

THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 28, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 28, 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, and Mr. Scott Collins. Mr. Brian Butler was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, Mr. Elliott Young – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Mr. Robertson stated that there were one or two minor corrections to the minutes which have been revised by Ms. Paugh

Motion by Ms. Wingate, seconded by Mr. Mears to approve the Minutes of the August 24, 2023, Planning and Zoning Commission meeting as revised. Motion carried 4 – 0.

PUBLIC COMMENT

The Commission found that Ms. Eul Lee was present and prepared to make comments. Ms. Lee stated that she is present to ask the Commission to bring back the phone in comment and if not, she will have to show up at more meetings.

The Commission found that Ms. Judy Rose Siebert was present and prepared to make comments. Ms. Siebert asked that her power point presentation be available. Ms. Siebert stated that she would like to bring to the attention of the Commission a section of the Delaware Code that empowers the Planning and Zoning Commission to act in conjunction and cooperation with State Agencies; that the Commission needs a legal leg to stand on when making decisions about subdivisions; that she does not believe that the Commission has used this section of the Delaware Code to support your decisions; that 6814 (b) of the Delaware Code states “In exercising the powers conferred by this chapter, the Commission is empowered to act in conjunction and cooperation with representatives, agencies, or officers of the United States government, this State, any other state, or any county, city or town within or without this State.”; that she pointed out some typical Office of State Planning building language of building in Level 4; that in this example they state that they don’t support any building activities in Level 4 and they ask that any buildings in Level 4 be moved out of those areas; that in some other PLUS reviews, the Office of State Planning or DNREC explicitly state that they are opposed to the subdivision; that she referred to the color coding on the State Strategies map; that on the general view of the County, there is mostly Level 4 area; that subdivisions have been overlayed by Eul Lee on this map onto this map; that on the next map you can see some subdivisions that are entirely in Investment Level 4 and some that are in Investment Level 3 & 4; that the next slide shows a table compiled by Eul Lee of subdivisions almost entirely in Investment Level 4 area; that is shows approximately 4,454 lots approved in Level 4 land since 2018; that the next slide shows a list of upcoming proposed lots in Level 4; and that she asks that the Commission use the power that is give to them in Section 6814(b) of the Delaware Code to follow the State PLUS review comments and make decisions in cooperation with State agencies.

OTHER BUSINESS

2021-31 Black Oak

Final Subdivision & Landscape Plan

This is a Final Subdivision Plan for the creation of one hundred twenty-seven (127) single-family lots to be subdivided out of 77.235 acres +/- . Included in the plan are fully improved streets, stormwater management, amenities, a Landscape Plan, and other site improvements. The Plan was previously approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, October 13, 2022. The development will be supported by central sewer and water systems being provided by Sussex County and Tidewater Utilities, Inc. The property is located on the northwest side of New Road (S.C.R. 266). This Final Subdivision and Landscape Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 335-7.00-6.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

C/Z 1958 & 1844 Westridge Shores RPC

Preliminary Site Plan

This is a Preliminary Site Plan for a Residential Planned Community (RPC) to consist of fifty-four (54) single-family lots, private roads, open space, sidewalks, and proposed amenities to include a community pier, a mulched walking path, two (2) kayak racks, two (2) park benches and a gazebo. The property was the subject of two (2) related Change of Zone Applications. The first was the Change of Zone 1844 for a change of zone from an Agricultural Residential (AR-1) District to a General Residential, Residential Planned Community (GR-RPC). This Application was approved by the Sussex County Council at their meeting of Tuesday, March 13th, 2018, through Ordinance No. 2555. The second was the Change of Zone 1958 to re-establish the previously approved and then expired RPC overlay, from a General Residential (GR) District to a General Residential District, Residential Planned Community (GR-RPC). This Application was approved by the Sussex County Council at their meeting of Tuesday, July 12th, 2022, through Ordinance No. 2873. The property is located on the north and northeast sides of Banks Road (S.C.R. 298), approximately 0.49-mile southeast of John J. Williams Highway (Route 24). The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: GR-RPC (General Residential District, Residential Planned Community). Tax Parcel: 234-17.00-165.00. Staff are awaiting agency approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan. Motion carried 4-0.

S-23-29 Eastern Lift Truck

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 2-story 20,525 square foot +/- warehouse and office building, parking, and other related site improvements. Staff note that the Parcel also lies within the Combined Highway Corridor Overlay Zone (CHCOZ) and a 60-ft setback and 20-ft landscape buffer have been provided to achieve the requirements of §115-194.1(E)(3) of the Sussex County Code. The Preliminary Site Plan complies with the Sussex County Zoning Code. The property is located on the east side of Sussex Highway (Route 13). Zoning: C-1 (General Commercial District). Tax Parcel: 532-20.00-95.05. 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 Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

S-23-10 Maplewood Dental

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed structure to serve as a 2-story 4,643 square foot dental office and other site improvements. At their meeting of Tuesday, June 30th, 2020, the County Council approved Conditional Use No. 2215 through Ordinance No. 2721 for the use of Professional Offices to be permitted within the AR-1 Zoning District. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. The property is located on the west side of Lighthouse Road (Route 54). Zoning: AR-1 (Agricultural Residential) District. Tax Parcel: 533-19.00-26.00. 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 Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve Preliminary Site Plan with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 4-0.

2018-09 Plover Point (F.K.A. Oak Landing)

Amendment to Conditions of Approval

The Planning and Zoning Department has received a request to amend Condition “K” of the Conditions of Approval for Plover Point (2018-09), an approved cluster subdivision to consist of one-hundred and forty-seven (147) single-family lots, private roads, open space and amenities to include a clubhouse, in-ground pool, volleyball and sand court, sports field, fire pit, picnic table seating areas, playground with a mulch base and an ornamental pond. Specifically, the request is to amend Condition “K” of the previously approved Conditions of Approval which states, *“The recreational amenities shall be completed prior to issuance of the 80th residential building permit. The recreational amenities shall include a pool, pool house/clubhouse and playground,”* to state, *“The recreational amenities shall be completed prior to issuance of the 100th residential building permit.”* The Applicant has provided a memo that details that this revision is needed to allow more building permits to be issued to keep up with the faster-than-expected pace of home sales. Staff note that the total number of lots for the subdivision is 147 lots and that 100 permits represent 68% of the total lots. The projected completion date of the Amenities is Memorial Day of 2024. The property is located on the east side of Oak Orchard Road (Route 5) in Millsboro. Zoning: GR (General Residential District). Tax Parcel: 234-34.00-97.00.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the request to amend Condition K of the Conditions of Approval for Plover Point (2018-09). Motion carried 4-0.

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 +/- . Staff have confirmed with the Commission’s legal counsel that the deed restriction prohibiting further subdivision no longer applies to the subject property as this restriction was removed through DB 3484, PG 119. 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.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision & Lot Consolidation off a 50-ft easement. Motion carried 4-0.

Lands of Kimberly Ferrell

Minor Subdivision & Lot Line Adjustment off a 50-ft Easement

This is a Minor Subdivision Plan and Lot Line Adjustment Plan for the creation of one (1) lot off a 50-ft access ingress/egress easement. Lot 1 will consist of 17.921 acres +/- and the residual lands will be 15.839 acres +/- . The property is located on the northeast side of Progress School Road (S.C.R. 562). A shared-use maintenance agreement has been established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District.) Tax Parcels: 131-13.00-32.03, 32.12, & 32.13. Staff are in receipt of all agency approvals. Therefore, this Application is eligible for both preliminary and final approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision & Lot Line Adjustment off a 50-ft. easement as a preliminary and final. Motion carried 4-0.

Lands of Harry & Sandra Nagler

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) lot off a 50-ft access ingress/egress access easement. Lot 4-A will consist of 1.224 acres +/- and the residual lands will be 1.856 acres +/- . The property is located on the southwest side of Prettyman Road (S.C.R. 254). A shared-use maintenance agreement has been established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District.) Tax Parcel: 235-29.00-28.05. Staff are in receipt of all agency approvals. Therefore, this Application is eligible for both preliminary and final approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary and final. Motion carried 4-0.

Lands of Joan Reed

Minor Subdivision Plan off a 50-ft Easement

This is a Minor Subdivision Plan for the creation of two (2) lots off a 50-ft access easement. Lot 1 will consist of 3.997 acres +/-, Lot 2 will consist of 3.997 acres +/- and the residual lands will be 2.00 acres +/- . The property is located on the south and southwest sides of Round Pole Bridge Road (S.C.R. 257). A shared-use maintenance agreement has been established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District.) Tax Parcel: 235-21.00-163.02. Staff are in receipt of all agency approvals. Therefore, this Application is eligible for both preliminary and final approval.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary and final. Motion carried 4-0.

OLD BUSINESS

C/U 2350 Beaver Dam Enterprises, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS. 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 Application which had been deferred since April 20, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2350 Beaver Dam Enterprises, LLC, for 2 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The property is zoned AR-1 Agricultural Residential. Multi-Family conditional uses can be appropriate in the AR-1 District when the land is located in the Coastal Area according to the Future Land Use Map in Sussex County's Comprehensive Plan. This Commission has recommended approval of a change to the Future Land Use Map to designate this land as being within the Coastal Area.
2. The property is in the vicinity of other residential developments and land that is zoned AR-1, GR, and MR. This conditional use is consistent with other zoning and development in the area.
3. DelDOT has reviewed the proposed project and has determined that the development's traffic impact will be "diminutive". This development will also be required to comply with all roadway and entrance improvements mandated by DelDOT.
4. This small multi-family conditional use meets the purpose of the Zoning Code since it promotes the orderly growth of the County in an appropriate location.
5. The proposed use is consistent with the County's Comprehensive Land Use Plan. It will be in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
6. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
7. There was no opposition to this Application and there was one letter in support from the site's neighbors.
8. This recommendation is subject to the following conditions:
 - A. There shall be no more than 2 Units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - C. Central sewer shall be provided to the development.
 - D. The development shall be served by a central water system providing adequate drinking water and fire protection.
 - E. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan

- shall contain the approval of the Sussex Conservation District.
- F. The trash receptacles shall be standard roll-out residential containers assigned to each unit. They shall be stored in an enclosed area. No dumpsters shall be permitted.
 - G. Construction, site work, and deliveries shall only occur on the site between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - H. As required by Section 115-22 of the Zoning Code regarding Multi-Family conditional uses in the AR-1 District, a 75-foot-wide vegetated buffer shall be installed along the perimeter of the development. This buffer area shall utilize existing trees and other vegetation to the fullest extent, with infill planting as needed to comply with the buffer requirements Section G (1) through (5) of Section 115-22 of the Zoning Code addressing AR-1 multi-family conditional uses.
 - I. The Final Site Plan shall include a landscape plan for the development showing the forested areas to be preserved, the proposed tree and shrub landscape design, and the buffer areas. The existing trees and other vegetation that will not be disturbed shall be clearly shown on the Final Site Plan and marked on the site itself so that they are not disturbed during construction.
 - J. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - K. 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.
 - L. This recommendation is contingent upon County Council approving the amendment to the Future Land Use Map designating this property as being within the Coastal Area.
 - M. 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 2350 Beaver Dam Enterprises, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

Ms. Wingate moved that the Commission grant preliminary approval for 2022-10 Raley Farm based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval for a cluster subdivision on land zoned AR-1 located within the “Low Density” Area of the 2019 Comprehensive Plan’s Future Land Use Map.

