

THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 14, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 14, 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, Ms. Lauren DeVore – Planner III, Ms. Christin Scott – Planner II, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission of required revisions to the agenda.

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

PUBLIC COMMENT

The Commission found that three people wished to provide public comment.

Mr. John Chirtea spoke regarding the importance of the Eagle Crest Aerodrome Airport and how it provides for the health and safety of the community.

Mr. Jeff King spoke regarding the health and safety issues associated with aviation issues, specifically the Eagle Crest Aerodrome Airport at Hudson Fields.

Ms. Judy Rose Seibert spoke regarding Title 9, Chapter 69. Zoning, Subchapter II. The Quality of Life Act, and the amount of current development located within Investment Level 4 areas.

OTHER BUSINESS

Chappell Farm (C/U 2193)

Request for Extension of Conditional Use

On August 24th, 2021, the Planning and Zoning Department received a request for an extension of the Conditional Use (C/U 2193) allowing for multifamily residential use on the lands of Chappell Farm, LLC. Conditional Use (C/U 2193) was approved by Sussex County Council at their meeting of Tuesday, June 22nd, 2021. The Applicant indicates that construction was delayed due to ongoing DelDOT improvements at the site and seeks an extension on these grounds. Under §115-174 of the Sussex County Code, Conditional Use approvals are valid for a period of three years. The approval for this proposal will expire on September 14th, 2024, unless “construction or use” is “substantially underway.” The Applicant has provided information to demonstrate that the project will meet the “substantially underway” threshold required if County Council were to grant an extension under the provisions of §99-40 in Sussex County Code. The parcel is located on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road in Milton. Tax Parcel: 235-23.00-1.02. Zoning: MR (Medium Density Residential District) and C-3 (Heavy Commercial District).

Motion by Mr. Collins to defer action on the request for extension of C/U 2193 Chappell Farm, seconded by Ms. Wingate and carried unanimously. 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 (Route 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. The Revised Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. The property is located on the east side of Kings Highway (Route 9). 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.

Motion by Mr. Collins to deny the Revised Preliminary Site Plan based on the requested relief from parking within the front yard setback requirement. Motion failed for the lack of a second vote.

Motion by Mr. Mears, seconded by Mr. Wingate to approve the Revised Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-1.

S-23-36 Silverleaf (F.K.A. MRBP, LLC)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the establishment of a large farm pond to consist of 14.32 acres +/- with access off a 40-ft ingress/egress access easement over a 20-ft wide stabilized dirt drive and other related site improvements. The Plans are being submitted under §115-219(A) of the Sussex County Code, which requires Site Plan review for certain uses to include proposed farm ponds. The Commission last reviewed a separate proposal for five (5) farm ponds on this site at their meeting of Thursday, August 24, 2023, which was approved. The Applicant has since revised the Plans to consolidate the former five (5) requested farm ponds into a single, large farm pond. It should be noted that the site was the subject of a previous Conditional Use Application (Conditional Use No. 2300 MRBP, LLC) for the construction and establishment of a borrow pit in this location. The County Council denied that Application at their meeting of Tuesday, September 27th, 2022. In response to this decision, the Applicant has subsequently provided a resubmittal for the site for the proposed farm ponds, which represent a less intensive use of the site. The Preliminary Site Plan complies with the Sussex County Zoning Code. The proposal is located on a 56.93-acre +/- parcel of land on the southwest side of McCary Road (S.C.R. 385), approximately 857 feet south of Frankford School Road (S.C.R. 92). Tax Parcels: 533-5.00-38.00 & 41.04. 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 by staff upon the receipt of all agency approvals.

Ms. DeVore stated that staff was furnished with a memorandum stating there are future plans to pursue a Minor Subdivision, and it was noted that the eastern portion of the site is most suitable for septic systems, which was also part of the proposal.

Mr. Robertson stated the site had previously been denied for a borrow pit; that he questioned if the plan was a way to get around the borrow pit requirements; that farm ponds have been listed in the Code, however, he had never known the Commission to regulate a farm pond.

Chairman Wheatley questioned the disposition of the soil coming from the pond, where the soil is going, and if the soil is intended to be sold; that the questioned the intention of the original five ponds, and what the motivation was for consolidating the five ponds.

Mr. R. Lawton Myrick spoke per the request made by Chairman Wheatley. Mr. Myrick stated the soil will be removed from the site, other than topsoil for the purpose of filling a few low areas; that the soil is going to be more of a cost to him to have the soil taken away; that if there is value in the soil, than so be it; that the area will be a farm pond, to be used for active and passive recreation for future cottages, which are not currently being shown; that the original five ponds were to spread around the site to act as amenities in the case that sewer was provided to McCary Rd., they could provide a major subdivision, at which time the ponds would be present as an amenity for fishing, swimming and boating; that the motivation to consolidate the five ponds was to reduce the square footage of the request, and that he felt the request for one farm pond would seem more acceptable to the Commission, rather than multiple farm ponds.

Chairman Wheatley questioned if the Site Plan for five ponds had already been approved.

Mr. Myrick stated he had requested to withdraw the Site Plan of five ponds.

Mr. Mears questioned why the farm ponds are being placed now, and why not at the time the major Subdivision application would be submitted.

Mr. Myrick stated he felt his current request was the path of less resistance; that there was a homesite on the property, which he felt was grandfathered in; that he did not believe he would have to go through the hurdle of requesting a Minor Subdivision; that he would like to construct the pond now and potentially request the Minor Subdivision in the future.

Mr. Butler questioned the proposed depth of the pond.

Mr. Myrick stated the pond was proposed to be approximately 30 ft. deep but would not be removing as much dirt as the borrow pit would have done.

Mr. Collins questioned what the urgency for the pond was.

Mr. Myrick stated the earlier the pond is built, the earlier he gets to enjoy it.

Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0. Ms. Wingate abstained.

S-20-25 Sussex Bible Church

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 31,250 square foot church, a 240 square foot pavilion area, an amphitheater, outdoor restrooms, athletic fields, and other site improvements. This Plan was previously granted preliminary approval by the Sussex County Planning & Zoning Commission at their meeting of Thursday, April 28th, 2022. The Plan has since been revised due to a DelDOT request asking that the proposed entrance off of Harbeson Road (Route 5) be eliminated, consequently, the proposed church building and associated parking have been redesigned. The church building footprint is the same but rotated. This revision has reduced parking from 268 total spaces to 257 total spaces which exceeds the minimum required of 132 total spaces. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. The property is located on the east side of Harbeson Road (Route 5) and the northwest side of Cool Spring Road (S.C.R. 290). Tax Parcel: 234-10.00-75.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

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

Sound United Methodist Church

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Sound United Methodist Church for the paving of the existing gravel parking lot and to include additional parking spaces. There are twelve (12) parking spaces located within the front yard setback. The Applicant has submitted a request for relief from the requirements for parking in the front yard setback. The Revised Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. The property is located on the south side of Lighthouse Road (Route 54) and the east and west sides of Sound Church Road in Selbyville. Tax Parcel: 533-19.00-45.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

