 sq. ft., at a density of two lots per acre, provided that central water is utilized; that the Cluster Design is subject to the Cluster Design requirements of the Sussex County Zoning Code; that under the 2019 Comprehensive Plan, that to the northwest and northeast portions of the site, Black Hog Gut and Prettyman Branch; that the Ashburn Subdivision is located to the east of the site; that to the east of the Ashburn Subdivision, is the Tower Hill Development, which was approved in 2018; that the Nassau Station and Sand Dune Village is located across New Rd. from the site; that there are four undeveloped lots fronting New Rd. located to the west of the site; that the property is zoned AR-1 (Agricultural Residential); that single-family dwellings, located on individual lots, are permitted; that the AR-1 Zoning District also permits Cluster Designed Subdivisions, with a minimum lot size of 7,500 sq. ft., at a density of two lots per acre, provided that central water is utilized; that the Cluster Design is subject to the Cluster Design requirements of the Sussex County Zoning Code; that under the 2019 Comprehensive Plan, the plan is found in the low density area; that within the low density area, single-family units, at a density of two lots per acre is appropriate; that the Comprehensive Plan does encourage the Cluster Design provisions of the Ordinance; that under the State Strategies and Investment Map the site is located within Investment Levels 2, 3 and 4; that the proposed development

is concentrated in the area of the site that is located within Investment Level 2 & 3; that Investment Levels 2 and 3 are areas in which growth is anticipated and where State Investments will support growth; that the proposed Black Oak Subdivision will contain 127 single-family lots and recreational amenities; that the original application for the project proposed 131 lots; that 77.23 acres contain 11.008 acres of State Regulated Tidal Wetlands; that the total acreage, after deducting the wetlands from the total acreage comes to 66.192 acres; that under the AR-1 Cluster Design Provision of a permitted two lots per acre, the project is permitted to have 132 lots; that central water will be provided by Tidewater Utilities, Inc.; that Tidewater hold the Certificate for Public Convenience and Necessity; that sanitary sewer will be provided as part of the Sussex County Unified Sewer District; that the development will be served by a gravity sewer connecting to an existing regional pump station located across from the site; that the Sussex County Engineering Department indicated that wastewater capacity is available for the proposed development; that stormwater management facilities will be designed and constructed in accordance with DNREC's current sediment and stormwater management regulations; that the stormwater management plan will be reviewed and approved by Sussex Conservation District; that there was a Subsurface Soil Exploration Report performed by Geotechnology Associates, which determined the appropriate locations for the stormwater management ponds; that a wetland delineation was performed by Environmental Resources, Inc.; that the wetland delineation determined that the site contained 7.921 acres of Federal Jurisdictional Non-Tidal Wetlands and 11.008 acres of State Regulated Tidal Wetlands; that the wetlands are located along the northwestern and northeastern boundaries of the site, which are nearest to Black Hog Gut and Prettyman Branch; that a wetland determination was reviewed by the Army Corp of Engineers Philadelphia District Office; that the Army Corp of Engineers did issue a Preliminary Jurisdictional Wetland Determination Letter on June 23, 2022; that there will be a 30-ft. landscape buffer adjacent to lands of other ownership; that the Application for the Black Oak Subdivision was submitted to the County in September 2021, which was prior to the adoption of the new Buffer Ordinance; that the provisions of the newly adopted buffer Ordinance are not applicable to the Black Oak Application; that the provisions that do apply to the Application require a 50-ft. buffer from tidal wetlands; that under the provisions of the Cluster Design Ordinance a 25-ft. permanent setback from the boundary of non-tidal wetlands is required; that when planning the original site design of the development, Mr. Crouch followed the guidelines of the Cluster Ordinance stating that homes should be clustered on environmentally suitable areas of the site; that that does contain woodlands, which contain mature forest in some areas; that all woodlands located within the wetland buffers will be preserved; that some of the mature trees are located outside of the buffer area and along lot lines; that a tree survey was performed to determine the location of the mature healthy trees; that the survey described mature trees to be trees with a circumference of five feet or greater, being measured at chest height; that after receiving the tree survey results, the plan was modified moving some of the lots from the left side more toward the center of the project; that the modification to the plan increased the proposed buffer area, which now contain all of the healthy mature trees; that the current plan, presented to the Commission, will contain a minimum buffer of 55-ft. between any non-tidal wetland buffer and any buildable area; that a minimum buffer of 190-ft. between any tidal wetland and any buildable area; that the average buffer between any buildable area and non-tidal wetlands is 130-ft.; that the average buffer between any buildable area and tidal wetlands is 261-ft.; that the provided buffers exceed the requirements by Code, but also exceed the buffer requirements by the newly adopted Buffer Ordinance; that the buffer areas will be protected and preserved by the provisions placed in the communities Restrictive Covenants; that a conservation easement will be placed on all lands within the buffer areas; that there will be provisions in place, that provide penalties for violations of the