2. The subdivision will have no more than 646 lots on 358.84 acres of land resulting in a gross density of 1.8 units per acre, which is lower than the maximum density that is permitted in the AR-1 Zoning District. All lots will be at least 7,500 square feet in size, with an average lot size of approximately 10,175 square feet.
3. The subdivision will have two entrances. This will allow safe vehicular and emergency access to and from area roadways. One entrance will be from Avalon Road and the other entrance will be from Zoar Road.
4. Because of the size of this subdivision, one of the Conditions of Approval will be to limit the number of building permits in any given year so that the development of the project keeps pace with road improvements on surrounding and nearby roadways.
5. There are no State or federal regulated wetlands on the site.
6. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
7. The Applicant has proffered that this development will be an age-restricted "Over-55" community. Based upon that classification, DelDOT has determined that the subdivision will have a "Minor Impact" upon area roadways. In addition, the subdivision will comply with all of DelDOT's requirements, entrance improvements, and improvements to area roadways.
8. The subdivision will be served by central water and sewer.
9. The subdivision provides for a total environment and design that is superior to that of a standard subdivision, and it complies with the design requirements and review procedures for an AR-1 cluster subdivision. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code as follows:
 - a. In June of 2015, the property was heavily logged, and it had been the site of prior timber operations before that. There was also a borrow pit along with agricultural uses on the site. Only a small area of mature forest remained. Originally, the plans called for 701 lots. The plan was revised to preserve this mature forested area, which is the most environmentally sensitive area on the property. This redesign reduced the number of lots from 701 to 646. The former borrow pit has also been incorporated into the design as an amenity for the project.
 - b. The cluster design includes approximately 162 total acres of open space or 45.42% of the site. This significantly exceeds the 30% minimum required by Code. Under a standard subdivision, the property would be covered with lots, roads, and stormwater management with very little open space.
 - c. The open space design includes large tracts of open space that will be beneficial to the residents of the community with fewer fragmented areas of open space.
 - d. There will be a buffer around the perimeter of the site that is at least 30 feet in width. This is larger than the perimeter buffering required for standard subdivisions.
 - e. The design limits the number of back-to-back lots. Instead, most lots will back up to open space.
10. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, prosperity, and welfare of the County.
11. This recommendation is subject to the following conditions:
 - a. There shall be no more than 646 lots within the subdivision.

- b. The developer shall establish a homeowner's association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
- c. As proffered by the Applicant, the subdivision shall be maintained as an Age-Restricted, "Over-55" community, as that term is generally interpreted and governed by Federal Law. This proffer was a significant part of the record, including DelDOT's review of the plan and the traffic impact of it on area roadways. The recorded Declaration shall include the federally accepted language restricting this subdivision as an "Over-55" community.
- d. The Final Site Plan and recorded Declaration shall state that agricultural and hunting activities exist on nearby properties. The Agricultural Use Protection Notice and a similar notice about hunting activities shall be included in these recorded documents as well.
- e. As shown on the Preliminary Site Plan, approximately 162 total acres, or 45% of the site shall remain as open space.
- f. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
- g. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision in accordance with Sections 99-5 and 115-25 of the Sussex County Code. This buffer shall utilize existing forest or similar vegetation where it exists. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located at least 10 feet from the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area. Signage identifying this perimeter buffer as a "non-disturbance area" shall be installed along the buffer at 300-foot intervals. In addition to this buffer area, there shall be a berm that is between three and five feet in height installed along the property's boundaries with Avalon and Zoar Roads.
- h. The development shall comply with DelDOT entrance and roadway improvement requirements. In addition, no more than 60 building permits shall be issued in any calendar year to allow home construction to keep pace with nearby road improvements.
- i. Street design shall meet or exceed Sussex County standards.
- j. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- k. The subdivision shall be served by Central Sewer.
- l. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
- m. Sidewalks shall be installed on at least one side of all internal streets.
- n. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- o. Because this will be an age-restricted community, the impact on area schools should be less than other subdivisions. However, the Applicant shall still coordinate with the local school district for school bus stops within the subdivision. The location of any bus stops shall be shown on the Final Site Plan.

- p. Amenities shall include a clubhouse and pool. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
- q. The plan shall preserve the forested area and pond at the southern boundary of the site near Zoar Estates, along with other forested areas in the open space where possible. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and all of the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site, and the silt fencing shall be located 10 feet beyond these limits of disturbance.
- r. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- s. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- t. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant preliminary approval for 2022-10 Raley Farm, for the reasons and conditions stated in the motion. Motion carried 4-0.

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

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.

The Commission discussed the Application which had been deferred since September 14, 2023.

Mr. Collins moved that the Commission recommend approval of C/Z 2015 G&M Route 24, LLC for a change in zone from AR-1 to I-1 Institutional based on the record made during the public hearing and for the following reasons:

1. This is a change of zone for the I-1 Zoning District. The I-1 Zoning District has permitted uses that focus on healthcare and institutional uses.
2. The rezoning is consistent with the stated purpose of the I-1 District, which is to allow public, quasi-public, and institutional uses to occur on properties that are compatible with surrounding districts and uses. There are properties nearby that are zoned AR-1, GR, CR-1, and other I-1 zoned land. This property is also located along the Route 24 corridor in the vicinity of Route One. The purpose of the I-1 zoning and the permitted uses within the I-1 district are consistent with this area.
3. There was testimony in the record that there is currently a need for additional healthcare facilities in this area of Sussex County and particularly a surgery center of the type planned for this location.

4. The rezoning will not adversely affect neighboring properties, public facilities, traffic, or area roadways. In fact, it is the continuation of the development of the existing Beebe Healthcare campus where this property is located. This is the third and final phase of this healthcare campus. The expansion of medical services at this location in an area where residential growth is occurring will reduce the need for the public to travel further afield for medical care on the County's road network.
5. The site is located within the Beebe Healthcare campus with multiple points of access including Route 24 and Warrington Road as well as the rear of Rehoboth Mall. This location will provide convenient access to the public uses permitted under the I-1 zone.
6. The property is served by central water and sewer.
7. The rezoning to I-1 promotes the health, safety, and general welfare of Sussex County and its present and future residents by providing a convenient location for needed medical office space.
8. Any further development of this site will require site plan review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 2015 G&M Route 24, LLC – A Delaware Limited Liability Company and/or Its Assigns for the reasons stated in the motion. Motion carried 4-0.

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

ORD 23-05

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.

The Commission discussed the Ordinance application which had been deferred since September 14, 2023.

In relation to ORD 23-05. Motion by Mr. Collins to announce the closure of the public record and to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

ORD 23-06

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.”

The Commission discussed the Ordinance application which had been deferred since September 14, 2023.

Per Mr. Collins' request, Mr. Robertson read the prepared motion into the record.

Mr. Collins moved that the Commission recommend approval of Ordinance No. 23-06 regarding “Through Lots” for the following reasons and with the following recommendation:

1. This ordinance will update the Zoning Code to reduce the need for variances where a lot has a primary frontage on one street but is also adjacent to a street or road along its rear boundary. The way the Code is currently written, even though it can be clear how a lot is oriented and what is considered its “front” and “rear”, the fact that it actually has frontage on two streets technically

means that it must have two front yards and therefore two front yard setback calculations. This adversely impacts many lots, making it difficult to construct improvements upon them without a variance from the Board of Adjustment. Historically, these variances are routinely granted by the Board of Adjustment. For this reason, this Code update is appropriate to eliminate unnecessary variances.

2. When originally introduced, the Ordinance stated that the commonly accepted rear yard of a through lot was treated as a rear yard for setback purposes under the Zoning Code. A revised ordinance was subsequently introduced to limit the application of the rear yard treatment for certain types of structures and in “small lot” situations governed by Section 115-183(d). Upon further review, those situations are very limited throughout the County and undermine the overall applicability and usefulness of the Ordinance as originally introduced. For that reason, it is recommended that Section 2, Lines 49-61 be deleted, so that Section 115-183E “Side and Rear Yards” now states as follows: *“E. On all Through Lots, the yard opposite from the street serving as the street address of the lot shall function as the rear yard. Except for fences, walls, or other similar means of enclosure not more than 7 feet in height, no buildings or structures shall be located within a distance of 15 feet from the street line of the rear yard of a through lot.”*

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of ORD 23-06 regarding “Through Lots” for the reasons stated in the motion. Motion carried 4-0.

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

PUBLIC HEARINGS

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

2023-06 Twin Masts

A cluster subdivision to divide 132.90 acres +/- into two hundred and forty-nine (249) single-family lots to be located on certain parcels of land lying and being in Broad Kill Hundred, Sussex County. The properties are lying on the west side of Coastal Highway (Route 1) and on the north side of Round Pole Bridge Road (S.C.R. 257). 911 Address: N/A. Tax Map Parcels: 235-16.00-68.00 & 69.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Preliminary Subdivision Plat, the Applicant’s Exhibit Booklet, a Traffic Impact Study (TIS), and the DelDOT response to the Traffic Impact Study, the PLUS comments, and the Applicant’s response to the PLUS comments, an analysis document of Eagle Crest Airport, a letter from Artesian Resources, the Applicant’s Soil Report, the Applicant’s Jurisdictional Determination letter, a Wetland Buffer Plat, the Applicant’s Proposed Conditions of Approval, the Applicant’s Chapter 99-9C response, the Staff Analysis, the Technical Advisory Committee (TAC) comments, which include letters from the U.S Department of Agriculture, Delaware Electric co-op, the Department of Watershed Stewardship, the Office of Delaware State Fire Marshal, the Sussex County Engineering Department, and a letter from the Applicant regarding the Traffic Impact Study (TIS). Mr. Whitehouse stated 85 comments had been submitted for the Application, however, some comments did appear to be duplicates, and all comments were included within the Commission’s paperless packet.

The Commission found that Ms. Mackenzie Peet, Esq., with Saul Ewing, LLP, spoke on behalf of the Applicant and Owner, Twin Masts, LLC; that also present were Mr. Tom Buescher, Ms. Megan Conner, and Mr. Hal Stuart were present on behalf of the Applicant, Mr. Jim Erikson, P.E. with Solutions, IPM, Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc., Mr. Charles Lamb with Delta Airport Consultants, Inc., and Ms. Betty Tustin, P.E. & PTOE with the Traffic Group, Inc.

Ms. Peet stated the Applicant submitted an extensive booklet which has been before the Commission for at least 10 days; that she would provide the overview of the project, address the project's compliance with the Code, and the plan's consistency and conformity with the Comprehensive Plan; that Mr. Launay will address the development's environmental considerations; that Mr. Erikson would discuss the Superior Design process employed in the plan's design, as well as the proposed stormwater management considerations; that Mr. Lamb would discuss the considerations given to the Eagle Crest Aerodrome, and Mr. Tustin would conclude the presentation, discussing the traffic, site specific and area wide road improvements; that Twin Masts proposes the subdivision of two, undeveloped parcels, which total approximately 132.9 acres, into 249 single-family lots, as a cluster subdivision in the AR-1 (Agricultural Residential) Zoning District; that the properties are located within the Low-Density Area according to the Future Land Use Map's designation; that single-family homes are permitted within Low-Density areas; that if approved, the project will provide 249 single-family lots, resulting in a density of 1.99 dwelling units per acre, which is compliant with Sussex County Code's base density of two units per acre; that the site is located off Round Pole Bridge Rd.; that the development would be accessed from Round Pole Bridge Rd.; that centralized amenities, including a pool and pool house, as well as pickleball courts are also proposed; that wet ponds and infiltration basins are contemplated stormwater facilities; that significant open space and forested areas, in excess of the Code requirements, as well as Code compliant buffers are proposed; that Twin Masts was presented to PLUS and a response letter was subsequently provided, addressing comments point by point; that the project, which was originally planned for 245 single-family homes, however, was increased to 249 single family homes after learning of additional site area, as evidenced in the record, based on email correspondence with the Office of State Planning and included as Exhibit No. 2; that no resubmission to PLUS was required for the additional four units; that resubmission was also not required when the first Twin Masts application was withdrawn; that the Preliminary Plan was sent through the Technical Advisory Committee (TAC) process; that the project team responded to staff comments, noting that many of the provided comments concerned Final Site Plan approval requirements; that the project team understands the Planning & Zoning Office's effort to be thorough in their review of the plan, but all that is currently being sought is a Preliminary Plan Approval; that the site is located within Investment Level 4, which always attracts a lot of attention from the public; that she would encourage members of the public to look to the County's Comprehensive Plan; that the Comprehensive Plan provides that it is important to note that the maps contained within the Strategies for State Policies and Spending Map are not parcel based; that it is still necessary to thoroughly investigate the constraints of land parcels; that it is equally important to note, that while this document and map series direct State investments, it is not a Land Use Plan in Delaware; that the State has delegated land use authority to the local governments, which in this case is Sussex County; that any land development activity must be in compliance with the Comprehensive Plan and meet all relevant Codes of the local jurisdiction, which the plan does; that nearby subdivisions include, Pintail Pointe, Cripple Creek, Covington Chase, River Rock Run, Creek Falls Farm, and Windstone; that the site is currently a vacant use, with portions of the property used for agriculture and other portions of the property consisting of existing vegetation; that the site borders Beaver Dam Creek and the Broadkill River; that there are delineated Federally regulated, State tidal, and non-tidal wetlands, as well as isolated man-made borough pits located on the site; that the borough pits are believed to have been excavated as a result of the Route 1 construction historically; that tree clearing, which is not prohibited by Code, will take place within those borough pit areas, and should take place to address an on-site