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

2021-29 Deer Creek

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Preliminary Subdivision Plan approval for the Deer Creek (2021-19) Subdivision as approved by the Planning and Zoning Commission at their meeting of Thursday, July 28th, 2022. Specifically, the Applicant is requesting to amend Condition “L” of the original Conditions of Approval which states, *“The Final Site Plan shall contain an additional emergency vehicular access between Staytonville Road and White Rail Circle connecting through either Doe Run or Buck Drive.”*, instead, read *“The Final Site Plan shall contain an additional emergency open space between Staytonville Road and White Rail Circle connecting through either Doe Run or Buck Drive.”* The Applicant has submitted a written request which explains that the emergency vehicular access is being revised to read “Emergency Open Space.” This previously approved AR-1 standard subdivision contains seventy-nine (79) single-family lots on 93.582 acres +/- and is located on the north side of Staytonville Road (S.C.R. 224). Tax Parcel: 230-19.00-27.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Butler, seconded by Ms. Wingate to amend Condition L of the original Conditions of Approval for 2021-29 Deer Creek, so that Condition L now states: *“The Final Site Plan shall include a 24 ft. wide, unobstructed area set aside for vehicular access to the subdivision in emergency situations between Staytonville Road and White Rail Circle connecting through either Doe Run or Buck Drive. 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 Staytonville Road is impassible.”* Motion carried 4-0. Mr. Mears abstained.

Lands of Christina Abramowicz

Minor Subdivision off a 25-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 49.99-acre parcel into three (3) lots including the residual lands. Proposed Lot 1 will contain 3.87 acres +/-, Proposed Lot 2 will contain 11.44 acres +/- and the residual lands will contain 34.67 acres +/- . All lots shall have access through the proposed 25-ft. wide ingress/egress access easement. Staff would like to note that there are wetlands shown on

the Plan, but no signature block for a wetlands delineator to sign off on. In addition, the residual lands must have at least 100 feet of frontage off of a private road, the plan only shows 25.5 feet of frontage for the residual lot. A shared-use maintenance agreement will be established for the use of the shared drive. Other than these two concerns the plan complies with the Sussex County Zoning and Subdivision Codes. The property is located on the west side of DuPont Boulevard (Route 113). Tax Parcel: 135-5.00-26.01. Zoning: AR-1 (Agricultural Residential) District. Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for preliminary and final approvals.

Motion by Mr. Butler, seconded by Ms. Wingate to grant preliminary and final approval for the Minor Subdivision off a 25 ft. easement, subject to the Final Site Plan being revised to contain a signature block for a Wetland Delineator to sign off on the plan. Motion carried 5-0.

Lands of Kenneth J. & Janice M. Arney

Minor Subdivision & Lot Consolidation off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 23.034-acre +/- parcel into four (4) Lots plus the residual lands. The Plan includes a proposed lot consolidation to consolidate the existing 50-ft ROW/easement which now exists on Parcel 48.01 into existing Parcel 48.05 to form the residual lands. Proposed Lot 1 will contain 1.5368 acres +/-, proposed Lot 2 will contain 1.0745 acres +/-, proposed Lot 3 will contain 1.2252 acres +/-, proposed Lot 4 will contain 9.2297 acres +/- and the residual lands will contain 9.9676 acres +/- . It should be noted that staff have informed the Applicant that there is a current deed restriction on Parcel 48.00 that restricts further subdivision of this property unless a finding by a Court of competent jurisdiction is made that said restriction is “void, unlawful or unenforceable.” The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. The proposal is located on the east side of Hartzell Road (S.C.R. 560A). Tax Parcels: 131-13.00-48.01 & 48.05. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Chairman Wheatley questioned if the Applicant had any comment in regard to the deed restriction.

Ms. DeVore stated that the Applicant’s interpretation was based on a previous survey, which was recorded, and that the Applicant states the restriction only applies to Lot 5, which is reflected on the current plan as the residual land, therefore the restriction would not apply to the current application. Ms. DeVore stated she did see the situation differently as there is a parent parcel tied to all and could prohibit further subdivision of the property.

Chairman Wheatley requested that Mr. Robertson review the Application and he felt it would be in the Applicant’s best interest to obtain a legal opinion, which could be submitted to the Commission, that may concur with the Applicant’s current interpretation.

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

Lands of Susan Dibonaventure

Minor Subdivision off a 30-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 36.36-acre parcel into five (5) lots including the residual lands. Proposed Lot 1 will contain 1.2265-acres +/-, Proposed Lots 2, 3, & 4 will contain 1.0001-acres +/-, and the residual lands will contain 32.13-acres +/- . Lots 1, 2, 3, & 4 will all have access through a proposed 30-ft easement located on the south side of Stockley Road (S.C.R. 280) and the residual land will maintain access from an existing entrance located on the south side of Stockley Road.

A shared use and maintenance agreement has been included in the Plan. The Minor Subdivision complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-5.00-54.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, staff are requesting final approvals 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 30 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.

OLD BUSINESS

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 application which had been deferred since August 10, 2023.

Ms. Wingate moved that the Commission recommend approval of Ordinance No. 23-11 to change the Future Land Use Designation of Parcel # 234-6.00-6.02 from its current designation as being within the Low-Density Area to being within the Coastal Area within the County's Future Land Use Map based on the record made during the public hearing and for the following reasons:

1. The property is currently designated as a "Low Density Area" within the County's Future Land Use Map.
2. The Future Land Use Map designates the property on the opposite side of Beaver Dam Road as "Coastal Area" and there is some existing "Coastal Area" land mapped on the same side of Beaver Dam Road.
3. There was no opposition to this proposed amendment to the Future Land Use Map.
4. This property is located along Beaver Dam Road in an area that has developed with multiple large subdivisions around it. Presumably, since these subdivisions preceded the current Future Land Use Map, there was no consideration about mapping them to direct their future development and they were left within the Low Density Area. However, they are also consistent with the Coastal Area designation and could have been given that designation at the time the current Future Land Use Map was drafted and approved.
5. For all of these reasons, it is appropriate to recommend that Parcel No. 234-6.00-6.02 be changed to the "Coastal Area" on the Future Land Use Map.
6. In addition, in recognition of the existing development in this area and the nearby mapping, it would be appropriate for the County Council to separately consider changing all of the land in this triangle between Fisher Road, Hopkins Road, and Beaver Dam Road to the Coastal Area in our Future Land Use Map.
7. For all of these reasons, I move that the Commission recommend approval of Ordinance No. 23-11.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of ORD 23-11 to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02, for the reasons stated in the motion. Motion carried 5-0.

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

The Commission discussed the Application which had been deferred since August 24, 2023.