restrictions and easements; that there will be a tree preservation restriction covenant placed to protect certain identified mature trees, being located within a setback area or located on a lot line; that there will be penalties for violations to those restrictions; that the open area, including the resource buffer area, will total 42 acres, or 54% of the 77 acre project site; that portions of the site are located within the AE Flood Zone, being identified as being within the 100 Year Floodplain; that the majority of the areas found within the AE Flood Zone are the locations of Black Hog Gut, Prettyman Branch and adjacent wetlands; that all of the areas within the AE Flood Zone are located within the resource buffer area, which will remain undisturbed; that all of the lots within the community will be located outside of the AE Flood Zone area; that all lots are located within Flood Zone X, which is designated as areas not effected by the 100 Year Floodplain; that U.S. Fish & Wildlife Service indicated that the proposed development will have no effect on endangered or threatened species; that DelDOT determined based on the project's anticipated vehicle trips and the DelDOT Coordination Manual, an Area Wide Study Fee could be paid by the developer in lieu of a Traffic Impact Study (TIS); that the development entrance will be designed and constructed in accordance with all DelDOT requirements; that the Applicant will be responsible for funding an equitable portion, as determined by DelDOT, of improvements planned as part of the DelDOT SR1-Conaway Intersection Project; that primarily the funding would be related to the proposed improvements at Old Orchard Rd. and New Rd. intersection; that DelDOT has a standard requirement that requires an Applicant to dedicate additional road right-of-way and to dedicate a 15-ft easement along the right-of-way, often to construct a 10-ft wide shared use path with a five-foot setback from the right-of-way; that the proposed Black Oak subdivision has limited road frontage; that the majority of the road frontage is adjacent to the 10 existing single-family lots, not part of the proposed subdivision; that the Applicant has agreed, as proposed in Condition R of the proposed conditions, to construct a shared use path on the property, as well as along the 10 existing single-family lots; that the construction of the shared use path would be subject to the approval of DelDOT; that a probable design modification of the shared use path may be necessitated because of the existing right-of-way limitations on the 10 existing single-family lots; that the Application was reviewed as part of the PLUS process; that a provided PLUS comment was provided by the State's Historic Preservation Office, who recommended a Phase 1 Archeological Survey be performed prior to any ground disturbance, due to the potential to any prehistoric and historic resources that may exist on the property; that the Application site, was previously part of a larger, original land patent that was granted by the Duke of York in 1676; that at that time, it contained about 475 acres; that it was called Tower Hill Patent; that the history of the Tower Hill Patent was extensively researched and documented in a book written by Mr. Ralph Prettyman; that Mr. Prettyman's ancestors owned the Tower Hill patent lands, which included the Application's parcel, from 1697 to 1770, as well as a larger parcel from 1697 to 1926; that the Commission members, with the exception of Mr. Mears who was not present, may recall the larger parcel was approved as a Cluster subdivision in 2018, which is now called Tower Hill; that the Applicant retained Dr. Edward Otter to perform the Phase 1 Archeological Study; that Dr. Otter had previously performed the Archeological study for the Tower Hill project; that the conclusions from Dr. Otter's study found evidence of precontact occupation of the site by Native Americans; that artifacts found included flakes and pottery fragments; that the summary of the report stated that unlike the major prehistoric sites found on the Tower Hill property, the precontact sites located on the Application site were small, only containing a few artifacts; that the study also found there were historical European American use of the site as farmland, with two periods of actual occupation; that one period of occupation took place in the second half of the 18th Century; that the other time period took place in the early 20th Century; that study found that at Site 8, was believed to be the previous location of the Thomas Gray House; that Thomas Gray was believed to

have lived on that site from 1770 until 1783; that the site was not rich in domestic artifacts; that Dr. Otter mentioned only a few sites, of similar age, have been examined within Sussex County; that additional study of Site 8 could provide new information about life during the 18th Century in Sussex County; that as a result, the Applicant has authorized Dr. Otter to perform additional work on Site 8, which is anticipated to begin in the fall; that it is proposed, upon completion of the Site 8 investigation, a copy of both the Phase 1 Archeological Study and the Site 8 Investigation be provided to the State Historic Preservation Office, Mr. Ralph Prettyman, Sussex County, Lewes Historical Society and the Nanticoke Indian Museum; that the site is located within the Cape Henlopen School District; that fire protection for the site will be provided by the Lewes Volunteer Fire Company; that Black Oak will have 127 single-family lots, which is less than the permitted AR-1 Cluster Design density; that the lots vary in size from 7,503 sq. ft. to 15,373 sq. ft.; that the average lot size is approximately 9,437 sq. ft.; that the development will have one entrance from New Rd., being located on the western side of the property; that the entrance will be designed and constructed in accordance with DelDOT requirements; that on the eastern side of the property, fronting on New Rd. will be a community park with provided parking spaces; that there will be a school bus stop, which is anticipated to be located at the community park location; that the exact location and design of the school bus stop will be coordinated with the school district; that there will be emergency access provided from New Rd. to the internal streets within the development through the cul-de-sac; that the subdivision streets will be private; that the streets will be constructed to the Sussex County Engineering Department standards; that there will be sidewalks provided on both sides of the streets, with non-intrusive street lighting; that the community recreational area is located at the center-rear of the property; that the recreational area will contain a clubhouse, with a minimum floor area of 2,800 sq. ft.; that there will be an outdoor swimming pool and deck, a tot lot, two pickleball courts, outdoor fire place, grilling area and parking lot; that it is proposed the amenities be complete and open for use prior to the issuance of the 65th residential building permit; that there is an existing kayak launching area, located to the north of the recreational area, where uplands are located adjacent to Black Oak Creek; that the existing launch is proposed to remain, being limited to kayaks and stand-up paddleboards, for use by the Black Oak residents; that there is a community park at the far east corner of the site, where the emergency access is also located; that there are four main stormwater collection areas; that two of the four areas will appear as large centrally located ponds, which will provide an attractive feature for the community; that it is anticipated the development would be constructed in approximately three phases; that the community will have a Homeowners Association (HOA), which will be comprised of all lot owners; that the HOA will be responsible for enforcing the restrictions, collecting assessments, and maintaining the development streets, entrances, buffers, landscaping, stormwater facilities, recreational amenities, and the remainder of the community's common areas; that there will be a restrictive covenant, listed as Condition Q, prohibiting the application of fertilizers, chemicals or similar soil additives on lots or common areas by homeowners; that all such applications will be applied by the HOA, by using best management practices and in consultation with a Delaware licensed Environmental Consultant; that the Applicant will be selling finished lots to builders; that the Applicant has agreed to voluntarily donate a half of a percentage point of the gross lot selling price at settlement to the Sussex County Land Trust; that he requested to submit for the Commission's review, Proposed Findings and Conditions; that the proposed Black Oak subdivision is an AR-1 Cluster subdivision, which is a permitted use within the AR-1 Zoning District and the Black Oak subdivision was designed in accordance with the purpose and goals of the Cluster Design provision, by clustering lots outside of the environmentally sensitive areas of the site, providing extensive wetland and forest