safety issue; that the Sussex County Zoning Map reflects the site as being within the AR-1 (Agricultural Residential) Zoning District, being adjacent and near other properties zoned the same; that properties located within the C-1 (General Commercial) Zoning District are also located near the site; that the Future Land Use Map reflects the site as being within the Low-Density Area, being adjacent to other properties designated the same and also located near a Developing Area; that upon final development, no roads or lots will be located within the floodplain, as it will be raised above base flood elevation; that as reflected within the Groundwater Recharge Area Plan, the site is located within all of the recharge areas; that the Twin Masts' Plan limits impervious area in the Excellent Recharge Area, proposing less than 35% impervious area, as required by Code and features proposed infiltration for groundwater recharge; that Exhibit No. 10 contains the Will Serve letter from Artesian; that Exhibit No. 11 contains the first page of the Geo-Technology Associates, Inc. (GTA) Soil Report, confirming a soil study was performed on the site; that similar to many residential developments, the Twin Masts Application has attracted substantial interest from some members of the public; that the project's site is properly zoned for the proposed use; that the Applicant is more than willing to discuss reasonable conditions with the Commission; that it cannot simply be denied use of its property; that the Delaware Supreme Court has spoken to this point, by explaining "*When people own land for a specific use, they are entitled to rely on the fact that they can implement that use, provided that the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and residents. To hold otherwise would subject a purchaser of land, zoned for a specific use, to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the Ordinances. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the Zoning Ordinances.*"; that Twin Masts Preliminary Plan complies with the specific criteria found in the Code and is therefore entitled to approval, subject to reasonable conditions, which the Commission may impose in order to minimize any adverse impact on nearby landowners and residents, as supported by the Supreme Court case just read, Tony Ashburn & Sons; that opponents have raised primary concerns with the site's proximity to the nearby airport traffic, development and environmentally sensitive areas; that Twin Masts has proffered Conditions of Approval, Condition A through Condition V, to address some of the development's impacts, and some of the public's concerns; that submission of Conditions of Approval and/or Findings of Facts are oftentimes submitted the day of the public hearing or during the Applicant's presentation at the public hearing; that she mentioned this because some members of the public, and primarily, some members of the Eagle Crest community have been quite critical of the time by which it took to finalize the Conditions of Approval and have called into question the Applicant's good faith effort to make concessions that address their concerns, despite the lack of any Code provisions, whatsoever, which require her client to meet their demands; that also, there have been comments made about Twin Masts' opportunity for a second chance; that it is no secret that the Application was previously withdrawn; that the Application was withdrawn primarily to learn more about the airport specific issues raised at the last public hearing and to also improve the plan; that her client, after months of negotiating with Eagle Crest and improving the plan, the Applicant is back before the Commission seeking Preliminary Plan approval for a Code compliant plan; that the project team has been negotiating with Eagle Crest since March 2023 on three conditions that have ultimately been put forward as part of the negotiation efforts; that Eagle Crest presented an agreement that her client could not agree to, because it far exceeded the scope of any verbal discussions my client had with the community, especially in relation to runway protection zones, and air rights easement over her client's property; that in an effort to address the Eagle Crest concerns, her client revised the original plan, which was Code compliant in her opinion, and engaged Delta Airport Consultants, Inc. to review the proposed development and any potential impact resulting from its location near the Eagle Crest airport; that per Delta's findings, the proposed development is located outside of any protection areas dictated by the FAA and below the FAA's approach surface height restrictions; that with the redesign of the plan, and

through consultation with Delta, and an agreement to proffer Conditions of Approval, specifically within Condition P through Condition R, her client more than adequately and voluntarily addressed the community's concerns; that Condition P was requested by Mr. John Pardee, Esq., on behalf of the Hudson family, the owners of the land whereby the airport operates, and concerns the pre-existing, non-conforming, yet lawful uses, of not only the aerodrome, but also Hudson Fields; that the condition provides as follows: *"The governing documents of any future or property or homeowners association (or similar) shall acknowledge and affirm the pre-existing, non-conforming, yet lawful uses of the Eagle Crest Aerodrome and Hudson Fields as recorded in the Recorded of Deeds in and for Sussex County, Delaware, in Deed Book 1614, Page 194, etc."*; that the purpose of this condition is to provide an acknowledgement and affirmation of both of those existing uses; that Condition Q concerns request and notice requirements to the future residents of Twin Masts by stating, *"The communities governing document shall provide a notice that: (1) the subdivision is located in the vicinity of land used as a private airport; and (2) there may be flights over the subdivision that will generate noise associated with aircrafts."*; that this condition requires notice to the homeowners as requested by Eagle Crest, not only concerning the proximity of the airport to the proposed development, but also to notify those future residents of potential noise generated from the nearby aircraft; that Condition R concerns a restricted development area that provides open space as requested by Eagle Crest; that the condition was most recently modified as of September 25, 2023, and states *"The developer shall permanently restrict a portion of the site approximately 100 feet in width by approximately 2,000 feet in length (the "Restricted Development Area" or "RDA"). The RDA shall consist of two areas, each to be 100 feet in width by 1,000 feet in length, ("RDA One" and "RDA Two"). In RDA One above-grade improvements shall be restricted, and below-or-at-grade improvements, (including but not limited to, stormwater infrastructure, utility infrastructure, streets, sidewalks, and a shared use path), shall be permitted. In RDA Two, the Developer may construct any of the following improvements: amenity facilities, utility infrastructure, (including any fencing for screening and security), stormwater management facilities, streets, and parking areas."*; that they did submit an exhibit for the record, reflecting each of the open space areas previously mentioned; that despite her client's good-faith efforts to come to terms with Eagle Crest, many letters of opposition were still submitted into the record; that some of which accused her client of acting in bad faith, perhaps because her client did not agree to the initial agreement, that was entirely beyond the scope of what any reasonable property owner would, or should, agree to, especially in the absence of any legal requirements to do the same; that she requested to submit two email chains, had between her client and Eagle Crest, that reflect her clients good-faith efforts to meet Eagle Crest's demands, which directly contradict some, if not most, of the testimony that had been posted on the docket concerning the airport; that one of the Applicant's representatives, specifically being Mr. Hal Stuart, did meet with Eagle Crest representatives in person, on four separate occasions; that according to the email correspondence just submitted, he also met many, if not most, of the demands Eagle Crest requested with the exception of one request for the installation of a parking sign; that what ultimately matters and what will be made perfectly clear within Delta's presentation, is that her client is not required to offer any of the previously mentioned conditions, but in good faith has proffered the conditions to address what is a misperceived issues and not an actual safety issue; that perhaps the issue is the development itself; that public opposition has reached an overwhelming point; that there is a noticeable trend of demanding, rather than seeing compromise; that for example, tree removal, in itself, is not prohibited by the Code; that nevertheless, the plan retains 62.7% of the existing trees; that she questioned, if the County was free to reject a plan because of the removal of trees, as the public is asking the Commission to do, where does it end; that she questioned if the Applicant were to come back with one more acre of trees, would that be sufficient; that instead of the public focusing on the voluntary retention of 62.7% of the trees, the public states the plan cannot be approved because 62.7% of trees is not enough, based on no specific criteria in the Code, and contrary to the Delaware law; that wetland impact is another example; that some of the members of the public miss what the plan has accomplished; that the project not only proposes compliance with the recently adopted Buffer and Drainage Ordinance,

but the plan exceeds those requirements; that the plan has provided a resource protection buffer with a weighted average depth, exceeding 100 feet for tidal wetlands and 30 feet for non-tidal wetlands; that the Twin Masts plan not only meets the requirements of the Code, but in several respects, exceeds the requirements of the Code voluntarily, which is inconsistent with the majority of the public's opportunities; that if the plan complies with the specific criteria of the Code, which Twin Masts does, it should be approved, subject to reasonable conditions which the County might impose; that Preliminary Plan requirements are being completed on a repeated basis with Final Plan requirements; that this is a Preliminary Plan approval request; that more work will still need to be done once the Preliminary Plan is granted approval; that if the project does not comply with the requirements for the final plan, then final approval will not be granted; that generalized concerns are never a basis to reject a plan outright; that in terms of the specific criteria, Twin Masts complies with the purpose of the Code, §115-19, and the Comprehensive Plan by proposing a permitted low-density, single-family residential development; that within that designation, single-family detached homes are permitted at two homes per acre, where a cluster-style site plan is used and a portion of the track is preserved as permanent open space; that the site is designed at 1.99 units to the acre and proposes 52.8% of permanent open space; that §115-21 allows for outdoor amenities for use by community occupants and for their guests; that the plan proposes a pool and clubhouse, as well as pickleball courts, sidewalks on both sides of the road, and a walking trail; that all proposed structures will comply with the height, area and bulk requirements of §115-25 for cluster developments, for the reasons that are more fully set forth in the submitted project material; that the proposed cluster development complies with the community design section of the plan; that housing types are limited to single-family, detached dwellings; that a forested buffer has been provided; that the proposed homes within Twin Masts are a minimum of 40 ft. from the perimeter of the site; that no lots have direct access to State maintained roads; that all lots will be configured outside of wetland; that the resource protection buffers exceed the County's minimum requirements; that the proposed community will be served by both central water and wastewater systems, both of which are anticipated to be provided by Artesian; that it took the project team some additional time, trying to work through a condition to identify what was to be in the restricted development areas; that they had a follow-up conversation with Artesian, where they learned there may not definitely be a temporary water facility placed in the community; that if this were to occur, it would count against open space; that in the event there is a requirement from Artesian for the temporary facility, the current open space of 70.15 acres would be reduced by 0.31 acre; that this would leave the site with 69.84 (52.6%) of open space for the project site; that if this should occur, the reduction would take place in open space area "A"; that the new area, if the temporary facility is required, would be approximately 53.57 acres, which still far exceeds the 30% contiguous open space requirement; that the project complies with Chapter 125(F) for a cluster development, for the reasons that are more fully provided within the project book; that this section requires homes to be clustered on environmentally suitable portions of the track and provides for a total environment and design which are superior to the which should be allowed under regulations for the standard option; that this requires homes to be clustered on environmentally suitable portions of the property, and also provide for a total environment and design which are superior to that of a standard development; that the project booklet address these criteria in great detail; that the proposed development plan has taken into consideration §99-9C; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape; that the Applicant proposes significant open space of 52.8% of the site; that the plan provides a minimum 30 ft. landscape buffer; that all proposed lots within the community are a minimum of 40 ft. from the outbounds of the project; that all lots will be configured outside of regulated wetlands; that there are some existing man-made isolated wet area existing on the site; that these wet areas were created in connection with the construction of Route 1; that Code compliant buffers and resource protection buffers have been provided; that there are no known sites that require historic preservation on the site; that the plan minimizes impacts of natural features; that the plan preserves large tracts of open space and preserves scenic views; that there will be a minimization of grade changes and tree, vegetation, and soil removal; that screening of objectionable features from

neighboring properties and roadways will be provided; that water will be provided by Artesian; that wastewater will be provided by Artesian; that the stormwater management system will incorporate best management practices for stormwater treatment and discharge will be in accordance with the with the State of Delaware and Sussex Conservation District; that the proposed development is planned in a way to minimize erosion and sedimentation changes in groundwater levels, increased rates of runoff, potential for flooding and design of drainage show that groundwater recharge is maximized to the fullest extent; that the plan accounts for safe vehicular and pedestrian movement within the site and to adjacent ways; that the entrance to the community will be designed, per current DelDOT standards; that sidewalks are proposed on both sides of the street and are anticipated to connect to the DelDOT multi-modal path to encourage and promote pedestrian traffic; that it is anticipated that the proposed Twin Masts community will cause current property values to remain the same, if not increase the values of other properties in the area; that the proposed subdivision will not adversely affect adjacent farmland considering the buffer and other natural areas that separate the community; that it is anticipated, based on the review of the County's population trends, that there could be and will likely be, school age children within the community; that one access point is provided off Round Pole Bridge Rd.; that a Traffic Impact Study (TIS) was prepared for this project; that DelDOT has recommended contributions to DelDOT projects in the vicinity of the site, and requirement for entrance related and frontage improvements; that the project is located near other residential land uses, and proposed single-family homes, at a density permitted by the Code; that the project is therefore compatible in design, density, home style, and land use; that there will be an efficient stormwater management system, that will act as an amenity, and runoff will be treated for water quality and quantity prior to discharge. At this time, Ms. Peet requested Mr. Edward Launay come forward to provide his portion of the presentation.