Mr. Butler moved that the Commission recommend approval of C/U 2446 Tijmen van den Bosch for greenhouses and employee housing based upon the record made during the public hearing and for the following reasons:

1. The property is zoned AR-1, Agricultural Residential. The proposed use will consist of large greenhouses with accessory and support uses and facilities, including employee housing, packhouses for packaging the products grown in the greenhouses, irrigation ponds, water tanks, storage tanks, and other uses and structures necessary to support the primary use as a large commercial greenhouse facility.
2. The site is located along the Route 404 Bypass around Bridgeville, which is an appropriate location for a large-scale agricultural use with its inherent trucking needs like this project.
3. This location is in an area of Sussex County just outside of Bridgeville that has evolved with multiple large-scale agricultural uses over many decades, including the OA Newton facilities, Perdue Farms' grain storage facilities, T.S. Smith's agricultural operations and store, and more recently Mountaire Farms' plans to develop its own grain storage facilities and rail spur. This use is consistent with these ongoing large-scale agricultural uses in this area of Sussex County.
4. The Property is designated as Developing Area on the Sussex County Future Land Use Map. This use is appropriate within this Area according to that Map.
5. The property is adjacent to the Town of Bridgeville, and the Town has submitted a letter in support of the Application, stating that, "The proposed application fits well with the surrounding properties, as this area is already primarily composed of larger-scale Commercial/Industrial and agricultural uses and is also designated as such in Future Land Use (Map 10-3) in our 2018 Comprehensive Plan." The Town also recognized that this use is consistent with its history of strawberry production, noting that Bridgeville was once known as "June Strawberry Capital of the World" following the construction of H.P. Cannon & Son's produce packing. The Town strongly supports this application right next to its borders.
6. The Secretary of the Delaware Department of Agriculture has supported this Application, stating in a letter to the Commission that this Application "will focus on the production of strawberries

using the newest greenhouse technologies from the Netherlands. Bosch Growers' sustainable technologies enable year-round local food production that conserves water resources, reduces agricultural inputs and carbon-sourced energy use, decreases food transportation miles to consumers, and targets zero waste." The Secretary concluded his letter with this statement: "Bosch Growers will be a valuable addition to Delaware's economy and agriculture industry. I am pleased to offer the Department of Agriculture's support" Several State legislators also provided support for this project.

7. The Department of Transportation has determined that the traffic generated by this use will be "Negligible".
8. There was nothing in the record to suggest that this use will have any adverse impacts upon neighboring or adjacent properties or residents or visitors to Sussex County.
9. The proposed use supports one of the primary goals of Sussex County: to conserve the county's agricultural economy. It also complies with the Comprehensive Plan's Vision Statement: "We appreciate and seek to preserve [Sussex County's] unique natural, historical and agricultural character while fostering new economic opportunities, community vitality and desirable growth through strategic investments and efficient use of County resources."
10. This recommendation is subject to the following conditions:
 - A. The primary use shall be large commercial/industrial greenhouses for growing fruits or vegetables with accessory and support uses and facilities, including employee housing, packhouses for packaging the products grown in the greenhouses, irrigation ponds, water tanks, storage tanks, and other uses and structures necessary to support the primary use as a large greenhouse facility.
 - B. Storage of materials and equipment associated with the use shall be permitted. The storage areas shall be shown on the Final Site Plan.
 - C. 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.
 - D. This project shall comply with all DelDOT entrance and roadway improvement requirements.
 - E. There shall be adequate parking on the site in compliance with the parking requirements contained in the Sussex County Zoning Code. The location of the vehicle parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
 - F. One lighted sign shall be permitted. It shall not exceed 32 square feet on each side.
 - G. Any dumpsters or trash containers shall be screened from the view of neighboring properties and roadways. The location of these trash containers shall be shown on the Final Site Plan.
 - H. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - I. A revised Preliminary Site Plan either depicting or noting these conditions shall be submitted to the Planning & Zoning office.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2446 Tijmen van den Bosch, 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, Chairman Wheatley - yea

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).

The Commission discussed the Application which had been deferred since August 24, 2023.

In regard 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.

The Commission discussed the Application which had been deferred since August 24, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2379 Lewes Saddle Ridge Solar I, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of undeveloped land that will preserve it from more intensive development. The solar array will be located on approximately 6.26 acres of a larger 7.06-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. There were concerns stated during the hearing about this solar array facility having negative impacts on the surrounding properties and property owners. These concerns are not supported by substantial or well-defined evidence in the record. Instead, the information supplied by the Applicant's experts suggests that the solar array will not adversely affect the neighborhood, and

there are solar array facilities throughout not only the United States but also here in Sussex County that indicate that locations such as this are appropriate for this type of use. According to Planning & Zoning Staff:

- There have been 51 approved solar array applications in Sussex County; of these 13 have received final approval from County Council.
 - Of these 13 sites:
 - 2 of them are within 1/4 of a mile of a village like Roxana or Lincoln.
 - 4 of them are within 1/4 of a mile of a subdivision.
 - 3 of them are within 1/4 of a mile of a town boundary.
 - 2 of them share the boundaries of a subdivision.
5. Based on the evidence and with the conditions imposed in this recommendation the proposed use will not have any adverse impact on the neighborhood.
 6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
 7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
 8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
 9. There will be a buffer of planted vegetation along the boundary of this site along adjacent Parcels 6.03 and part of Parcel 6.00 as well as the entire Ridings Development to screen it from view as shown on the Preliminary Site Plan.
 10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
 11. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar array and shall provide contact information in case of emergency.
 - E. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.

- H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- I. There shall be a forested buffer along the boundary of the parcel adjacent to Parcels 6.03, the Ridings development buffer, and Parcel 6.00 to the point where the 25-foot wetlands setback begins. No buffer is required for Parcels 6.01 and 6.02. The buffer shall consist of continuous evergreen trees at least six (6) feet in height, planted in a staggered arrangement to effectively achieve a visual buffer. The buffer shall be 20 feet wide and for every 100 linear feet, there shall be a minimum of 15 trees. All new trees shall be guaranteed throughout the existence of this conditional use. This shall be shown, with the requirements stated, on the Final Site Plan.
- J. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2379 Lewes Saddle Ridge Solar 1, LLC 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, Chairman Wheatley - yea

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.

The Commission discussed the Application which had been deferred since August 24, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2380 Dagsboro Thorogoods Solar I, LLC for a solar farm in the AR-District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 26.23 acres of a larger 30.36-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.

4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, it materially complies with the requirements of that Ordinance.
5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted vegetation along the boundary of this site facing Thoroughgoods Road and the east and west front corners of the site to screen it from view as shown on the Preliminary Site Plan.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - E. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - I. There shall be a 30-foot-wide buffer of planted vegetation along the boundary of this site facing Thoroughgoods Road and the east and west front corners of the site as shown on the Preliminary Site Plan. This buffer shall consist primarily of spruce trees spaced at 20-foot intervals within this buffer area. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.