resource buffers and significant active and passive open space that exceed the Cluster Development Design requirements and the provisions of the Zoning Ordinance.

Ms. Stevenson questioned what Dr. Otter's additional study of Site 8 will entail, if Dr. Otter will receive time and space to perform his investigation, and the location of the shared use path.

The Commission found that Dr. Edward Otter spoke on behalf of the Application; that he is the Owner and Principal of Edward Otter Inc., a cultural resources firm based in Salisbury, MD; that the investigation will be to understand what is left of the Thomas Gray house site and what can be learned about Thomas Gray, himself; that as it stands, all that is known is that Thomas Gray was a farmer; that he purchased the land 1770, taking a mortgage two years later; that when Thomas Gray died, he still owed money on the land; that we currently do not know much about Thomas Gray; that archeology is the only resource available to obtain information and learn about people like him; that the first step is to obtain a ground penetrating radar to attempt to identify cultural features; that these features may include a well, cellar hole or posts which would have been used to build the house; that the penetrating radar will allow them to target those areas with excavations; that the excavation would answer how large the house was, what material was used and what foods were eaten; that when looking at a 1937 aerial photograph, the entire area was an orchard; that the tree roots potentially could have destroyed all remains, and there may be nothing additional to learn; that currently they do not know how much they can learn; that if anything is found it will be analyzed, which will provide them better understanding about the lot; that in his experience, similar sites are found and then the process moves on, either being built over or left on vacant land, never receiving additional investigation; that there is little understanding of life during that time because there has been little work; that the State has no archeological requirements, which does not provide many opportunities in the area and it is his understanding that he will receive the time and space necessary to perform his additional investigation.

Mr. Fuqua stated the shared use path according to DelDOT's design, will run from the western boundary of the site to the eastern boundary of the site and the Applicant has offered to contribute to DelDOT for a portion of the remaining construction of the shared use path, between the eastern boundary and Tower Hill.

Mr. Hopkins questioned how much of the existing tree line, to the north of the property, is anticipated to be removed.

Mr. Fuqua stated the existing trees consist of 29.8 acres; that the trees to remain or be reforested are proposed to be a total of 14.5 acres after development; that there is an existing 13.6 acres of old growth forest; that it is proposed approximately two acres will be removed of the old growth forest, leaving 11 acres of old growth forest remaining; that the Cluster Development guidelines encourage developments to be clustered on the least environmentally encumbered lands; that the same section specifically states the provision does not inhibit the development of wooded parcels; that also in the Ordinance it states that the removal of healthy, mature trees shall be limited, but not prohibited; that based on a tree survey a real effort was made to identify mature forest and to preserve the areas of mature forest by moving the lot lines to allow any mature trees to be located in the preservation areas, as well as the placement of individual restrictions.

The Commission found that Mr. Zac Crouch, with Davis Bowen & Friedel, spoke on behalf of the Application; that the tree survey was included within the provided exhibits to the Commission and Exhibit 4 shows the originally submitted plan versus the currently proposed plan, to show how much the plan was modified to save the mature growth as much as possible.

Ms. Wingate questioned if there was a tree line buffer currently existing adjacent to 10 existing properties along New Rd.

Mr. Fuqua stated to the rear of the ¾-acre lots, adjacent to the 10 existing lots along New Rd., there is a 30-ft. landscape buffer proposed, as it is required by the Ordinance; that the 30-ft. landscape buffer will be located along Ashburn Lane properties, the lots located to the west and the rear of lots located adjacent to the 10 existing lots along New Rd.

The Commission found there was no one present in the room who wished to speak in support of the Application.