The Commission found that Mr. Edward Launay, Environmental Consultant and Wetland Scientist with Environmental Resources, Inc. spoke on behalf of the project, regarding existing environmental conditions. Mr. Launay stated that the project site consists of 132.09 acres; that the site borders both the Broadkill River and Beaver Dam Creek; that initial work performed was the delineation of the boundaries of the Federal and State wetlands, State regulated wetlands, and to identify features that might be subject to their jurisdiction; that he submitted a plan to the U.S. Army Corp of Engineers, with a wetland report; that the Army Corp of Engineers issued an approved Jurisdictional Determination on May 27, 2022; that there are 70.7 acres if the site are agricultural field; that 36.4 acres of the site is upland forest; that 7.9 acres of the site are State regulated tidal wetlands; that 5.1 acres of the site are non-tidal forested wetlands; that he also delineated some borrow pit features that are within the surrounded uplands, located to the southern and northwestern parts of the property; that the Jurisdiction Determination from the Army Corp of Engineers determined that those areas were not subject to their jurisdiction; that the portion where development will occur is located outside of the 100 Year Floodplain; that the site is predominantly very well drained, to well drained loamy and sandy soils, in the Fort Mott, Rosedale, Henlopen and Runclint series; that there is some less well drained soils in the Klej series, being a transitional soil located between the wetland or hydric soils, that were delineated as past of the wetland areas that border the State regulated tidal wetlands; that these soil types have few development limitations, being some of the best soils in terms of using land for development purposes in Sussex County; that he consulted with the U.S. Fish & Wildlife Service, and received a determination from them on June 5, 2023; that there is one threatened species listed, being the Eastern Black Rail; that it inhabits the interior of salt marsh areas; that there is quite a bit of salt marsh located along the Broadkill River; that it is a possibility that this reclusive bird could occupy in those areas; that the plan has provided buffers, and therefore, no impacts are anticipated to threatened and endangered species; that he consulted with Mr. Derek Davison with the U.S. Fish & Wildlife Service; that they had no comments with regard to any threatened and endangered species on the property; that the map reflects a green resource buffer, which is known as the Buffer Zone A; that the buffers in Sussex County are split into two different areas, being Zone A and Zone B buffers; that there are certain activities that generally do not occur in the Zone

A buffer; that within the Zone B buffer, there are things that are permitted, such as walking trails; that within Zone B, buffers can be reduced somewhat; that for example, the driver for the current site is the 100 ft. buffer from the tidal wetlands; that the tidal wetlands are often buffered by non-tidal wetlands next to them; that as one goes through the exercise of determining what the composite outside line of the resource buffer would be for the site, the tidal wetland buffer, which is required to be 100 ft. becomes the driver for the site; that buffer averaging is permitted; that based on the site plan, there may be areas where one could reduce a buffer down to half its width; that one could take a buffer that was a tidal wetland buffer of 100 ft., reduce the buffer to 50 ft., but it would need to be made up for elsewhere by adding to the buffer in a different location; that for the particular site, there were a few areas where they needed to reduce the buffer down; that the buffer was not reduced below the standard buffer for tidal wetlands, which is a minimum of 50 ft.; that without any buffer averaging on the site, the required buffer would equal to 10.41 acres; that in regards to superior design, they questioned how they could expand that buffer and preserve more forest; that the buffer being provided for the site is 13.91 acres, being a voluntary aspect of superior design; that buffer itself is currently mature to mid-successional forest; that the goal of the Buffer Management Plan is to preserve all that forest as it currently is; that there is a pedestrian path that will in part of the Zone B buffer; that there will be provisions for them to make storm outfalls for treated storm water and other than that, there will be no other buffer impacts proposed; that they have maximized the resource buffers were they could; that they expanded the resource buffer to the maximum amount of area that would qualify as a resource buffer under the Code, and there were areas bordering those resource areas that they could expand further.

Ms. Wingate stated there were comments submitted into the record by Mr. Hans Medlarz, questioning the voluntary comment on the buffer, requesting clarification on the voluntary statement, and she questioned if this was the subject Mr. Launay was currently speaking about.

Mr. Launay stated when the original application was submitted, it was grandfathered from the Buffer Ordinance; that more or less, the previous plan came close to meeting the spirit of the Buffer Ordinance; that with the current plan, nothing is voluntary; that there is a minimum amount of resource buffer; that when going through the exercise before averaging and after averaging, to determine what is required; that what is currently voluntary is the fact that there is no requirement to take the 100 ft. tidal wetland resource buffer and expand it to 150 ft.; that the required buffer is 10.41 acres; that they expanded the buffer to include additional forested areas, equaling 13.91 acres; that the voluntary portion was what was added above and beyond the required resource buffer; that there was a good amount of area, that bordered the resource buffer, where they could add to a protected conservation area; that as part of the Resource Buffer Ordinance, there is a plan to do a Resource Buffer Management Plan; that they decided a good way of addressing a Buffer Resource Management Plan was to prepare a Declaration of Covenants, that would be binding on the Applicant and the future homeowners association; that this declaration would take the additional lands and protect them as well; that the conservation areas are reflected in green in the submitted documents; that the conservation area also includes a wood area of mature forest located at the far corner of the site, nearest to Round Pole Bridge Rd.; that the additional area landward of the resource buffer, the resource buffer itself and the wetlands, as well as the tidal wetlands will all be protected by the Declaration of Covenants; that this will protect those areas from docks and piers; that there are no impact anticipated to the wetlands on the site; that there are some small areas of resource buffer and some areas they are adding adjacent to the resource buffer that will also be protected under the conservation area, totaling 4.13 acres of the site; that these areas are largely the field areas that are currently unforested; that there is a portion of that area that will be temporarily impacted by construction; that as part of the Buffer Management Plan there is a Afforestation Plan to, in the long term, turn those areas into forest land as well; that this is also protected under the conservation easement; that the conservation easement allows civic culture activities to allow for the afforestation of the 4.13 acres; that the site had an existing woodland area of 44.2 acres; that the woods to remain, without any

afforestation is 27.7 acres (62%) of the site; that after the afforestation efforts, after the project is approved and developed, will be 31.0 acres; that 72% of the site will be wooded at the completion of the project, and 39.21 acres of the site will be subject to the conservation area and the Declaration of Restrictions.

The Commission found that Mr. Jim Erikson, a Professional Civil Engineer with Solutions, IPM, spoke on behalf of the project, regarding the site layout and land planning considerations. Mr. Erikson stated §115-25(F) of the County Zoning Code provides review procedures for cluster subdivisions; that within that section, there is a required process on how the site plan must be developed; that step one of the process is to provide a sketch plan, reflecting the location and uses of all open space, the extent of the wooded areas and wetlands, as well as the location of any historical or cultural feature resources on the site; that he presented the Commission with an overall layout of the existing site conditions and land coverage of the site; that there are no know historical or cultural resources present on the site; that there are wetlands within the parcel and along some of the site's boundaries; that are portions of woods throughout the site; that approximately 44.23 acres of the site is wooded; that the remainder of the site is farmland; that the next portion of the process is to identify portions of the site which should be preserved; that throughout his presentation he would reference areas that are worthy of preservation, as this is language directly quoted from the Code; that these areas worthy of preservation are mapped; that these areas include wetlands, waterways, and other water bodies; that also included in this area, are the most environmentally critical woodland areas within the site; that for the project the most important woods within the project are the wooded areas along the wetlands; that the first 50-60 ft. of natural areas landward of the tidal wetland lines, as well as the first 25 ft. of natural areas landward of the non-tidal wetland line are the most important and critical areas to protect the wetlands and are therefore worthy of preservation; that after the areas being worthy of preservation are mapped, other areas are then mapped; that these other areas are described in §115-25(F), which include tree lines, scenic views and prime farmland; that the areas with the fewest important natural, scenic, and historical features should be considered the potential development areas; that he shared an image with the Commission reflecting the areas designated worthy of preservation; that the tidal wetlands are reflected in a cyan pattern, located mostly over the western portion of the site; that the non-tidal wetlands were reflected in red; that the wooded areas were reflected in green; that the yellow areas represented medium priority areas that are wooded areas located within Delaware's Ecological Network, but located outside of the areas identified as being worthy of preservation; that within the yellow shading, there are also additional sub-areas; that there is an area, located nearest to Rt. 1, reflected with a blue diagonal pattern, ovetop of the yellow; that this sub-area consists of relatively newer trees, as this area was an agricultural field until the 1990's; that Mr. Erikson provided historical aerials of the site from 1968, 1992, and 1997, which reflected the site was still cleared at that time; that the trees in the yellow shaded area are not as mature, and therefore, were not considered as important; that also located within the yellow shaded areas, are the locations of the borrow pit areas, which are reflected in a blue brick pattern; that the borrow pits in those areas were dug in the 1960's; that the trees within that area were cleared when the borrow pits were stripped and dug; that they believe these borrow pits were used for a short time for a specific project; that they believe the project was likely the construction and improvements of Rt. 1; that as a result of this, the large area was excavated, and several smaller borrow pits were dug even deeper as needed; that these pits have side slopes greater than two to one in areas, being dug without any form of safety bench or other considerations; that portions of the pits will intermittently fill up with water, which may sit for extended periods of time due to the depths; that the depth, steep slopes, intermitted pooling, and lack of safety benches create unsafe conditions on the site; that to avoid injury to future residents, especially children who could easily fall into one of the borrow pits, these areas need to be cleared and subsequently filled; that because the lands must be cleared to fill the borrow pits, the woods in this area were treated with lower priority for retention than other woodlands on the site; that this was due to the safety concern that must be addressed; that at a minimum, the area of clearing to fill the borrow pits would be the similar

area that was required to dig the borrow pits; that this greatly increased the minimum clearing required in those vicinities; that there are smaller wooded areas on the eastern portion of the site, reflected in brown on the exhibit; that these are wooded areas that are not identified to be within Delaware's Ecological Network; that the Delaware Ecological Network map is a State-wide conservation network developed from GIS and field collected data, based on principles of landscape ecology and conservation biology, providing a consistent framework to help identify and prioritize areas for natural resource protection; that the Delaware Ecological Network map did not identify this area as being ecologically important, and thus the area was not considered to be of significant importance; that use these maps, they identified the developable area, which is reflected in the submitted exhibit; that in accordance with §115-25(F) the developable barrier was chosen to minimize the impact on the most important features mapped in the first step; that the most important features they identified included the State and Federal wetlands, and the trees that are located most adjacent to those sensitive areas; that from there, they located the roads and trails for the project; that the roads were kept internal to the site, as feasible, to provide compliant buffers and expand tree retention; that the trails were located along the limits of the existing tree lines to provide residents with a trail system that would allow the ability to enjoy the preservation of scenic views while limiting disturbance within the trees; that there are no existing destinations outside of the project boundaries for the trail system to connect; that as part of the last step, they configured the lot lines, and made necessary adjustments to satisfy various reviewing agency comments; that they provided resource protection buffers, landscape forested buffers, and other required items; that ultimately, they ended up with the limited disturbance line, which is within the developable area, previously identified; that during this step, they also prioritized items that were raised as concerns during the prior application's public hearing; that this included adjusting the road location and reducing the internal right-of-way to increase the perimeter tree retention; that the existing trees extend over 30 ft. into the site, where it ranges from 168 ft. down to 30 ft. in some areas where the existing trees were only approximately 30 ft. wide, the trees were voluntarily retained beyond the 30 ft. wherever existing trees extended beyond 30 ft. into the property; that the average width of the woods to remain in this vicinity is just over 80 ft.; that within the Resource Protection Averaging Exhibit, the buffer that are being provided from the wetlands and around the site far exceed the minimum requirements; that they are providing a 605,764 sq. ft. buffer area, whereas the minimum required buffer is only 425,844 sq. ft.; that in addition to this, there are many areas where the tree lines extend well beyond the buffer that is permitted by buffer averaging; that in other areas there is proposed afforestation that will further expand the existing wooded buffer; that in one area, they are adding trees to what was a thin strip located adjacent to the most sensitive areas on the parcel; that the LOD (Limitation of Disturbance) remains along or outside of the Zone B line, and in all these areas, reflect that trees are being retained well beyond the minimum requirements; that the proposed layout is retaining 27.716 acres (62.7%) of the existing trees; that of the approximate 16.5 acres of trees that are proposed to be removed, it should be noted that approximately nine acres will need to be removed in order to fill the borrow pits, being over half of the amount of trees that are proposed to be removed within the project; that those nine acres are required to be cleared to remediate a safety concern; that the proposed Site Plan provides 4.126 acres of afforestation; that these areas will further expand buffers along creeks, further protecting the most important resources on the site; that they also adjusted the internal lots and amenities to provide a limited development area and consideration of the Eagle Crest Aerodrome; that a detailed preservation, regarding Eagle Crest impacts will be presented by Delta Consultants representatives; that the plan adjustments to accommodate Eagle Crest were made voluntarily; that they carefully looked at the Excellent Groundwater Recharge Area; that §89-7 describes limitations associated with the development of Excellent Groundwater Recharge Areas; that it states if the proposed impervious percentage within the Excellent Groundwater Recharge area is less than 35%, there are no additional limitations upon land development; that for the project, the anticipated impervious percentage is 26%, which is compliant, consistent, and in character to the impervious percentages of the adjoining $\frac{3}{4}$ acre lots; that lots were rearranged to allow for additional trees located within the Excellent Groundwater Recharge Area could