- J. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2380 Dagsboro Thorogoods Solar 1, LLC for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

PUBLIC HEARINGS

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

C/Z 2015 G&M Route 24, LLC - A Delaware Limited Liability Company and/or Its Assigns

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.44 ACRES, MORE OR LESS. The property is lying on the south side of Turquoise Lane, and the east side of Healthy Way; approximately 900 feet southeast from the intersection of John J. Williams Hwy. (Route 24) and Lexus Lane. 911 Address: N/A. Tax Map Parcel: 334-12.00-57.11.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Exhibit Booklet, the Preliminary Site Plan, the Staff Analysis, letters received from the Applicant, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that one letter of support, no letters in opposition, and three mail returns were received for the Application.

The Commission found that Ms. Mackenzie Peet, Esq., with Saul Ewing, LLP, spoke on behalf of the Applicant, G&M Route 24, LLC; that also present were Mr. Michael Glick, representative of the Developer, Mr. Bruce Leshme, General Counsel for Beebe Medical, Mr. Mike Fiore, Administrative Director for Lewes Surgery Center (the anticipated tenant), Mr. Jamie Sechler, Professional Engineer with Davis, Bowen & Friedel, Inc., and Ms. Lauren Townsend, Landscape Designer for the Developer. Ms. Peet stated that Beebe Medical Center, Inc. is the record owner for the property; that the Applicant submitted the application on June 8, 2023, accompanied by a request to expedite; that the Application intended to deliver much-needed medical and office space to accommodate an ambulatory surgical center; that to allow this intended use, the Applicant seeks to rezone the 12.44-acre parcel from AR-1 (Agricultural Residential) to I-1 (Institutional); that Exhibit E contains the concept plan for the proposed development; that the plan reflects the proposed development of two approximately 60,000 sq. ft. medical and professional office buildings to be laid out as a medical office complex; that the plan notes the availability of public water and sewer; that the conceptual plans reflect the two proposed office buildings, with ample and Code compliant parking, contemplated plantings and landscape buffer proposed to the adjacent residential uses; that the intention is to develop the project in two phases; that the first phase is to include the development of the first building, which will accommodate space for

the anticipated Lewes Surgery Center; that thereafter, the second phase will develop a similar professional medical office; that ambulatory surgery centers (ASC's), offer more cost-effective healthcare solutions than traditional hospital systems; that this results in reduced medical expenses for patients, shorter wait times, and increased accessibility for patients in need of specialized medical procedures; that Lewes Surgery Center (LSC) provided a letter of support, as did Beebe Medical Center, both of which in part emphasized Lewes Surgery Center's need for more space, because of its average utilization of 93% to 99%, its desire to expand its services in a location central to Lewes and Rehoboth, but also to allow for the ability to serve a larger region in Milton and Georgetown; that the site offered an attractiveness due to its proximity to other healthcare providers; that the end user of the second builder is currently unknown; that should the demand change, the idea is for the second building to be used for another permitted use in the I-1 District; that on September 1, 2023, the Applicant submitted a Supplemental Exhibit Packet with Exhibit G and the surrounding conditions map reflecting surrounding uses, which included other institutional uses; that nearby residential developments are Sterling Crossing, Arbor Landing and Seaglass at Rehoboth, as well as many other institutional and commercial uses as well; that the exhibit contains the 2020 State Strategies Map, confirming the presence of the property in Investment Level 1 & 2 as provided in the Comprehensive Plan; that it is the State's intent to use its spending and management tools in both areas, and specifically to maintain and enhance community character to promote well designed and efficient new growth, and to facilitate redevelopment in Investment Level 1 areas, and to promote well designed development in Investment Level 2 areas; that the County's Future Land Use Map also confirmed the Future Land Use designation as Commercial; that the map also reflects the site's location as being adjacent to other properties zoned Commercial and Coastal Area; that the site is located adjacent to properties zoned AR-1 (Agricultural Residential), GR (General Residential), CR-1 (Commercial Residential), and I-1 (Institutional); that the site is not located within any Wellhead Protection Areas or Excellent Groundwater Recharge Areas; that Exhibit 2 contact the department's review letter of the DelDOT Service Level Evaluation Request; that the letter explains the proposed use and site are located within the Henlopen Transportation District (Henlopen TID); that the Applicant will be required to participate in the Henlopen TID; that within §115-83.4 it lists the permitted uses for the I-1 (Institutional) District; that this section confirms the intended surgical center and related uses are permitted as a matter of right; that the purpose of the I-1 District is; *"to recognize the public, quasi-public and institutional nature of particular parcels of land and provide standards and guidelines for their continued use and future development, and to ensure that the public, quasi-public, and institutional structures and developments in the district will be compatible with surrounding districts and uses."*; that the proposed use is consistent with the purpose of I-1 and proposing permitted uses for ultimate operation on the site, subject to the approval of the requested Change of Zone and site plan approval; that all proposed uses, both institutional and commercial, will be compatible with the districts nearby, that support similar and complementary institutional uses; that the proposed rezoning and the proposed use are supported by, and are consistent with the County's Comprehensive Plan; that the County's 2045 Future Land Use Map identifies the property as being within the Commercial Area; that the requested Zoning Map Amendment is to the Institutional District, which is an applicable Zoning District in the Commercial Area; that the Commercial Area is a growth area, where the Comprehensive Plan encourages the County's most concentrated forms of new development, including higher density residential development and most commercial development; that as the plan provides, Commercial Areas include concentrations of retail and services uses that are mainly located along arterials and highways, which is consistent with the site, being proposed off Rt. 24 and near Rt. 1; that the plan provides the institutional and commercial uses, like that proposed, may be appropriate depending on the surrounding uses; that the surrounding area has pre-existing institutional and commercial uses, making the proposed use, subject to the zoning change, appropriate and consistent with the surrounding uses; that Chapter 9 of the Plan, "Economic Development", identifies the healthcare sector as a leading employment sector in the County; that the plan recognizes it as one of

the fastest growing sectors in the County, especially considering the County's aging population, and the present and continued need to provide healthcare services to Sussex County residents, and to remain competitive in the healthcare industry; that the development of the medical center campus will generate numerous new skilled job opportunities for skilled professionals in Sussex County, and within the letter provided by the Lewes Surgery Center, it states that the ability to provide for more space will allow for the credentialing of surgeons in the community, being a benefit to the present and future residents of Sussex County.