The Commission found that Ms. Jill Hicks spoke in opposition to the Application; that she lives within the Chapel Green community; that her husbands family has owned property within Lewes since 1963; that there is a lot at stake regarding the property rights, citizen rights and the degradation of the quality of life and the environment; that Delaware Online reported on March 25, 2022, that Delaware is the worst state in the Nation for water quality; that the environmental integrity projects stated that 97% of Delaware's rivers and streams are too polluted for water recreation and aquatic life; that of the 4,470 total miles of rivers and streams in the State, an estimated 1,900 miles, being nearly half, are too impaired for any type of use; that according to the Environmental Protection Agency (EPA) the most impairment in the State's water comes from polluted runoff from farms, suburban and urban areas; that regarding the Application site, she commended the Developer and their partners for designing a plan that stays off and away from the wetlands; that she also admires the work performed as a result of the tree survey; that there is no argument, as the wetlands are all jurisdictional; that however, there is a large area, located to the southwest corner of the site that is determined and titled by the State as an "Excellent Groundwater Recharge Area"; that an area is determined to be an Excellent Recharge Area when "*any area where soils and sedimentary deposits of the most coarse grain nature have the best ability to transmit water vertically through the unsaturated zone to the water table*"; that this constitutes a critical area as defined under the Delaware Code, Chapter 92, Title 29; that Sussex County Code, Section 89-7, titled "Excellent Recharge Area", states, "*1) the requirements of this Chapter do not impose any additional limitations upon land development provided the impervious cover of any portion of the tax parcel located within the Excellent Groundwater Recharge Area is 35% or less, 2) Impervious cover of that portion of the tax parcel within the Excellent Groundwater Recharge Area, which is greater than 35%, but no more than 60% is allowed, provided the Applicant demonstrates through an Environmental Assessment Report, prepared by a registered professional geologist or registered professional engineer, familiar with the hydrogeologic characteristics of Sussex County and using a climatic water budget that will assure that post development recharge quantity will meet or exceed the existing predevelopment recharge quantity*"; that she did not believe the Excellent Recharge Area was addressed by the developer; that she had concerns regarding the impact of the proposed impervious surfaces will have to the Broadkill watershed; that the subject Water Recharge Area must not be negatively impacted; that it is important that the quantity of water continue to move through the zone; that she, as a tax payer and concerned citizen, request the number of impervious surface proposed within the Excellent Recharge Area, be calculated and present to the Planning & Zoning Commissioners; that she suggested, if the amount of impervious surface can be legally added to the Excellent Groundwater Recharge Zone, according to the Code, it be made clear to homeowners and the HOA that no additional impervious surfaces, such as, but not limited to, sheds, porches, sidewalks and hardscapes, be added without the recalculated addition of impervious surfaces to the total Excellent Groundwater Recharge Area and its impact and her concerns are regarding the importance of water runoff and the watershed table.

The Commission found that Ms. Janet LeDigebel spoke in opposition to the Application; that she resides in Milton; that she was glad to see the preservation of trees; that it failed to be mentioned that when you removed old growth forest, the existing tree roots become vulnerable; that she received this information from the Sussex County Engineer; that this situation has been seen with Arbor Lyn; that when the outer existing trees are removed, the inner tree roots are not used to the elements, resulting in the tree dying; that in removing the trees to construct 19 lots, it will damage all of the mature forests; that she would request that all of the mature forests be preserved; that this would require the elimination of 19 lots; that Dr. Otter's report found many artifacts; that she requested the Commission preserve the three areas where the artifacts were found, as they make the area a historical site; that she requested to present a slide showing the consequences when the habitat along New Rd. is disturbed; that the wildlife does not have anywhere to go; that she presented a picture of a fawn that was hit by a vehicle and killed and all of the wildlife is leaving New Rd. and heading to Savannah Rd.

The Commission found that Mr. Hank Faust spoke in opposition to the Application; that he resides in Lewes; that he read over the paperless packet; that within the Archeological Study, there was a section that mentioned no projectiles were found on the historic sites; that however, located in Figure 12, it looks to be an arrowhead; that he questioned if the arrowhead could make a case to permit additional digs for Native American artifacts and remains; that the U.S. Fish & Wildlife report noted that there was no effect on endangered or threatened species located on the Information for Planning and Consultation (IPaC) Resource List; that the U.S. Fish & Wildlife stated that if additional information on the distribution of listed or proposed species become available the determination may be reconsidered; that he lives along the connecting watershed; that there are wetlands located behind his home, which are connected to the wetlands located behind the Application property; that he has photos of multiple threatened and endangered frogs; that he believes one of the species to be a treefrog that is considered threatened in Delaware; that there is the species of Barking Tree Frog, which is a species considered endangered in Delaware; that he feels there are many more trees being removed from the adjacent Tower Hill development than he believes people realized; that he was confused on the exact number of trees anticipated to be removed for the project; that based on his calculations from Google Maps, if the developer were to only develop within the existing field, not encroaching any trees, it would be development of 28.2 acres; that he believed the proposed property consisted of 77 acres; that he questioned how much of the proposed trees consist of re-planted trees; that he feels the current proposed plan is going to clear a lot of trees and should be considered; that he had heard Ms. LeDigebel's point and felt it should be considered; that he felt the County Code does not currently reflect the need in the area; that the current Code allows for so much density for the area; that the density becomes overwhelming to area traffic and medical resources; that the hospitals are full constantly; that medical facilities are understaffed; that the people moving to the area are generally older in age, requiring healthcare; that people moving to the area have no idea that the medical facilities are at 110% capacity all the time; that Beebe Hospital has 216 beds; that 196 beds are general patient beds; that 20 beds are reserved for ICU patients; that his girlfriend is a nurse for Beebe; that she often tells him how the hospital is so full the overflow patients get placed into the ICU unit; that he does not believe County Council has considered the County is building at a rate that is not sustainable; that due to this the health of Sussex County citizens is being impacted; that medical specialist are so overloaded that follow up appointments are scheduled out from six months to a year; that he feels that there should be some consideration given to changing the current laws for development in Sussex County; that the Strategies for State Policies and Spending Report stated the site is located within Investment Levels 2, 3 and 4; that the report stated the State investments will support growth within Investment Levels 2 and 3, but request developers remove any development planned within Level 4