be retained to further encourage groundwater recharge in those wooded areas; that in addition to providing additional perimeter buffers, the developer also had additional soil studies performed for the Stormwater Best Management Practice (BMP), that is located within the groundwater recharge area; that it was confirmed that the BMP has infiltration potential and labeled as an Infiltration Basin One, and the other being labeled as Infiltration Basin Two, which is located in Open Space E, will be designated as infiltration basins; that this will ensure that the Excellent Groundwater Recharge Area is being utilized and the site will feature very significant groundwater recharge; that the site's stormwater management BMP's are mostly interconnected and treatment trained orientation; that this means that only one facility flows into another; that designs in this orientation provide significantly more pollutant removal and groundwater recharge than ponds that are not interconnected; that stormwater must flow; that stormwater for most of the site would need to go through two or more BMP's prior to discharging, rather than going through only one facility that each step provides treatment for the project; that the post development runoff rates and volumes will be reduced from the existing conditions; that the proposed stormwater management design discharges less water, at a lower rate; that additionally, because the existing site is largely agricultural, the proposed stormwater management design will reduce nutrient runoff from the existing conditions; that this exceeds all DNREC requirements; that developing the site as a cluster subdivision provides for a total environment and design, which is superior to that allowed under the standard subdivision option; that the site contains approximately 70.15 acres (52.8%) of open space, which far exceeds the minimum of 30% requirement; that of those 70.15 acres of open space, approximately 53.88 acres are within a contiguous tract, far exceeding the minimum contiguous tract requirement; that the remaining open space allows for the Site Plan to provide a treatment train orientation for stormwater management that provides significant groundwater recharge and reduces pollutant loading, as well as the rate and volume of stormwater runoff from the existing conditions; that by clustering the lots, the Site Plan is able to retain approximately 62.7% of the existing trees on the site, and there is another 4.14 acres of afforestation; that the site will ultimately have a wooded area that has 72% of the existing wooded area; that the development of the site was limited to the areas least encumbered by environmentally sensitive areas; that the site layout was designed in a sequence and process in accordance with the severity of design criteria; that determination of superior design is ultimately a plan that provides for a total environment and design which are superior to that permitted for a standard subdivision; that they had drawn up a rough land mass conceptual plan for a standard subdivision of the parcels, which can be compared to the cluster plan presented currently; that the open space provided is approximately 52.8% in the cluster option, and approximately 32% in the standard plan; that tree retention for the cluster subdivision is approximately 62.7%, and is only approximately 36.5% in the standard plan; that the impervious area within the Excellent Groundwater Recharge area would increase from approximately 26% in the cluster option, to approximately 28% in the standard plan; that both percentages are Code compliant, but the cluster subdivision percentages is lower; that the infiltration facilities would be removed with a standard subdivision plan; that a standard subdivision plan would also have more back-to-back lots with significant drainage conveyance within the lots; that the treatment drain orientation for the stormwater management BMPs would be more limited; that infiltration and groundwater recharge capacity would be significantly reduced, especially with the removal of infiltration under the standard plan; that open space retention, groundwater recharge, and more efficient stormwater management are all fundamental items that are the focal point of the superior design requirements in accordance with §115-25(F); that the proposed cluster plan will improve all those fundamental items in comparison, and is therefore superior to a standard subdivision plan, when taking into consideration all superior design criteria. Mr. Erikson introduced the Commission to Mr. Lamb and requested he provide his portion of the presentation for Twin Masts.

Mr. Robertson questioned if the referenced Yield Plan was submitted in the project record.

Mr. Erikson stated the Yield Plan was not submitted in the record and requested to submit his hard copies for the record at that time.

The Commission found that Mr. Charlie Lamb, with Delta Airport Consultants, Inc. spoke on behalf of the project. Mr. Lamb provided his background information, where he began his professional aviation career over 50 years ago as a commercial pilot; that he has been an active flight instructor since 1974; that he has multiple FAA ratings, and a multitude of category and classes of aircraft, including an airline transport rating; that in 1976 he graduated from NC State University with a degree in civil engineering and immediately upon graduating, he began his professional degree in airport design; that he earned his Master's degree from Virginia Tech, specifically on aviation system planning and forecasting models; that he has worked at thousands of airports across the country, many being within Delaware, Maryland, Virginia and Pennsylvania area; that he is a registered Professional Engineer in Delaware; that he joined Delta Airport Consultants in 1979; that Delta Airport Consultants have offices in Ohio, as far south as Georgia, and as far west as New Albuquerque, New Mexico; that the two closest offices are located in Harrisburg, PA and the home office located in Richmond, VA; that they closest airport they have worked with, in the vicinity of Eagle Crest is the Georgetown Delaware Coastal Airport; that they have also worked with other Eastern Shore airports in the area, including but not limited to Ocean City, Easton, Frederick and Carroll County, Maryland, as well as Salisbury; that they are currently performing a runway extension project at Salisbury; that they have worked with almost every airport in Virginia; that they are a collection of aviation enthusiasts who plan, design and understand airports; that the Eagle Crest Hudson Airport is a privately owned, restricted use facility; that the airport is not available for public use; that the airport is not listed in the FAA National Airport System Plan (NPIAS); that only about 25% of the 13,000 airports are listed in the NPIAS Plan; that an example of an airport that would be included within the NPIAS Plan is the Georgetown Coastal Delaware Airport; that the Eagle Crest airport is primarily used for daytime operations; that it does not have an instrument approach procedure; that it is utilized in visual weather conditions, or what U.S. pilots call VFR (Visual Flight Rules); that the airport does not have an instrument approach procedure; that it has a runway that is 3,500 ft. long, 100 ft. wide, turf on both landing thresholds place about 300 ft.; that it has 23 base single engine aircrafts, according to the latest records he had seen; that over the past summer, his company was approached by Twin Masts, LLC to evaluate the airport and the impacts of their off-airport development for Eagle Crest Airport; that since the airport is a privately owned, restricted use facility, there are four conditions that can make it where the FAA or the public will take an interest in it; that these conditions are if it is a public use facility, if it is a Department of Defense (DOD) or military airport, if it is a Federal facility, or if it has an instrument approach procedure; that Eagle Crest does not meet any of the mentioned requirements; that in other words, it is a non-public facility; that typically, in the vast majority of the time, neither local or State land use control authorities put any burden or responsibility on a land owner to protect a non-public airport; that because the Eagle Crest airport is a non-public airport, no real studies need to be performed; that it would be the airport's responsibility to protect the airport, and with a public airport, the airport is required to protect its facility, and typically the local community, State and FAA as well.

Mr. Wingate questioned if emergency aviation response would fall under public use.

Mr. Lamb stated that no, emergency aviation response does not qualify a facility as a public use facility, as it takes one of the four previously mentioned requirements to be considered a public use facility.

Mr. Lamb stated that within part 77 of the Federal Aviation Administration, which evaluates the safe, efficient use and preservation of navigable airspace, but would not consider anything that is not a public use facility; that he recently worked with a major resort developer on a large, upscale, residential flying community; that they had already purchased much of the property and homeowner demand was very

strong; that much like Eagle Crest, the airport runway ran from a public road to a public road; that a major concern we passed on to that property owner was that incompatible land use in the Runway Protection Zone, being the area immediately off the end of the runway, should not expect any assistance from the FAA, local, or State agencies to help protect the airport; that their strong recommendation to them was to buy some type of land instrument, such as an easement or fee simple, to protect the Runway Protection Zone and approaches; that for the FAA Design Standards, FAA Advisory Circular AC 150/5300-13B – Airport Design, he requested to use a road analogy; that for a private airport, or for his explanation, a private road, can range from anything such as a logging trail, to a private driveway, to an access road; that a private airport is not for the public and is a restricted use facility; that in these cases, protection is not typically provided, and private facilities are not designed to specific standards; that in regard to a private road, it could be whatever a logger may need it to be; that a private driveway could be whatever the private resident needed it to be; that the same applies for airports; that a non-public airport can operate without issue, given the correct combination of the aircraft characteristics, pilot training and local knowledge; that for example, one could have a 900 ft. strip for a private restricted use airport, with trees located on both ends; that if one would bring in the right aircraft, with the correctly trained pilot, and local knowledge, the pilot could safely operate in and out of that facility; that the majority of public use airports were built between the 1930's and the 1970's; that the airport design standards from the 1950's is nothing like the standards are today; that currently the design standards for a new airport are much more rigorous than they were back in the 50s through 70s;; that many public use airports today, even in the national plan, do not meet the current advisory circular guidelines for design; that the FAA states that the airports are continuing to aggressively fund improvements at these facilities to help bring them up to what are the current 2023 design standards; that just because an airport does not fully meet the FAA design standards for new airport, does not mean it is unsafe or less usable; that when they look at a public use facility, the main thing they tell the prospective person wanting to build a new airport, is you need to own the runway object free area, which is the boundaries offset from the runway and taxiways; that one will need to own the Runway Protection Zones off each end; that it is recommended one should own property out to the 50 ft. Terrain Clearance Line, which is the limit at which these FAA imaginary surfaces are at least 50 ft. above the existing ground; that they recommend that one buy out to the 65 DNL Noise Contour, which is what is accepted as the area where sensitive land use can begin without restriction; that additionally they recommend obtaining any additional property required for taxiways, aprons, hangars and access roads; that Twin Masts, LLC came to them requesting they analyze the Twin Masts development and its potential impact on Eagle Crest Airport, as through it were a brand new FAA funded, public use, publicly owned facility, under the 2023 Design Standards set forth in the FAA Advisory Circular AC 150/5300-13B; that the first thing they analyzed were the Runway Protection Zones and the Runway Object Free area; that the airport has both an approach and a departure Runway Protection Zone; that the proposed development is not located inside either of those zone by a significant margin; that they then, analyzed the approach; that FAA Part 77 provides the dimensions and slopes for what should be protected for the approach coming into the facility; that if something should penetrate that surface, it is presumed to be a hazard; that if it is presumed to be a hazard, an Aeronautical Study can be performed to determine whether or not it is actually a hazard or not; that for the proposed development, the approach surface is located 70 ft. or more above the property; that it is a 20:1 approach surface; that in the subject case, they anticipate no development; that the height restriction for the County is 42 ft.; that they are at over 70 ft. with the current approach surface over the property; that the provided information is based on a three degree glide slope, which is the standard glide slope or path for an airplane to come into, which is above the 20:1 protected surface; that for a general aviation airport, it is easy to increase the slope to four degrees; that for a non-public, restricted use airport, one could increase the degree to whatever is needed, depending on the type of aircraft and pilot; that their findings were that the entire development is located outside both the Runway 14 Approach Runway Protection Zone and outside of the Runway 32 Departure Runway Protection Zone; that their second finding was that the entire proposed development is located