The Commission found that Mr. Bruce Leshme, General Counsel & Chief Legal Office for Beebe Healthcare, spoke on behalf of the Application. Mr. Leshme stated that he had been with Beebe Healthcare for 10 years, and currently resides in Lewes; that the site is the remaining parcel from land purchased in 1998 and 2000; that at the time the parcel consisted of approximately 34 acres; that the proposed project would be the third and final phase of the site's development; that the land currently hosts their Bookhammer Outpatient Center, which is the one-story building, facing Rt. 24; that this is the location of the Beebe Outpatient Surgery Center, laboratory services, imaging services, and recently opened, Breast Health Center; that in addition, the land also hosts the Rehoboth Medical Arts Building, which sits between the Bookhammer building and Healthy Way; that the Rehoboth Medical Arts Building is a three-story building; that the Tunnell Cancer Center occupies the entire first floor; that the second and third floors are occupied by various physician offices, and medical offices; that some of the office are for Beebe practices and others are for independent practices; that proposed for this final phase is two 60,000 sq. ft. buildings; that each building will be three stories; that they intend for the Lewes Surgery Center to relocate from its current location in Lewes to the first floor of one of the proposed buildings; that they intend to occupy the second and third floors with Beebe medical offices, and adjacent to the site, Beebe has recently opened their specialty surgical hospital, which is located on a 20-acre parcel, facing Warrington Rd.

The Commission found that Mr. Mike Fiore, Administrative Director for Lewes Surgery Center, spoke on behalf of the Application and strictly to the needs of the center. Mr. Fiore stated the center opened in 2006; that between 2006 and 2017, the center stayed in approximately 80% utilization; that between 2017 and 2022, the center exceeded 90% utilization; that the center is now to the point where, the center consistently remains between 93% and 99% utilization; that during a recent board meeting for the Lewes Surgery Center, six out of the 13 surgeons who operated in August, exceeded 100%; that this means the surgeons are exceeding their blocked time to accommodate patients, due to their need and because they cannot be pushed out any further; that the opportunity is a unique opportunity for Lewes Surgery Center to work in concert with Beebe, because of RSH, previously mentioned by Mr. Leshme; that it would be a huge benefit to the community and their patients, to have a surgical facility at that location; that with the accommodations of the space, it will allow them to meet the need; that currently the practice is a multi-specialty surgical center; that they have ophthalmic, pain management, general surgery, plastics, and orthopedics; that the orthopedic practice will be added four new surgeons in 2023; that two additional surgeons have been added to the Lewes community, and are very much needed; that they have other specialties, such as GI [Gastrointestinal] and OBGYN [Obstetrics & Gynecology] within the community; that those specialties are not located currently at the center; that they have existing surgeons who have been credentialed, and they are attempting to find accommodation for time; that they have a waiting list of five additional community surgeons, who are requesting time, but they unfortunately had to deny them; that they must expand the center, either by hours, which is not beneficial for the ASC or the patients, and their goal is to expand the current space to accommodate the utilization that they are currently experiencing and will continue to have.

Ms. Peet stated that to conclude the Applicant is seeking to rezone the property from AR-1 (Agricultural Residential) to I-1 (Institutional); that if the rezoning request were approved, the site would operate as

an ambulatory surgery center and would provide much-needed healthcare services to present and future Sussex County residents.

Mr. Collins questioned how quickly the development could begin, and stated if approved, the Commission would take into consideration potential concerns about adjoining residential developments.

Ms. Peet stated she understood the Commission would want to see buffering; that they had conceptually proposed down-screened lighting; that all of those concerns would be taken into consideration and the earliest the development could begin would be as soon as they could deliver to market.

Ms. Wingate stated she feels that everyone knows what the current need is; that her niece is a doctor at Beebe and she has heard of the need first-hand.

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

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

In relation to C/Z 2015 G&M Route 24, LLC – A Delaware Limited Liability Company and/or Its Assigns. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

ORD 23-05 (Master Plan Zoning District)

AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance as it was introduced to County Council and the PLUS response comments dated, March 22, 2023, from the PLUS meeting held in February 2023. Mr. Whitehouse stated one comment letter which was received earlier in the day.

Mr. Vince Robertson, Assistant County Attorney, spoke on behalf of the Ordinance Application. Mr. Robertson stated the proposed Ordinance was for the benefit of everyone; that the Ordinance had been in the works for quite some time, dating back to the 2018 Comprehensive Plan; that they wanted to look at a way, for those who have larger parcels for development, to have more creativity and flexibility; that this would be provided to not only the developer, but also to the County; that this would avoid constantly having similar looking subdivisions; that they wanted to create a way to create larger mixed-use developments, that incorporate commercial uses, institutional uses, mixed-use residential and interconnectivity on a fairly large scale, with greater density than one could get currently under base zoning; that the Master Plan District would allow all of this to be packaged into one Zoning Application; that the Application would be dealt with at a high level when it would go through the public hearing process; that the Planning & Zoning Commission would handle the Site Plan Review stage on the back end, without public hearings; that the Staff Review would provide the more particular details of the plan; that they did look for a model to use, because it is fairly complex; that the City of Dover has a Master Plan Ordinance; that they took the City of Dover's Master Plan Ordinance, deconstructed it, and then reconstructed it to hopefully work for Sussex County; that the Master Plan Zoning Ordinance is not intended to replace RPCs [Residential Planned Communities], subdivisions or more typical types of commercial development; that the difference between the Master Plan and an RPC is the Master Plan is on a larger scale; that the project must consist of 200 acres or more; that the Ordinance does allow for a

large density, at potentially 12 units to an acre; that the Ordinance allows for more intensive commercial or institutional uses than an RPC would; that within an RPC commercial is permitted, but the commercial uses are limited; that the Ordinance is intended to incorporate the following areas, as part of a single unified development, being Residential Areas, Neighborhood Commercial Areas, Civic Areas, and Professional, Medical and Financial Office Areas; that not all of the areas are required to be used, but some of the areas must be used; that the Ordinance is not an opportunity for to develop a giant residential subdivision at 12 units to the acre; that if the developer is going to propose residential, they need to also provide commercial, civic or professional areas as well; that the also considered is the large scale is enough to promote interconnectivity; that if a project were to be located between two State maintained roads, the idea would be that a State maintained road would be installed in the middle of the project to provide interconnectivity between the two State maintained roads, but would also be located within the development; that from the central State maintained road, private roadways were spur off from it; that these roadways would be private, but dedicated to public use; that the requirements are that the project must be a minimum of 200 acres; that 20% of the land area must be designated to a non-residential use; that the density cannot exceed 12 units an acre; that the land area shall have access to an existing or planned arterial or collector road; that the land area shall be served by existing or planned infrastructure, such as sewer and water; that the proposed MPZ must be generally consistent with the Comprehensive Plan; that they recently added the requirement that 20% of all multifamily dwellings shall be set aside for Sussex County's Rental Unit dwellings; that the Applicant will receive more design flexibility, and the County will receive more rental units under the Affordable Rental Program; that there are also open space requirements included; that the process is a four step process being, a pre-application meeting, the public hearings before the Planning & Zoning Commission and County Council, administrative review of the plans and Site Plan review by the staff; that the pre-application meeting would be similar to the current process; that staff would sit down with the applicant, engineer and/or attorney to discuss the project and potential design changes; that this would also be the time the application would go through PLUS review; that next, the application would proceed through the public hearings before the Planning & Zoning Commission and County Council; that at this time, there will not be a detailed site plan provided; that instead a general, overall Master Plan would be submitted; that he Master Plan will define what the overall and Spatial Distribution Plan will look like; that the plans will reflect where the densities are going to be placed; that with that there will be a Master Manual submitted, which are the design guidelines that a developer is utilizing in the Master Plan; that there are 14 different elements that will need to be shown in the Master Manual; that the Master Manual will govern the project from the beginning to the end; that the project will be required to remain consistent with the Master Manual; that MPZ's would be advertised for public hearings, similar to a Change of Zone application; that the next step is the administrative review of the plans, which is performed by the Planning & Zoning Commission; that this process would be similar to how the Commission reviews site plans currently; that at this stage there would be a Implementation Plan and an Implementation Manual, which would provide much more detail in the area they are looking to get approved; that it must remain consistent with the Master Manual and design plans provided during the public hearings; that this would be vetted by staff; that if at any point there would be a material change, it would return the project to the public hearing process; that no major changes may take place without first going through a public hearing; that the design process begins more general and then becomes more specific as it goes through the process and the administrative review is where housing type, housing location, topography, streets, roads, sidewalks and landscaping would be reviewed;