areas; that the Applicant's response state, increased wetland setbacks, voluntary buffers and preserved forest will limit the impact to Level 4 areas; that he stated limited does not sound complete removal of development in the Level 4 area and often times, many things are promised with proposed developments that end up not being upheld in the end.

Ms. Stevenson stated the Commission does recognize and consider Mr. Faust's concerns regarding the building rate; that she stated the Commission does not make the laws and that the Commission is only allowed to use the law they currently have.

Dr. Otter stated the subject picture in Figure 12, referenced by Mr. Faust, is referred to as a flake; that when taking flakes from a rock, the flakes tend to be thin, with one side being flat and the other side showing facets where other flakes have come off of the original flake; that shown in Figure 12 is a small flake, about one inch long; that the flake is flat on one side; that there is some resemblance of a point, however, there is no point and the subject is identified as a flake; that there were no points found on the site and there were not many flakes found on the site.

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

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

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

In relation to 2021-31 Black Oak (F.K.A. Glenwood). Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2316 Southern Delaware Medical Center, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MEDICAL OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED SUSSEX COUNTY, CONTAINING 2.29 ACRES, MORE OR LESS.

The property is lying on the southeast side of Shady Road (S.C.R. 276), approximately 0.14-miles northeast of the intersection of Shady Road and Plantations Road (Rt. 1D). 911 Address: 17611, 17623 & 17637 Shady Road, Lewes. Tax Parcel: 334-6.00-511.02, 511.06 & 513.00.

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

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Lighthouse Construction, Inc. and the Owner, Southern Delaware Medical Center, LLC.; that also present are Mike Glick from Lighthouse Construction, Harry and Lynn Caswell, part-owners, Jamie Sechler, P.E. from Davis, Bowen, and Friedel and Lauren Townsend, Architectural Designer with Lighthouse Construction; that the Conditional Use application is for Medical Offices on three AR-1 zoned parcels on the southeast side of Shady Road, Lewes totaling 2.297 acres; that the proposed building will be 32,960 sf. with 127 parking spaces and 4 handicapped parking spaces; that the adjacent properties are zoned AR-1 and MR and the property across the street is zoned C-1; that the property is surrounded by a mix of residential and commercial uses; that a 20 ft. buffer is proposed between the

residential property at 17603 Shady Road, the Sunset Glen Community and the subject property; that there is a 6 ft. fence between the subject property and the Sunset Glen Community and some mature trees that separate the subject property from the properties to the rear; that the updated concept plan shows a revised entrance to the property and interconnectivity to the property on the northeast side of the subject property; that the landscape plan shows the landscape buffer and is included in the exhibit booklet; that the property is located in an Investment Level I area according to the State Strategies and Spending Map; that the Traffic Impact Study (TIS) prepared by JMT shows that the property is located in the Henlopen Transportation Improvement District (TID) and shows the Developer anticipated frontage, entrance and off-site improvements; that the Future Land Use Map designates the area as Commercial Area; that Commercial Area consists areas of retail and service uses that are concentrated on arterial roads; that the Comprehensive Plan states that more intense uses are to be located along main roads or near major intersections but also that institutional and commercial uses may be appropriate depending on the surrounding uses; that this proposed use is appropriate for the area because of the close proximity to the commercial uses in the area; that the proposed use is of a semi-public character and will provide much needed use for the residents of Sussex County; that Dr. Angela Caswell-Monack, Board Certified Obstetrician and Gynecologist plans to lease space for her growing practice; that there are no wetlands on the site or no known archeological sites or areas of excellent groundwater recharge or wellhead protection areas; that the site will be served by Tidewater for water, Sussex County for sewer, and Delaware Electric Co-op for electricity; that the use is not anticipated to adversely affect neighboring properties; and that the Applicant has submitted proposed Conditions of Approval and some of those conditions include hours of operation and the 20 ft. landscaped buffer to screen the property from neighboring properties.

Ms. Stevenson asked about the interconnectivity.

Ms. Peet stated that there is interconnectivity shown on the site plan between the subject property and the property at 17603 Shady Road.

Ms. Stevenson requested the number of parking spaces being placed in the front yard setback.

Ms. Peet stated that there are 26 parking spaces proposed in the setback area and noted that this is a concept plan.

Ms. Stevenson asked that the Applicant address the parking spaces in the setback area.

The Commission found that two people spoke in support of the Application.