outside of the Runway 14-32 Object Free Area; that their third finding was that the entire development track is located more than 70 ft. below the Part 77.19 Approach Surface; that as he previously stated, with public use airports, they typically recommend they buy out to 50 ft.; that for the current project, it is over 70 ft. being well beyond their recommended 50 ft.; that he requested to address three additional items, which were not addressed in their submitted letter, dated July 10, 2023; that the public had raised concern to the development of homes beyond the Runway Protection Zone, along the Runway Centerline; that this development is roughly 1,700 ft. to 4,000 ft. off the end of the runway; that the developer voluntarily offered to place two restricted areas, being 100 ft. in width on the Runway Centerline, where no residential structures would be constructed; that additional design characteristics they chose to work toward were Approach Category B, with wingspans up to 49 ft., which the FAA defines as a small aircraft; that the Runway Protection Zones that are provided would accommodate both Approach Category B1 and B2 aircraft; that a B2 Aircraft would include a Beechcraft B200, which is a nine passenger pilot and co-pilot aircraft, with a Cabin Class of 12,500 lbs.; that the FAA would consider this a small airplane; that this is not the standard type of airplane coming in and out of Eagle Crest on a daily basis; that despite this, the Runway Protection Zone provided would be able to accommodate that type of aircraft on a daily basis, for the current visual flight rules; that there have been concerns raised regarding noise; that FAA Advisory Circular 150/5190-4B provides the history of how noise contours are developed; that this model has been in service for 40 years or longer; that the model recommends that residential development, and other sensitive land uses, be located outside of the 65 DNL (Day Night Average Sound Level); that currently, there are many homes located within the 65 DNL, at a number of public use facilities; that some residential development is even located within the 75 DNL; that mitigation can be provided by either purchasing the house in that area, or by insulating the house; that insulation would consist of double pane glass windows, air conditioner or whole house ventilation; that these are the standards that the proposed houses will be constructed for the proposed subdivision; that for reference he looked at the Georgetown Airport, and its published noise contours; that he advised the Commission that comparison of the Georgetown Airport to the Eagle Crest Airport, would be similar to comparing a two ounce wiffle ball to a 16 lb. bowling ball in regards to noise contours; that Eagle Crest consists of single-engine and light twin aircraft coming and going on an infrequent number of times; that if one were to take the Georgetown Delaware Coastal Airport noise contours, and apply them to Eagle Crest Airport, it would still not reach the proposed subdivision; that it goes up to 1,400 ft. off the end; that the proposed project is located well outside the 65 DNL in relation to Eagle Crest Airport; that he has never performed noise contours for a turf strip, or a facility with this low of activity; that another expressed concern was regarding off airport alternate landing area, which is a request or need for a facility, that in the case of issue, would allow for the plane to land; that the Twin Masts Site Plan has been revised to remove any homes located within Area One and Area Two; that the FAA does not suggest any off airport alternate landing areas along the Runway Centerline; that there is no standard which indicates that requirement; that throughout his entire career, he has never heard of an airport buying rights, or developing an off-site landing strip path as part of their development plans, 2,000 ft. to 4,000 ft. off the end of the runway; that in the case of Runway 14 Arrivals and Runway 32 Departures, there are several good alternatives in the area for off airport landing; that in the case there was a total catastrophic engine failure at 1,000 ft. traffic pattern altitude, the pilot would have approximately 11 square miles of area that he can glide to; that he has gone through Commercial Glider training; that there are a number of local and nearby airports, that would not meet that design criteria; that the New Castle Airport for Runway 7 Approaches, with heavy residential located within 1,000 ft. at the end of the runway on centerline, which goes out for over two miles; that the Runway 9 Departure would not meet that criteria; that the New Castle Runway 1 arrival would not meet the requirement; that the departure from Runway 10 would not meet the requirement; that there are hundreds of examples out of the 13,000 airports in the United States, that do not meet the requirement; that the Eagle Crest Airport is a small airport with a runway length of 3,500 ft, with a 300 ft. displacement on each end; that it is a 23 single-engine piston aircraft using airport facility; that its category approach is a Category A1 Design

Standards, with occasional Category B1 Design Standards; that the facility has approach speeds of 91 knots to 121 knots for A and B wingspans, which are typically under 49 ft.; that the facility is a non-public, restricted use facility; that it is a well-maintained turf airport; that no future residents of Twin Masts will be located within the Runway Protection Zone limits; that the Twin Masts development is well clear of the Runway Protection Area; that no future residents will be located within the Runway Object Free Area; that the Part 77 Approach Surface is located 70 ft. or better above the development; that the existing runway does not have existing obstructions to the approach; that both Runway 14 and Runway 32 have existing obstructions; that the proposed development will not be an obstruction, and if it were an obstruction, it would not be the first obstruction to the runway; that there are no structures proposed to penetrate the Part 77 Approach Surface as part of the proposed project; that Eagle Crest Airport does not have an Instrument Approach Procedure; that Eagle Crest is a VFR (Visual Flight Rule) airport, and is primarily used in daytime conditions; that Eagle Crest is not considered one of the exceptions, such as being an FAA facility, Federally owned for military or DOD, or have an Instrument Approach Procedure; that the closest existing resident to Runway 14 is a couple hundred feet; that the approach for Runway 32 is almost identical to Runway 14, with a subdivision located 2,000 ft. off the end and continues past that; that he could not verify if there had been any previous noise complaints for Runway 32; that the proposed community building code standards will require heavy insulation, double-paned glass and air conditioning, which will help reduce noise; that the closest alternate airport is located approximately 10 miles away; that the alternate airport is a public use facility with a 5,500 ft. runway, with all-weather capabilities and full and fixed based operation services; that there are other airports throughout Delaware where residential neighborhoods are located on the extended runway centerline, and are located as close to the end of runway as the proposed development; that Runway 27 has heavy residential located 1,000 ft. off the end of the runway going out for over two miles, belonging to the longest runway, of 7,275 ft. for New Castle Airport, and he stated if Eagle Crest would have approached him to build an airport, in its current location, and Twin Masts already existed, he would state they would have a very good chance of going through the entire environmental process, and it being found eligible to be constructed as a publicly owned, paved runway facility.

The Commission found that Ms. Betty Tustin, Sr. Project Manager for The Traffic Group, Inc. Ms. Tustin stated she also holds a Civil Engineering degree which she obtained from Virginia Tech; that she is a registered Professional Engineer in Delaware, Maryland and Virginia; that she has conducted traffic impact studies in those states for over 40 years; that DelDOT has one of the most stringent procedures for conducting Traffic Impact Studies; that it is a four-step process; that the first step is to meet with DelDOT to develop a scope of work for the study; that once that is completed, traffic counts are obtained and submitted to DelDOT for approval; that subsequently, the trips projected to be generated by any other committed development in the area, as well as the trips projected by the development are compiled and submitted to DelDOT for approval; that finally, the analysis is completed and if any deficiencies are identified, mitigation measures are developed and tested; that the final analysis is submitted to DelDOT, who then requests their engineering consultants to scrutinize the submitted analysis; that during this process, which takes many months, not only had her engineering team been involved in the calculations and analysis, DelDOT's engineer team and their engineering consultant team have also been involved through the entire process; that at least a half dozen, if not more, professional and registered civil engineers or engineers in training with a bachelor's or master's degree have conducted, reviewed, and approved the analysis; that DelDOT had reviewed the Traffic Impact Study, which was completed in 2020 for the Twin Masts development; that in accordance with the with the Memorandum of Understanding with Sussex County, as is required in the Development Coordination Manual, any proposed development projected to generate more than 50 peak hour trips or more than 200 daily trips, is required to complete a Traffic Impact Study; that there is one exception, but it does not apply to the Twin Masts project; that there is one access along Round Pole Bridge Rd.; that DelDOT has been asked to consider an access on Rt. 1; that DelDOT will not allow access from Rt. 1; that a letter submitted

from the public, referred to a statement made in the State Rt. 1 Quarter Capacity for Preservation Program, which referred to a planned access road, connecting Round Pole Bridge Rd. to the contiguous parcels and properties with frontage along Rt. 1; that the intended purpose of this access road is to eliminate the direct access these parcel and properties now have onto Rt. 1, and provide access to the parcels and properties via Round Pole Bridge Rd. through the Twin Masts development; that the development team met with DeIDOT to discuss and assess the suggested access route; that all agreed that such an access road was not feasible, however, should the access road have been constructed, it would have added additional traffic to Round Pole Bridge Rd. from the affected parcels and properties; that the access would not have provided an access to Rt. 1 for the Twin Masts development; that the existing driveways would have been closed, if the access road was built; that DeIDOT selects the intersections for study based on a travel demand model, which forecasts travel patterns for proposed development; that intersections are selected based on the number of trips are proposed to pass through that intersection for the proposed development; that the travel demand model is presently conducted by Ms. Anna Maria Fumato, with the TIS (Traffic Impact Study) section of DeIDOT planning; that trips of all purposes are included in the travel demand model, such as residential, school, shopping, recreational, and work related trips; that a submitted letter from the public incorrectly opines that only work-related trips are included in the travel demand model; that study intersections are identified if more than 50 peak hour trips are projected to pass through that intersection; that the threshold is commonly accepted amongst most jurisdictions; that the presumption is that 50 trips, both coming and going through an intersection, generated by a proposed development, will have a negligible impact on that intersection; that she presented an exhibit from DeIDOT, which illustrated the selected study intersections; that the selected study intersections were at Round Pole Bridge Rd. and Hudson Rd., Rt. 1, Hudson Rd. and Steamboat Landing Rd. and Rt. 1, Rt.16 and Rt. 1, the crossover south of Hudson Rd., Rt. 1, Eagle Crest Rd. and Oyster Rocks Rd., Hudson Rd. and Eagle Crest Rd., Hudson Rd. and River Rock Way, Hudson Rd. and Falls Rd., Hudson Rd. and Sweetbriar Rd, and the side access along Round Pole Bridge Rd.; that she understood the public was concerned that the intersection of Round Pole Bridge Rd. and Cave Neck Rd. was not selected for the study; that the reason is, because there were less than 50 trips projected to go through that intersection, and therefore any impact that the Twin Masts development would have on the intersection would be minimal; that they study these intersections n a typical weekday, and also on Saturday during the summer months; that they performed the study in late 2021 and early 2022, when DeIDOT was reconstructing the bridge of the Broadkill River on Rt. 1; that the construction would have impacted traffic volumes through the area; that DeIDOT recommended that they use traffic counts from recent studies in the area and supplement those counts with their own when necessary and appropriate; that the counts are actual county from other studies, and were not pieced together; that these traffic counts were provided from the Chappell Farm, the Brittingham and the Cool Spring Farm Traffic Impact Studies; that the majority of these counts were collected in 2021; that counts for two intersections were collected in 2019; that none of the counts were collected in 2020, during the year of the pandemic; that DeIDOT required that they inflate the traffic counts at the study intersection by regional growth factors to represent traffic volumes with the project's completion estimated to be in 2028; that these counts were increased by a factor of 3.6%; that DeIDOT also required that they include traffic volumes from other developments in the area, which included Compass Pointe, Chappell Farm, and Vincent Overlook; that to reach the peak hour traffic volumes to be studied, they added in the peak hour trips that were projected to be generated by the Twin Masts development; that the results of their analysis indicated that six of the study intersections are operating and are projected to operate at acceptable levels of service; that levels of services attract traffic engineering criteria by which the intersections are judged; that intersections are judged by Levels of Service A through F, depending on the amount of delay that is experienced or is projected to be experienced by motorists at that intersection; that she presented the Commission an exhibit which illustrated levels of services for intersections, and what they may look like in real life; that Level of Service A, is a highly stable level with free flow conditions and delays of less than 10 seconds; that Level of Service F is a level of stopping for more