Chairman Wheatley questioned if the information and requirements provided in the Master Manual and the Spatial Distribution Plan proffered by the Applicant and approved by the staff, or is the manual negotiated with staff, or is approved by the Planning & Zoning Commission.

Mr. Robertson stated that the Master Manual is a manual the developer will initially prepare, most likely

in draft form; that its design is be in a narrative and graphic form; that it will be similar to a Zoning Code that governs a project; that the manual will stated what the developer plans to do, and the rules they intend to follow going forward with the project; that conversation and potential negotiation will be had at the initial level of the preapplication meeting; that the Master Manual will then be presented the Commission and County Council; that if there is anything about the plan that the Commission or County Council does not like, there will be an opportunity to change it; that MPZ's will be similar to RPC's in the fact that conditions can be placed upon it, or can be denied outright; that the Master Manual and the overall Master Plan will act like a Zoning Code for the project; that once a project is approved at the public hearing stage, the project will return for administrative plan review, where the Commission will review to ensure the plans and project implementation complies with the Zoning Code [Master Manual] that was established at the public hearing; that this process would be similar to site plan review performed currently by the Commission; that if a developer wanted to propose a shopping center, with residential and mixed commercial use, the developer would be required to apply for commercial rezoning; that public hearings would be required before Commission and County Council; that the developer would then be required to return for the RPC or subdivision request with additional public hearings; that it would also not have any interconnectivity requirement, and the proposed MPZ Ordinance addresses all of these thing globally at one time.

Chairman Wheatley stated the public has stated multiple times that they had not been provided and overview and the proposed MPZ Ordinance would provide the Commission a tool for that purpose.

Mr. Robertson stated the Commission has seen these circumstances over time, where smaller parcels are claimed piece by piece for smaller projects, when everyone anticipates that the smaller projects are part of a larger plan; that the MPZ will provide the framework to have flexibility to provide the larger plan, to provide interconnectivity and to involve State maintained roads.

Mr. Collins questioned whether the developer will initially fund the road, that will eventually be supported by DelDOT.

Mr. Robertson stated the funding will depend on whether or not the site is located within the TID [Transportation Improvement District], which will be determined during the early stage of the pre-application meeting; that there will be coordination with DelDOT and the Applicant; that the MPZ is not requiring for all the roads within the project to be DelDOT maintained; that if DelDOT has interconnectivity scheduled in the future, through the CTP [Capital Transportation Program], there can be a nexus between the developer, the development and DelDOT to construct the interconnectivity, and there is not one definite answer, but it is a subject that would be taken into account.

Mr. Robertson stated that the final step in the process would be administrative plan review, which would be for the final, detailed, technical site plan review; that this will be performed by the staff within the County's Planning & Zoning and Engineering departments at this point, as the Commission will have already approved the general concept plan; that the process the Application will still be required to go through the PLUS process; that the project will still be required to go through all agency reviews; that project approval would be valid for five years to get underway for the time the site plans are approved; that Mr. Robertson presented to the Commission a visual example of a Spatial Distribution Plan, which is intended to reflect the density throughout the project; that this will allow the public and the County to ensure the design makes sense, using generally good planning, with lower densities located toward the outside perimeter of the project, and high, more intensive uses located on the interior of the site; that this is also an opportunity to ensure the project is located along major arterial roadways, or roadways that could handle the intended commercial uses; that this will provide the Commission a general visual of what the project will look like; that the manuals will contain more details regarding each of the areas;

that currently it is tough to propose mixed use without the need to request a Conditional Use; that any material changes to the approved plan would require the project to return to the public hearing stage; that they have been discussing the MPZ with County Council for approximately two years; that they have received input and constructive comments from people who would be required to implement the MPZ; that he requested to read the provided comments, as the comments potentially may become recommendations made to County Council; that the first comment was regarding eligibility requirements, stating: *There is some confusion as to where this could go. It was referenced in the Whereas clause, but we would like to add it into the Ordinance, and that would be to add that it is clearly in the Coastal Area, the Developing Area, Town Center Area, and Commercial Area;* that this requirement would be to mirror the Whereas clause; that another comment was made regarding the Spatial Distribution Plan, stating, *we would like to clarify that in addition to higher densities, the commercial areas or intensive uses should be centrally located and/or along main roadways consisting with higher density residential uses;* that this would allow commercial uses to be placed in the middle or along roadways, such as Rt. 1; that comments for the eligibility requirements stated, *consider changing the reference from "existing" or "planned" arterial or collector roads, and to use "major arterial roadways and collector streets";* that the term originally used was not defined in the Code; that major arterial roadways and collector streets are defined within Chapter 99; that in regard to the Development Principles and Standards, there was a suggestion made to consider *adding a new No. 11 to state that all collector roads, or the similar term, within the MPZ must be constructed to DelDOT standards and State maintained, or move and copy the requirement from elsewhere at Line 317 to Line 322, and that all other roads within the MPZ are dedicated to public use and must remain open and accessible to the public at all times;* that the intended project would be large enough, providing different types of uses to people inside and outside of the community, into the commercial, civic or professional areas; that due to this, they want to make sure that all roads are dedicated to public use; that initially, there was a requirement that stated all open space shall be located to the fronts of buildings; that after meetings and discussions with staff it was decided that open space statement should be a goal, not a requirement; that they have changed the wording from "shall" to "should"; that there initially was a service alley requirement, to allow for trash and miscellaneous items to be located in the back; that after discussions, it was found to be a good opportunity, however, would be a tough requirement to comply with given the geometry and various other factors; that in Line 304, it states that consideration should be given to allowing these areas to have frontage on existing DelDOT rights-of-way, instead of just an internal main street; that an area is located along Rt. 1, the developer should be able to provide more intensive uses along Rt. 1; that Lines 304, Line 358, and Line 392 are related to Parking Design; that there was a suggestion made that it be more flexible and be designed so that off street parking is screened from rights of ways and non-commercial uses; that the buildings and landscape areas are more visible than large off-street parking lots; that previously there was a requirement that parking lots not be visible at all or not to be located in the fronts of buildings; that again, due to geometrical and other planning reasons, it may not always be the best; that in Line 317 there is consideration being given to change "shall" to "should", regarding the location of commercial areas and how they are oriented to main streets; that in Line 330, 364 and 398, consideration should be given to deleting the item that states services drives shall be designed and used for loading and trash collection, or change it to say whenever possible, service drives shall be designated or designed and utilized for loading and trash collection; that there was a prohibition against drive-thru uses in the neighborhood commercial area; that the prohibition originated from the desire to have the locations to be more walkable; that the goal was to have people walk around the community; that a drive-thru can be more convenient in terms of pharmacies and banks; that in Line 448, the Master Manual refers to a Master Transportation Plan, to be approved by DelDOT; that they have come to realize a Master Transportation Plan is not an item recognized by DelDOT; that they now suggest replacing it with Traffic Impact Study for the MPZ as approved by DelDOT; that Line 466 to 471 contains a requirement listed in the Master Manual that there be reference to architectural details; that after discussions they concluded that Sussex County does not dictate architectural styles; that the