Mr. Christian Hudson spoke in support of the Application. Mr. Hudson stated that Medical Offices are needed in Sussex County, and we need the infrastructure to keep up with the population growth.

Ms. Cathy Asbert spoke in support of the Application. Ms. Asbert spoke of the need for medical offices in the area and that it would be nice to have one within walking distance from her home.

The Commission found that two people spoke in opposition of the Application

Mr. Ray Hellman spoke in opposition to the Application. Mr. Hellman stated that the TIS said that the proposed use will have a minor impact on traffic and that he disagrees with this as Shady Road is already heavily traveled, and the only access will be on Shady Road, and a buffer is needed.

Mr. Fred Solomon spoke in opposition to the Application. Mr. Solomon stated the height of the building is out of proportion to other buildings in the area; that the size of the building is too big for the acreage and should be scaled down; that the proposed use will have an impact on traffic; that the buffer should be greater than 20 ft.

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 2316 Southern Delaware Medical Center, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2356 Sun Massey's Landing RV, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION NO. 9 IN ORDINANCE NO. 2378 (CONDITIONAL USE NO. 1963) TO AMEND THE REQUIREMENT THAT NO CAMPERS OR RVS SHALL BE STORED ON THE CAMPGROUND DURING THE PERIOD THAT THE CAMPGROUND IS CLOSED TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS. The property is lying on the north side and south side of Long Neck Road, within the Massey's Landing RV Park. 911 Address: 20628 Long Beach Drive, 20636 Long Beach Drive, 32464 Sailfish Ln, and 22814 Conch Road, Millsboro. Tax Parcel: 234-25.00-31.02 & 31.05.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's exhibit booklet, a copy of Ordinance No. 2378 (CU 1963), a copy of the Applicant's conceptual layout plan, and a copy of the Applicant's cost information. Mr. Whitehouse noted that there were zero comments.

The Commission found that Mr. David Hutt was present on behalf of the Applicant, Sun Massey's Landing RV, LLC; that the resort is managed by the Bluewater Development Company and present on their behalf are Rafael Correa and Tony Nichols; that there was a Conditional Use granted for Massey's Landing RV Campground with 24 conditions; that two conditions were modified in 2017; that the request tonight is to change Condition No. 9 which currently reads "The campground/RV park shall remain vacant and no campers or RV's shall be stored on the campground during the period that the campground is closed."; that as part of the request for amendment, there is proposed language for Condition No. 9 which is "The campground/RV park shall remain vacant and no campers or RV's except "Park Model RV's" on approved Park Model campsites shall be stored on the campground during the period that the campground is closed. Park Model RV's in special flood hazard areas shall meet the requirements of 115-141.5B (3) for manufactured homes."; that this change would allow the Park Models to remain at the resort when it is closed; that the second sentence in the proposed change essentially refers to moving any Park Models that are in a special flood hazard area; that the final site plan shows the various types of campsites but all 291 campsites are required to be transient; that there are 216 sites where guest bring their RV's, 5 tent sites, and 70 Park Model sites; that the Park Model sites are highlighted on the site plan; that the sites shaded in tan are with the special flood hazard area and the areas shaded in green are outside the flood hazard areas; that pursuant to the conditions at the end of the first weekend in November each year, the process begins of disassembling those campsites and removing the RV's from the property; that the cost for this process is \$150,000 annually; that during

the pandemic, a hauler could not be found to facilitate this process and the RV's remained on the site; that a notice of violation was sent to the property owner and that prompted this application; that there are many RV parks where the RV's remain on the property year round; that during the hearing to amend conditions in 2017 there were three points discussed, one was regarding the special flood area, the second was about the taxation of RV's which receive a title from the Department of Motor Vehicles (DMV), and the third was if they remain on the site on a 12-month basis they essentially become Manufactured Homes and that makes them a permanent structure which is the opposite of an RV park; that these three points will be addressed as this is what the Commission focused on in 2017; that the difference between a Manufactured Home and an RV is clear, an RV must be less than 400 sf. while a manufactured home must be more than 450 sf.; that if you bring a manufactured home into a Manufactured Home Community, you surrender the title and it becomes a fixture on the land, and you pay property taxes to Sussex County; that an RV always stays a motor vehicle which is registered through the DMV and each of the 63 RV's on the site are registered through the DMV and are not subject to taxation like a Manufactured Home or single-family home; that the second point was that this is a flood hazard area, however, the same concerns exist when the homes are occupied from April through November; that there would be no danger to individuals as the RV's are not occupied when the park is closed for the season; that Hurricane season ends in November with the most activity from Mid-August through Mid-October; that County Code has a provision that states exactly what is required if an RV is located in a special flood hazard area; that Sussex County Code Section 115-141.4 G subsection 2 states "Recreational vehicles that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § 115-141.5B(3) for manufactured homes or § 115-141.6C(4), as applicable."; that those two code sections relate to special flood hazard areas and the second one applies to Coastal High Hazard areas which does not apply here; that the reason for denial in 2017 was best described in reason 4 from the motion; that reason stated the following "Section 115-172.H.9 - No permanent structures for human occupation or manufactured homes other than the one used by the park manager are permitted in a campground"; that this section prohibits the conversion of RV's into permanently anchored structures like a manufactured home; that the Code seems contradictory while it should be read to be harmonious; that in the exhibit there are pictures of a park model RV with the hitch for towing purposes; that the online packet includes an SFR report from DelDOT which states there would be a minor impact on traffic and an area-wide study fee could be paid and this must be incorrect as this request would not generate any new traffic; that he spoke with the DelDOT staff in attendance at this meeting and they concur; that in fact, if this amendment is approved there would be 126 less trips per year on Long Neck Road as the RV's would remain on the site year round; that they will not be occupied year round as the Park will be closed from Nov through the beginning of April.