than 80 seconds; that Levels E & F are considered unacceptable; that the intersections of Hudson Rd. and Round Pole Bridge Rd., Hudson Rd. and Eagle Crest Rd., Hudson Rd. and River Rock Way, Hudson Rd. and Falls Rd., Hudson Rd. and Sweetbriar Rd. and the site access along Round Pole Bridge Rd. were determined to have acceptable levels of service; that the study intersections along Rt. 1 are projected to operate at unsatisfactory levels; that the construction of a grade separation of Rt. 1 and Rt. 16 is currently underway and anticipated to be completed in 2025; that moving southward, DelDOT has a project along Rt. 1 from the point north of the intersection with Hudson Rd. and Steamboat Landing Rd., southward to a point beyond the intersection of Rt. 1, Eagle Crest Rd. and Oyster Rocks Rd.; that this project will eliminate some crossovers and restrict certain movements at the intersection; that as the intersection with Hudson Rd., left turns from Hudson Rd. and Steamboat Landing Rd., onto Rt. 1 will be restricted; that vehicles will no longer be able to cross straight across either; that those who desire to travel north or south on Rt. 1 will make a right turn and proceed to the next crossover and make a U-turn, in order to facilitate traffic flow on divided highways; that many jurisdictions are actively closing intersections to prohibit left turns and through traffic, as it has been proven that making a right turn and proceeding to make a U-turn is safer than making a left turn onto a divided highway; that at the intersection of with Eagle Crest Rd., left turns onto Rt. 1 onto Eagle Crest Rd. and onto Oyster Rocks Rd. will be restricted similarly, with vehicles no longer being able to cross straight across from Eagle Crest Rd. to Oyster Rocks Rd.; that a third DelDOT project is proposed along Rt. 1 for a grade separation at the intersection with Cave Neck Rd.; that this project is slated to begin construction in 2025; that typically, a proposed development would be required to make a roadway improvement to mitigate any level of service deficiencies at the study intersection; that in this case, since DelDOT has project's already design, and in some cases have already begun construction, the Twin Masts development will be making a financial contribution to these projects; that a fourth project is proposed within the study area, at the intersection of Hudson Rd., Cave Neck Rd. and Sweetbriar Rd.; that a roundabout has been selected for these intersections and is scheduled to begin construction in 2025; that the Twin Masts development will be making a financial contribution to this project as well; that with various DelDOT projects, traffic patterns are anticipated to change in the future; that the grade separated interchanges to be located to the north at Rt. 16 and to the south at Cave Neck Rd. will attract drivers from other roadways as there will be less delay as currently experienced; that the delay at Hudson Rd., Cave Neck Rd., and Sweetbriar Rd. will be greatly reduced, making these roadways a more desirable means of travel; that the Twin Masts development will also be improving Round Pole Bridge Rd. along their frontage; that these improvements are to include 11-ft. lanes with five foot shoulders, as required by DelDOT; that they will be constructing right turn lanes into the development, to remove the vehicles from the vehicles continuing on Round Pole Bridge Rd.; that a letter from the public stated that they are required to put a left turn lane in on Round Pole Bridge Rd., however, that is not the case; that DelDOT projected that 84% of the trips generated by the Twin Masts development will travel to and from the east by Hudson Rd., which is the section of Round Pole Bridge that they will be improving; that few trips generated by Twin Masts will travel to and from the west on Round Pole Bridge Rd.; that to verify the projected distribution of trips from the Twin Mast development, they queried information from a preferred partner of Replica, a big data company, who is very familiar with the information that can be obtained from these types of services; that Replica is a location based service and is obtained from various sources such as phone applications that rely on GPS, being 30 million unique devices per month; the Replica additionally receives cellular network data from major telecom providers, such as Verizon and AT&T, as well as vehicle GPS based upon three billion traffic trips per month and four million point of interest data locations per month; they based on this data, they anticipate residents within the Twin Masts development will have similar demographics as those who live in other developments in the area, such as Oyster Rock, Osprey Landing, Covington Chase, River Rock and Great Falls; that she presented to the Commission an illustration of trips generated on a typical day in the spring of 2023; that the data showed that 10% of trips went to Milton; that about 13% of trips went to Lewes; that the remainder went to other incorporated areas such as Rehoboth and Georgetown; that 25.8% were social trips; that 16.8%

were work related trips; that 15.4% were shopping trips; that 10.4% were freight trips, such as UPS and FedEx; that 10% were restaurant trips; that 5.64% were recreational trips; that 3.81% were errand trips and less than 2% were trips for school; that this data was taken from Block Data Groups, instead of city destinations; that almost over 80% of the trips traveled more than four miles to their destination; that the public had concern that most of the residents of Twin Masts will want to travel to Milton; that as observed from the Big Data, less than 7% from nearby communities traveled to Milton; that when the stated the development will have 1,000 daily trips, that means 500 trips in and 500 trips out; that trips go left and right; that there is no one section of roadway that will feel the impact of all the trips projected from Twin Masts; that only the driveway will feel the impact of this; that they anticipate 1,000 trips will turn left, and 193 trips will turn right; that at the intersection of Hudson Rd. and Round Pole Bridge Rd., those trips will divide again; that at the intersection they project 710 will go north to Rt. 1 and 301 trips will go south to Hudson Rd.; that the daily trips projected by Twin Masts will be spready out throughout the day; that the ITE (Institution of Transportation) Engineers Handbook, provides diurnal for how trips are expected to be generated and spread out throughout the day; that based on this, the outbound trips are projected to be higher in the morning hours and the inbound trips to be higher in the evening hours; that at no one time are there hourly trips greater than 125; that they anticipate just a little over 100 trips from Twin Masts to come out, turning left, per hour at the most; that the trips projected to turn right from Twin Masts onto Round Pole Bridge Rd. are minimal compared to those trips anticipated to turn left; that they obtained safety data of Round Pole Bridge Rd. for the last five years; that with the last five years, there have been nine crashes; that four crashes involved a deer; that two crashes involved a ditch; that all the crashes were single vehicle collisions, aside from one, which was a rear-end collision; that crash three, occurred between 3:00 a.m. and 4:30 a.m.; that they also performed a speed study, which showed that 85% of vehicles traveled 35.34 mph or less in the westbound direction; that 85% of the vehicles travel 31 mph or less in the eastbound direction; that the average speeds are 26 mph eastbound and 29 mph westbound; that most vehicles traveled between 26 and 30 mph; that only two vehicles drove at a speed greater than 40 mph; that these volumes were averaged over a seven day period; that they performed a Roadway Level of Service Analysis, based on the procedures established in the DelDOT Highway Capacity Manual, which resulted in Level of Service C in the eastbound and westbound directions, being found within an acceptable level of service; that within this analysis, they considered the lane widths, shoulder widths, the number of access points, posted speed limits, vertical grades, horizontal grades, passing lanes, and et cetera, and this comprehensive analysis was referred to in the letter provided by Ms. Anna Maria Fumato from DelDOT.

Chairman Wheatley invited representatives of DelDOT to speak per the Commission's request and questioned if DelDOT concurred with the information provided by the Applicant.

Mr. Stephen Bayer, DelDOT Supervisor of the Statewide and Reginal Planning section, and point person for the Corridor Capacity Preservation Program, spoke per the Commission's request. Mr. Bayer stated he generally concurred with the information; that as far as the Corridor Capacity Preservation Program, there are no implications with the project; that the CCPP gets triggered when there are access points to a corridor that is within the program; that as described within the presentation, there would be no access to Rt. 1, as such, Corridor Capacity becomes a non-issue; that during November 2022, during part of the Development Coordination process, they looked at alternative access to those parcels that do have access to Rt. 1, and attempting to bring the access away from Rt. 1; that there is a larger Grade Separated intersection coming to the south, just past the intersection with Hudson Rd.; that if they included some sort of alternative access to the rear, it would make the Grade Separated intersection much more expensive, and therefore was abandoned as an option.

Ms. Sireen Muhtaseb, Professional Engineer for the TIS (Traffic Impact Study) section of DelDOT Planning, spoke per the Commission's request. Ms. Muhtaseb stated her group reviews all Traffic Impact

Study analyses for residential and commercial developments within Delaware; that they did review the Twin Masts analysis, which did conform to their standards and regulations; that all information was backed by engineering and analysis, that the analysis is supported by facts, not opinions; that if anything, the development will improve and upgrade Round Pole Bridge Rd. along the frontage of the development; that they understand some traffic mitigations will be improved by DelDOT's CTP projects; that they have Grade Separated sections proposed north and south of the site; that they have proposed improvements going to Hudson Rd. and Rt. 1; that they have a five-legged roundabout proposed on Hudson Rd. and Cave Neck Rd. and all of these projects together are going to improve the traffic in the area, as well as along Round Pole Bridge Rd. as well.

Mr. Collins stated the remainder of Round Pole Bridge Rd. is not in the best of shape, and questioned when upgrades were proposed to be performed to Round Pole Bridge Rd.

Ms. Muhtaseb stated, as part of their entrance plan process, they require developers to improve their frontage; that the site frontage will be improved to 11 ft. lanes with five-foot shoulders; that the frontage will have a sidewalk or a shared use path, with a right turn lane with a bike lane; that it will have asphalt, drainage, signing and striping; that it will be improved from Hudson Rd. and Round Pole Bridge Rd. to the bridge on the other side; that the remainder of Round Pole Bridge Rd. is a local road with a very low ADT; that there have been less than 10 crashes over five years, therefore it is not a priority for the department to upgrade it and no upgrades are planned in the near future.

Ms. Wingate questioned if emergency alternative access could be considered for the site.

Mr. Bayer stated it potentially could be considered; that the specifics would need to be looked at; that emergency access from Rt. 1 would not be permitted; that they are very sensitive to the topic, and they understand that the County is looking at that somewhat programmatically throughout developments all around.

Mr. Robertson stated there was a TIS (Traffic Impact Study) performed for the initial application; that there had been comments made regarding whether the TIS should be updated and questioned if DelDOT is satisfied with the current Traffic Impact Study or not.

Ms. Muhtaseb the TIS was a recent study; that it was approved by DelDOT and reviewed by their consultant engineer in March 2023; that the counts used in the TIS are accepted, approved, and verified counts that were used from other studies; that the reasons for this are because the Broadkill Bridge was closed and under construction; that it is typical for them to use other approved existing counts when there are road closures; that the counts look good to them; that the counts are consistent with other studies, and therefore, there is no need to re-evaluate or re-analyze and DelDOT did not accept any traffic counts during the time of the COVID pandemic.

Mr. Collins questioned if there was any consideration given for an affordable housing or workforce housing component to the development.

Ms. Peet stated no; that there was no consideration given to providing affordable or workforce housing within the development.

Ms. Wingate questioned if there was an option to provide emergency access off Round Pole Bridge Rd.

Mr. Erikson stated the only potential area, would be within the area they have set aside for limited development; that they have already committed to limiting development within that area; that if it only

needed to be a grass strip, and DeIDOT would access a grass entrance way onto Round Pole Bridge Rd., he believed it would still satisfy the limited development area per the proposed condition, and as long as DeIDOT is agreeable, he believed they could accommodate that location for emergency access.

The Commission found that no one wished to speak in support and 15 were present who wished to speak in opposition of the Application. [One public speaker was admitted, as they did not provide their name for the record.]

Mr. Abraham Scheer, M.D. spoke in opposition to the Application, expressing concerns regarding the health and safety of future residents regarding lead exposure, as well as sound, crashes, and the unobstructed Runway Protection Zone.

Ms. Janet Le Digabel spoke in opposition to the Application on behalf of herself, as well as Ms. Heather Kingree, Ms. Sara Esposito, and Mr. Dennis Le Digabel, with combined concerns regarding a potential service road through the community, potential aviation crashes, the pieced together Traffic Impact Study, the State Investment Level 4 designation for Round Pole Bridge Road; the anticipated traffic patterns along Round Pole Bridge Rd., impact to property values, the increased traffic and the impacts it will have, nearby active hunting, the exposure to lead, the current road conditions of Round Pole Bridge Rd., the lack of preservation of the environmentally sensitive areas, and protection of natural resources and the lack of how the development is superior in design.

Mr. Brian Reed, of Reed Farm, LLC, spoke in opposition to the Application with concerns regarding the safety of the road, the requirement distance for steel shot hunting, and how the development will negatively impact his source of income from renting the wetlands for hunting purposes.

Mr. Robert Masone spoke in opposition to the Application with concerns regarding the safety of the Eagle Crest airport, the safety of the residents around the Eagle Crest airport, and the potential complaints of noise due to the airport.

Mr. Jeff King spoke in opposition to the Application with concerns regarding the negative impacts to the Eagle Crest airport, complaints due to aircraft noise levels, aviation environmental concerns, and the intelligent use of County mandated open space for emergency landing fields.

Mr. Joseph Larrimore spoke in opposition to the Application with traffic concerns.

Ms. Eul Lee spoke in opposition to the Application with questions and concerns regarding the required Zone A and Zone B wetland buffer requirements, her dissatisfaction with public comment processing, the ecologically important areas of the site, the location of the borrow pit on the site, the Traffic Impact Study and crash data, the safety and current road conditions of Round Pole Bridge Rd, and the traffic counts and impacts.

Mr. Peter Caltagirone spoke in opposition to the Application, with concerns regarding a potential attack on the Eagle Crest airport in relation to future noise, proximity to the airport, and the need for the establishment of a permanent easement to provide protection to the airport in the future.

Mr. John Chirtea spoke in opposition to the Application, requesting a pathway be required by the Commission providing a flight path for the Eagle Crest airport.

Mr. Mark Nardi spoke in opposition to the Application with concerns regarding the current road conditions, increased traffic, and the flawed Traffic Impact Study, which had lapses in data and incomplete data tables.

Mr. Charlie Quandt spoke in opposition to the Application with concerns regarding the traffic along Hudson Rd., and questioned if the plan proposes a right-turn only to exist the development.