project would be large enough, that the project would last over a long period of time; that over that time period, architectural tastes and styles might change from the time it goes through the public hearing until the time the project is built; that in Lines 489 to 491 it provides regulation and design of lighting fixtures, street lighting and signage; that those items are not so specific that it needs to be considered at the County level; that they added confirmation that any MPZ will be subject to the Resource Buffer Requirements; that a similar project is Eden Hill, located in Dover, within their Traditional Neighborhood Design Residential District; that Eden Hill provides a large professional office building, a commercial district for medical and retail sections and residential; Eden Hill had a general overall Master Plan, which they refer to as a Pattern Book and there was a comment letter submitted by Pennoni.

Mr. Whitehouse stated the drafted Ordinance is a good summary; that throughout the whole process, they have received technical input from the State and the PLUS comments, and the State was very supportive of the objective.

Mr. Collins questioned if the Ordinance inserted any requirements to protect forested areas.

Mr. Robertson stated that within Line 235, located on Page 7, the Ordinance addresses design principles; that it states *the design for the entire zone shall follow an environmentally sustainable approach to the development to accomplish this design shall take advantage of natural drainage patterns on the site and minimize unnecessary, earth moving, erosion, tree clearance, and other disruption of the natural environment, that existing vegetation and habitat shall be preserved wherever possible, wherever extensive natural tree cover and vegetation do not exist or cannot be preserved on the site, landscaping shall be undertaken in order to enhance the appearance of the development*; that the Commission will also have the opportunity to place conditions on it and/or require changes to be made to the Site Plan; that because MPZ projects can go to 12 units to an acre, there will be some give and take; that an example of this is, if one had a subdivision and were locked into two units an acre, it becomes much more difficult, without incentives, do provide tree preservation; that if there is a wooded lot for an MPZ, the developer can work around those areas of existing woods and still achieve a fairly high density; that the MPZ fosters this capability more than any other tool the County Code currently offers; that with Residential Planned Communities (RPCs), one would be stuck with base zoning; that RPC's provide for flexibility, but if the zoning is MR (Medium Density Residential), the Applicant is still limited to four units to the acre; that the MPZ will allow for 12 units to the acre, however 12 units an acre is not expected to be proposed across a entire 200 acre parcel, and the design principles are intended to limit that ability.

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

Mr. David Hutt, Esq., with Morris James, LLP spoke generally in support of the Application, however, presented with some concerns. Mr. Hutt stated that the proposed Ordinance is similar to LPD (Land Use Planning Design), and other types of overlays; that essentially the MPZ is creating a unique zoning district for the parcel itself; that regardless if that is called a Master Manual or a Spatial Distribution Plan, those plans become the Zoning Code for that parcel of land; that he felt with an Ordinance like this, it cannot be too specific; that the County has seen this problem with the C-4 (General Commercial) Ordinance; that he believe people believed it would be a Commercial RPC ordinance; that the Ordinance has not been proven to be successful, partly due to the requirements found in it; that the C-4 Ordinance has already been amended to change the ratio of commercial and residential; that the use of "shall" within the proposed Ordinance was discouraging to see; that he believed the individuals should be allowed a great deal of flexibility; that he is concerned about the requirement range of 20% to 50% for commercial areas, professional office, medical and finance area or civic area; that he could foresee, certain circumstances along a major arterial road, where it may be appropriate to have a greater degree of the Commercial and Civic mix versus the residential mix; that to pigeonhole the requirement to be

between 20% to 50% seems like too much, making the tool unusable; that he felt the requirement of only a minimum of 25% residential or 20% of all the other items, so that it allows for a great deal of flexibility across all the various uses; that another example of this, is the proposed maximum of 10% requirement for civic areas; that he believed if one were to propose development centered around a large civic area, the County would welcome it, similar to the development of Freeman Stage; that there are very limited opportunities in the Sussex County Zoning Code for the mixture of residential and commercial uses; that C-4 Zoning is the only zoning district to permit this, unless the Applicant went through the Conditional Use process; that within Line 198, located on Page 6, within the definition of Spatial Distribution Plan, Subsection A, where it states lower density development radiating away from higher density to development radiating away from higher density to development at the interior of the MPZ; that he would suggest striking "at the interior of the MPZ"; that it would depend on the site, whether or not that can occur; that he believe a change was made to Subsection B, however was not changed within Subsection A, making the two inconsistent; that Mr. Robertson spoke to adding a provision in the Eligibility Requirements to be located in one of the four Growth Areas he identified; that he suggested the requirement be expanded, as there are areas in Sussex County that are situated along major arterials, having water and sewer service available, which may not presently included within a required Growth Area; that he suggested and was additionally suggested by the Office of State Planning Coordination and the Pennoni letter, that the whereas clause, at the beginning, be modified in Lines 19 through 22; that the felt MPZ projects are appropriate to be located within the four Growth Areas, however, given the right area of land, with right additional circumstances, it could also be appropriate in other locations as well; that the Planning & Zoning Commission and County Council can offer protection of this, as Change of Zone applications are where they have the most discretion; that MPZ's are zoning classification requests; that if the Commission does not like the Master Manual or the Spatial Distribution Plan, it can be recommended that County Council deny the request.