Ms. Stevenson asked what happens at the end of the season, are the utilities disconnected?

Mr. Hutt stated that the Park is closed and there are workers on-site who would notice if anyone was squatting and that the units are winterized.

Mr. Rafael Correa stated that all waterlines are disconnected so that the lines do not freeze and there are five or six members of staff on the property preparing for the next season.

Mr. Hopkins asked about the dimensions of the units.

Mr. Correa stated that they are all under 400 sq. ft.

Mr. Hutt stated that they all meet the national standards for an RV.

Mr. Hopkins asked if the Applicant is asking to have these classified as manufactured homes.

Mr. Hutt stated that this is the opposite, that they will always remain as RVs in a flood hazard area or not.

Mr. Hopkins asked if they pay tax to DMV each year.

Mr. Hutt stated that they are registered vehicles, and the registration fees would be paid to DMV.

Mr. Hopkins asked if they were changed over to manufactured homes, then the tax would be paid to Sussex County and not the DMV.

Mr. Hutt stated that it is not possible for this to occur as they would not meet the minimum size for a manufactured home as the RVs are all less than 400 sq. ft.

Mr. Hopkins stated that he would like the exact dimensions.

Ms. Wingate asked if they would have to be pulled off-site to go through the DMV registration process.

Mr. Hutt stated that they are titled as RV and do not have to go through the same process as cars for registration purposes.

Mr. Mears asked if the water is shut off for the entire park.

Mr. Correa responded that the water is not shut off for the entire park as it is needed for maintenance buildings and the welcome center which functions during the winter months.

Mr. Correa stated that the dimensions of the buildings are 13'4" wide by 29'1" long and the length would be 37'7" if you include the deck; that the height of the RV is 11.5'.

Chair Wheatley stated that he would be more comfortable with the change if the condition stated specifically that the units will not be occupied during the winter months.

Mr. Hutt stated that the provision is in the prior condition, but the Applicant would have no opposition to having it added to this condition. Mr. Hutt stated that the deck is not taken into account as part of the 400 sq. ft. maximum size for an RV.

Mr. Robertson asked Mr. Correa to email the drawing showing the model including the dimensions of the RV to Mr. Whitehouse so it may be made part of the record for this Application.

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

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

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

In relation to C/U 2356 Sun Massey's Landing RV, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 9.54 ACRES, MORE OR LESS. The property is lying on the south side of Vines Creek Road (Rt. 26), approximately 0.5 miles east of Armory Road (Rt. 382). 911 Address: 30028 and 30032 Vines Creek Rd. Tax Parcel: 233-11.00-172.00.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's conceptual site plan, and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse noted that there were zero comments.

The Commission found that Mr. Tim Willard, Esq. was present on behalf of the Applicant, ES Motors, Inc.; that also present on behalf of their application are Mr. Max Nichai and Mr. Alex Stenevich, principals of the LLC; that this property is located just east of Dagsboro and is comprised of 9.5 acres; that the property is designated as Coastal Area on the Future Land Use Map which recognizes that office uses and light commercial uses are appropriate, therefore the designation of C-2 Medium Commercial would be appropriate; that there are other commercial uses in the area including an RV storage property, a plumbing business, a seafood shop, and a trailer retail business; that this property has a Conditional Use permit which was approved in 2019 for the current use as a Used Car Sales lot and Repair Shop as well as storage for Commercial Vehicles; that the current use would continue but the proposal is to add some storage units on the rear of the property to provide commercial storage for small construction firms and some office buildings; that the subject property is on a minor arterial road which would support such development; and that proposed findings were submitted to the Commission.

Mr. Alex Stenevich confirmed the statements made by Mr. Willard as true and correct.

The Commission found that one person spoke in opposition to the Application.

Ms. Nicole Vance spoke in opposition of the Application. Ms. Vance stated that she is the owner of the two properties to the east of the subject property; that she is concerned that there would be no buffer between the subject property and her property; that she has installed a privacy fence to shield from the current business; and that this would change the peaceful quiet neighborhood to a commercial area.

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/Z 1963 ES Motors, Inc. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

AN ORDINANCE TO AMEND THE TEXT AND MAPS OF CHAPTER 13 (MOBILITY ELEMENT) OF THE COMPREHENSIVE PLAN IN ADDITION TO AMENDMENTS TO THE EXISTING AND FUTURE LAND USE MAPS OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-16.00-50.02, 235-22.00-441.00, AND 235-22.00-442.00. The property is lying on the west side of Coastal Highway (Route 1), west of the intersection of Coastal Highway and Eagles Crest Road (S.C.R. 264). 911 Address: 29763 Eagles Crest Road, Milton.

Mr. Whitehouse advised the Commission that submitted into the record were letters received on behalf of the property owners, a copy of the proposed ordinance introduced at County Council on June 7, 2022, a copy of the property owners' presentation, and documents that have been submitted, a copy of the County's PLUS submission, a copy of the PLUS comments that were received from the State Planning Office dated July 22, 2021, a copy of the Delaware private use airport and heliport document dated August 2007, a copy of the property owner's exhibits, a copy of the technical assessment submitted on behalf of Century Engineering for Sussex County and a copy of the updates to the technical assessment. Mr. Whitehouse noted that there was one letter of comment which was included in the paperless packet.

Mr. Whitehouse stated that the request for a corrective amendment to the Comprehensive Plan of Sussex County was received by the Planning and Zoning Department from the property owners; that letter was included in the paperless packet; that following receipt of that letter there was discussion with the property owners and a PLUS submission was sent to the State Planning Office; that then an Ordinance was crafted and introduced at County Council this summer; that essentially there are three parts to the Ordinance; that the first part refers to the Future Land Use Map and the request is to change the designation from Low-density to Industrial; that the second part of the request relates to the existing Land Use Map of the County to change from the Utilities and Recreational designation to Industrial; and that the third element relates to Chapter 13 within the Comprehensive Plan to add the airport icons to recognize the airports as shown in Exhibits B & C in the paperless packet; that Mr. Drew Boyce from Century Engineering available to answer questions regarding the technical assessment; and that Staff from DelDOT are also available to answer questions the Commission may have.

Mr. Robertson stated that this is a somewhat unusual Ordinance before the Commission; that Century performed the technical assessment on behalf of the County; that the request is to make the hanger area and runway identified as industrial; that the second is to show the icons; and that the third is to amend some of the text in the Comprehensive Plan.

The Commission found that Mr. John Pardee, Esq. was present on behalf of the property owners; that Christian and Jamin Hudson, property owners are also present; that the first two map amendments are simply corrections to errors that were made in the 2018 Comprehensive Plan that eliminated designations that had been set forth in the 2008 Comprehensive Plan; that the 2018 Plan had identified the air strip and the hangers as industrial designation; that the other request is to add two icons to the maps in Chapter 13 of the Comprehensive Plan; that the power point presentation shows the history of the property, the designation in 2008, the error in the 2018 plan, the draft amendment to Chapter 13 to show the airplane icon, and there is a timeline included; that if the correction is not made it would essentially show that the industrial use was taken away from the property owners; that the icons on the map show the impact of the airport from a land use planning perspective; and that the Eagle Crest airport is the 5th largest airport in Delaware and the 2nd largest in Sussex County.

Chair Wheatley asked Staff about the process if an airport application was submitted in the AR-1 district.

Mr. Whitehouse responded that it would be a Conditional Use application.

Chair Wheatley spoke about historical use and the importance of having it correctly designated so that it cannot be taken away in the future.

Ms. Stevenson stated that it would be a good idea to have different color icons for public and private airports on the Maps in Chapter 13 of the Comprehensive Plan.

Mr. Robertson stated that there is an Agriculture Protection Notice placed as conditions on some applications and it could be reworded to mention the airstrip so that residents moving to the area would know that there is an airport close by.

Mr. Drew Boyce, Century Engineering stated that his company performed a technical assessment of DelDOT's comments regarding a public use airport versus a private airport; that the 2008 Comprehensive Plan referred to both public and private airports; that the 2018 Comprehensive Plan only refers to public airports and only identified the two public airports in Sussex County; that Century provided a technical assessment of the distinction between the two and provided some recommendations for Planning and Zoning and County Council to consider; that the recommendation to this body is that it should be technically correct in the Comprehensive Plan.

The Commission found that three people spoke in favor of the Application.

Mr. John Chirtea spoke in support of the Application. Mr. Chirtea stated that Eagle Crest Aerodrome is a great little airport and urges the support of the Commission.

Mr. Jeff King spoke in support of the Application. Mr. King stated that there are 26 or 27 homes that have access to the airstrip; that it is pretty unique to see this in the United States; that he has been involved on two airport boards; that Eagle Crest private airport is larger than Laurel public airport so it should be shown on the maps; that it is also good for future planning, for people moving to the area to know there is an airport in the area and it will be noisy and that he supports Hudson's proposal.

Mr. Steve Bayer, Delaware Department of Transportation (DelDOT), stated that DelDOT has no official position on this ordinance; that they are available as an information resource for the Commission; and that they offer encouragement that what appears in the final plan in terms of symbology and text be factually accurate.

Ms. Jennifer Cinelli-Miller, DelDOT, stated that she was part of the team who worked on the mobility chapter for the 2018 Comprehensive Plan; that DelDOT has no objection to the ordinance; and that the different color icons for public versus private airports are a good idea.

Mr. Joe Larrimore spoke in support of the Application. Mr. Larrimore stated that he owns parcel 50 which adjoins the area that would be changed to Industrial Zoning.

Chair Wheatley explained that the zoning will not be changed to Industrial Zoning that this Ordinance would just be a Land Map designation of Industrial and the only use would be the airport and that to put another use on that property if it is not a permitted use in the AR-1 district then it would require a new application.

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

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

In relation to the Ordinance related to Tax Parcel No. 235-16.00-50.02, 235-22.00-441.00, and 235-22.00-442.00. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Meeting adjourned at 8:50 p.m.

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