Mr. Robertson stated that he had discussions regarding the discretion the Commission and County Council will have; that what had been provided was based on staff recommendations; that Mr. Hutt's comment was more to policy for the Commission to consider; that he tended to agree with Mr. Hutt; that MPZ projects are intended to be large in scope; that some projects may be large enough that they are self-contained, being to a scale that would create their own infrastructure, water and sewer;

Chairman Wheatley stated that on the western side of the County, there are large farms of 500 to 600 acres, where someone could potentially want to Master Plan a project; that the location might not be located within a Town Center, but could be located close enough that utilities would make sense due to the size of the project; that he could foresee instances where an MPZ could be useful in these areas and he would not want to limit the availability of it.

Mr. Butler stated that he felt more self-contained projects would be beneficial for the western side of the County; that Heritage Shores is self-contained with golf courses and its own shops, and that he believed Heritage Shores was developed on 400 acres.

Chairman Wheatley stated that water and sewer service will play a key role for the Ordinance; that I the parcel is large enough, the Applicant may need to build their own plant, where they have to augment the County's or someone else's plant and these are things that can be done.

Mr. Robertson stated that the State would not be in favor of this based upon their Policies & Strategies for State Spending within Level 4 areas, however, if the site is large enough, it would be able to sustain the improvements that the State would require.

Mr. Collins stated he did not believe residents would want higher density commercial to be located

inside of the community, for the use of the community and the public and would be better suited for the perimeter of the property.

Mr. Hutt stated that he mostly had western Sussex County in mind with his statements, because the Coastal Area, being one of the four Growth Areas mentioned does not exist in Western Sussex County; that he also wanted to address within the Eligibility Requirements, on Page 7, Lines 221 and 22, which states at least 20% of all multifamily dwellings shall be set aside as Sussex County Rental Program (SCRIP) units, governed by Chapter 72; that he felt this concern reverts back to the ratios and requirements; that the SCRIP Ordinance has been in place for a long time; that the Ordinance does not have a track record that would indicate that it is something feasible; that he recognizes the importance of housing; that he suggested that part of the Zoning District say that there must be an affordable housing component; that there are many ways to approach the issue, without locking people into 20% of all multifamily dwellings being a part of the Sussex County Rental Program and the MPZ would be up to the Commission's discretion, as to whether or not the project had addressed affordable housing at the right level.

Mr. Collins questioned if the Ordinance could be modified to allow for some of the housing could be affordable housing to limit the use of housing for short-term rentals and he stated that generally, ownership, even for lower-income housing, tends to be better for the communities that they are in.

Mr. Hutt stated that historically, the County has not regulated short term rentals and that doing so, may be a slippery slope, as it is difficult to enforce; that with how the Ordinance is currently laid out, he felt there would be good opportunities; that there are government credit sponsored programs; that those programs may be interested in a five acre block, because they know there are certain amounts of credits and tax benefits, however, that would not help the developer meet the 20% requirement; that his last concern was in regard to drive-thru; that a parent with a sick child does not want to walk into the pharmacy, they want to take advantage of the drive-thru; that the question is, how specific does one get, before narrowing the scope down too much that it no longer is a usable tool; that he does understand the fear of not regulating the MPZ enough; that he does feel that should be a lesser fear, since the application will be for a Change of Zone, allowing the Commission the greatest amount of discretion, with the ability to place conditions; that he is in support of the Ordinance, as he feels the more available tools, the better and he hopes that the tool can be as useful as possible for all parts of Sussex County.

Mr. Robertson stated it presents an opportunity for the Commission to become engaged in the process, being proactive in a conversation of how the project will look in the end through Conditions of Approval or changes to the Spatial Distribution Plan and Master Manual. (2:45:47)

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

In relation to ORD 23-05 regarding the Master Plan Zoning District. Motion by Mr. Collins to defer action for further consideration, leaving the record open for ten (10) business days to allow for additional written public comment regarding the Ordinance Application, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

ORD 23-06 (Through Lots)

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I, SECTION 115-4 "DEFINITIONS" OF THE CODE OF SUSSEX COUNTY REGARDING "YARD, FRONT" AND "YARD, REAR" OF THROUGH LOTS, AND CHAPTER 115, SECTION 115-183 "SIDE AND REAR YARDS."

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance as it was originally introduced to County Council earlier in the year, and a copy of the Ordinance as it was re-introduced to County Council at their meeting of August 29th, 2023, adding some additional text to the short title, which made reference to Chapter 115-183 for Side and Rear Yards and one comment letter, received the day of the public hearing, which was placed in the Commission's Paperless Packet in the mid-afternoon that day.

Mr. Whitehouse stated the Ordinance relates to the Bulk and Area requirements, being the form base coding aspect of the Code; that when you have an existing parcel that is located between two perpendicular roads, the Code states that the parcel shall have two front yard setbacks; that what staff had noticed was that residents were building a dwelling on the parcel, but subsequently discover they cannot have a pool, shed or even a certain height of fence; that due to this, staff see a lot of variance applications being submitted for the Board of Adjustment; that most of these applications are approved; that staff wanted to amend the Code to allow some relief, but without removing Through Lot protection entirely; that the goal of the Ordinance is to allow some accessory structures to be permitted within the front yard; that between Lines 51 and 54, it states that except for accessory structures and structures subject to §115-185, which are 22 ft. in height, the requirement for the Through Lot shall operate; that the Ordinance creates a mechanism that if a property owner wants a pool or an accessory structure, it would be permitted, subject to being no greater than 22 ft. in height; that additionally the Code states, that if the property owner takes advantage of this, they would not be permitted to use the Small Lot Ordinance; that the Small Lot Ordinance permits for five foot setbacks; that the Ordinance and the Ordinance was drafted to be limited to accessory buildings and structures; that the Commission may want to go further, to allow projections or additions of the dwelling.

Mr. Mears questioned how the County interprets which side of the property is the front yard.

Mr. Whitehouse stated within the definitions, in Lines 28 through 31 for the front, there is an existing definition for what a Through Lot is; that it states in the case of a Through Lot, the required front yard adjacent to the street which serves as the street address for the lot, shall function as the front yard; that it then goes on in Lines 34 through 40 to say that the rear yard definition in Code is amended; that it states the amendment adds, *provided, however, that in the case of a through lot, the yard opposite from the street serving as the street address of the lot shall function as the rear yard, subject to §115-183 and §115-185*, and they have achieved the goal of the Ordinance through change the definitions.

Mr. Robertson stated that if the Commission would consider an older subdivision, where the driveway is on the subdivision's internal street, and the backyard is adjacent to a County road; that the front yard is going to be located where the driveway and the 911 address is, and the backyard will be located along the County road because there is no access to that road; that by the current Zoning Code, the property would have two frontages because it is located along two streets, even though no one considers it this way; that the through lot issues often cause a back up in the Board of Adjustment's schedule with Variance applications, and the proposed Code change will eliminate the issue.

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

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

In relation to ORD 23-06 regarding Through Lots. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Robertson reminded the Commission of the workshop scheduled for September 21, 2023.

Meeting adjourned at 5:45 p.m.

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