Mr. Erikson stated the plan reflected a channelized right-turn lane, which does not restrict movements to the other direction.

Mr. John Doran spoke in opposition to the Application with concerns regarding the proximity of the Twin Masts development to the Eagle Crest Airport runway, and the structures, ponds, and other amenities currently proposed within the Runway Protection Zone.

Ms. Pamela Russo spoke in opposition to the Application with concerns regarding the mature forest, the wildlife, and the destruction of the groundwater.

Ms. Judy Rose Siebert spoke in opposition to the Application with concerns regarding the impact the development would have on the economical network.

Ms. Wingate questioned the Applicant's proposed Condition R, which stated, that *the developer shall permanently restrict a portion of the site approximately 100 feet in width, by approximately 2,000 feet in length for any and all improvements, except for amenity facilities, utility structures including fencing...* and she did not feel the condition should state "*except for*", because it would then allow for some obstructions regardless of it being a house or a pickleball court.

Ms. Peet stated that based on the information that was submitted into the record via the email correspondence, and previous discussions between Mr. David Hutt, Esq., representative of Eagle Crest, Mr. John Pardee, Esq., representative of Hudson Fields and herself, they came up with Condition R; that the condition was based on the primary concern, as it was expressed to her, was the first 100 ft. by 1,000 ft. area; that within the RDA (Restricted Development Area) One, they have only proposed below or at grade improvements; that the RDA One area is much more restrictive than the RDA Two area; that based off their professional's analysis, Mr. Charles Lamb, the Applicant is not required to provide anything; that the Applicant, however, voluntarily provided the 100 ft. by 2,000 ft. area; that there is an RDA (Restricted Development Area) Plan submitted into the record, which reflects the RDA One area and the RDA Two area and the proposed Conditions of Approval were amended as of September 25, 2023, to address some of the Eagle Crest's concerns.

Mr. Collins questioned what the development look would like, and how many lots would be provided if the Applicant were to accommodate what was being requested for the emergency landing area, and the removal of the forest.

Ms. Peet stated they had already relocated six lots to provide for the requested Runway Protection Zone.

Mr. Erikson stated that it would be a very difficult approximation; that accommodating those requests would crush the developable area; that he very particularly lined up the area of the open space and with the expansion of the area, it begins to squish everything, making it unable to efficiently achieve lots, roads and stormwater, while still achieving superior design.

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 2023-06 Twin Masts. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Recess

8:27 p.m. - 8:54 p.m.

Chairman Wheatley stated that there are seven public hearings for essentially the same thing in different locations. Chairman Wheatley stated that the Applicant should give the complete presentation on the first hearing and the things that are duplicated, the Applicant can ask to have that testimony incorporated into each current hearing, and this will save time but get all the information in the record, but this is the Applicant's choice.

The Applicant, Mr. Joe Shanahan stated that he would like to consolidate the hearings.

The Commission found that Mr. Joe Shanahan spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc.; that also present were Mr. Brian Conlon, Langan Engineering and Environmental Services, the engineering firm working on this project, and the following two projects; and Mr. Websly Darbouze, Colliers Engineering & Design, the engineering firm on the subsequent four projects on the agenda this evening. Mr. Shanahan stated that RWE Group is one of the largest renewable energy companies in the United States; that RWE has been developing, constructing, and operating renewable energy facilities for more than 15 years in the United States; RWE has a secure investment grade credit rating and revenue over 28.6 billion; that RWE has over 1,500 employees and is the second largest solar owner and operator in the United States with a renewable energy portfolio of about 8 gigawatts (GW) of installed capacity including solar, battery storage, and onshore wind; and that RWE Clean Energy also supports federal agencies, private businesses, cities, towns, and homeowners in meeting their energy goals.

Mr. Shanahan stated that that members of the Commission know the general characteristics of ground mounted community solar projects because of the number of public hearings during the past 12 months; that he will mention the characteristics again so that they are in the record for this application and the other six applications being considered this evening; that solar projects do not emit any noise or odors; that they do not create and glare during the day and as there are no lights on the sites do not create any illumination at night; that they do not produce any form of waste; that they do not create any traffic because once constructed there are only occasional visits to the site for inspections, landscaping and maintenance; that they do not require sanitary sewer service or utilize the water supply; that solar projects do not create any burden on local fire, police, or other first respondent departments; that solar projects do not put any additional children in the respective school districts; that solar projects particularly in rural areas raise tax revenue in areas that have difficulty increasing their tax base without putting any additional burden on community services or infrastructure; that community solar projects allow access to solar power for all Delmarva customers; that 15% of users will be low-income households; that this project and the other six applications will provide rental income for the property owners and allow them to keep the farm for future generations; that when the life of the solar project comes to an end the equipment will be removed and the site will be restored to its previous condition; that Sussex County requires a decommissioning plan; and that these attributes apply to C/U 2381 and the other six applications.

C/U 2381 Consolidated Edison Development, Inc.

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 PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43.27 ACRES, MORE OR LESS. The properties are lying on the south side of Lewes Georgetown Highway (Rt. 9), approximately 0.40 mile east of Harbeson Road (Rt. 5). 911 Address: 26628 & 26772 Lewes Georgetown Highway, Harbeson. Tax Map Parcels: 235-30.00-61.00, 58.06 & 58.07.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a copy of the Applicant's conceptual site plan and exhibits, a letter from the Applicant, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division, a letter from the Sussex Conservation District. Mr. Whitehouse stated that there were zero comments.

Mr. Shanahan stated that C/U 2381 is the Harbeson A Solar Project located at 26628 and 26772 Lewes Georgetown Highway in Harbeson, Delaware; that the lease area is shown on the site plan is 25.8 acres on an overall 43 acre property; that the project would be set back 315 feet from Lewes Georgetown Highway accessed by 20 ft. wide gravel driveway; that the site is mainly undeveloped with one residential building and the landowner resides at the property; that this project is a public utility use under the Sussex County Zoning Code; that it meets the purposes of the Conditional Use as each has a public or semi-public character that is essential and desirable for the general convenience and welfare for the Sussex County residents; that this project is located in an AR-1 Agricultural Residential zoning district; that a public utility use is allowed when approved by the County Council; that the application was submitted on July 1, 2022 and preceded the adoption of the recent Solar Ordinance in April 2023; that the application complies with the new ordinance including the requirement for a decommissioning plan; that the proposal is 4 megawatt alternating current project with is the maximum size allowed under the new ordinance; that the project will be enclosed by a 7 ft. fence as required by the National Electrical Code; that the fence will be gated with a lock and knob box; that it will be solar arrays wired together to collect energy from the sun and send it into the solar project's converter and converting the power to electricity and distributing it to the Delmarva power grid; that the panels are hung on posts and are approximately 3 ft. off the ground and approximately 12 ft. in height; that the grounds around and below the panels will be planted with a pollinator friendly mix that provides more shelter for a variety of insects that provide a food source for wild animals and birds; that an exhibit book was submitted and contains the DelDOT Service Level negative determination, a Federal Aviation Administration Determination of No Hazard, Invoice from and fee paid to Delmarva Power to undertake Community Solar Interconnection Study, determination by the state Historic Preservation Office (SHPO) that a review of the property or of the project under the National Historic Preservation Act (NHPA) is not necessary, determination from the United States fish and Wildlife Service that the project will have no adverse impact on any threatened or endangered species, United States Army Corps of Engineers Preliminary Jurisdictional Determination (PJD), Approval by the Office of State Fire Marshal, "Clean" Phase 1 Environmental Site Assessment, and the Decommissioning Plan and Cost Estimate; that this site is owned by Terri L. Martin, who with her husband is present this evening; that Ms. Martin requested that the following be read into the record this evening,

"Members of the Planning and Zoning Commission, my name is Terri Martin. I was born and raised in Sussex County. I graduated from Cape Henlopen high school, Delaware Tech Community College, and Wilmington University. Reminders of my family's deep roots include Martins Farm Road, Thompsonville, and Russell Road, Bridgeville. Having inherited none of the family land, I began assembling my property in 1984 and have added to it as contiguous pieces of land became available over

the years with the last piece being purchased in 2009. In total, I currently own approximately 46 acres, I have also owned and operated a successful business, M&D Bird Farm for the last 21 years. It has always been my plan that I would find a way for my land to produce an income so that I could retire comfortably without creating another housing development. I was intrigued by the several calls I received from solar com, like ConEd, offering to lease my land for a solar farm. Most assuredly, this was stimulated by Delaware's State mandates to increase the amount of power that comes from renewable energy sources like solar. I found the prospect of reducing our carbon footprint with solar power very appealing. In conclusion, I am requesting that the Commission approve this Conditional Use and allow ConEd to move forward with making Sussex County more energy efficient. Respectfully submitted. Terri Martin"

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

There were no questions from the Commission.

Mr. Robertson asked if there was a vegetated buffer on the southeast side of the property.

Mr. Shanahan stated that there is no proposed vegetated buffer as there is an existing buffer.

The Commission found that there was no one present who wished to speak in favor of or in opposition to C/U 2381.

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 2381 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/U 2382 Consolidated Edison Development, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL 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 37.04 ACRES, MORE OR LESS. The property is lying on the south side of Kendale Road (S.C.R. 287), approximately 0.15 mile east of Wil King Road (Rt. 288). 911 Address: N/A. Tax Map Parcel: 234-2.00-18.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a copy of the Applicant's conceptual site plan and exhibits, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division, a letter from the Sussex Conservation District. Mr. Whitehouse stated that there were zero comments.

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2382 is the Lewes A project located on Kendale Road in Lewes, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 21.6 acres of an overall 37 acre property; that the setback is approximately 200 ft. from Kendale Road with

access by a 20 ft. gravel driveway; that the site is mainly undeveloped with some residential properties to the north of the site; that there are portions of wooded areas and wetlands to the south and east of the property and all development is outside of the wetlands; that this site is owned by Garciel Street Family and Matt Tucker, family member, is present this evening; that requested that the following be read into the record this evening,

“Thank you for taking the time to consider our family’s farmland as a future site for clean energy production in Lewes, Delaware. Our family has farmed the land containing this parcel for the last century and it is now being managed by the fourth generation of the family. Aside from contributing to the local agricultural community, the Garciel Street family are members of the Nanticoke Indian Tribe and have deep roots both in the tribe and the community. It is very humbling to know that through this partnership with Con Edison, we will be able to continue to make an impact on the community and the people in this area. Through this project, we will be able to ensure that this land remains in the family and continues to be one of the few remaining undeveloped agricultural properties on the western side of Lewes. Signed by Matt Tucker – Garciel Street family”.

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

There were no questions from the Commission.

Mr. Robertson asked if there would be any tree removal.

Mr. Shanahan stated that there may be some tree removal at the rear property line.

The Commission found that there was no one present who wished to speak in favor of or in opposition to C/U 2382.

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 2382 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/U 2383 Consolidated Edison Development, Inc.

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 30.1 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 143.09 ACRES, MORE OR LESS. The property is lying on the southwest side of Woodland Ferry Road (S.C.R. 78), approximately 635 feet northwest of Old Sailor Road (S.C.R. 78A). 911 Address: N/A Tax Map Parcel: 232-12.00-4.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a copy of the Applicant’s conceptual site plan and exhibits, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that there were zero comments.

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2383 is the Laurel E project located on Woodland Ferry Road in Lewes, Delaware; that for the purpose of this public hearing

he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 30.1 acres of an overall 143 acre property; that the setback is approximately 1500 ft. from Woodland Ferry Road with access by a 20 ft. wide gravel driveway; that the site is mainly undeveloped with portions of wooded areas, wetlands and floodplains of Broad Creek to the rear of the property to the south and all development is outside of the wetlands and the floodplain; that this site is owned by the Dickerson Family, currently by Richard Dickerson and Zachary Dickerson; both Richard and Zachary were present earlier this evening, but had to leave to attend to farm animals; Richard and Zachary represent the fifth and sixth generations of Dickersons to own and operate this property as a farm; that Richard and Zachary Dickerson said that approval of this application would allow their family to create value from an underperforming portion of their property as this location is very sandy and nearly impossible to irrigate; that the lease to Con Edison will afford them a steady stream of income that will assist them in keeping the farm in operation and the land in the family for still more generations to come; and that Richard Dickerson feels that the opportunity to make a positive impact on the greenhouse gas effect caused by fossil fuels with this solar project will in some way offset the many years of emissions which have resulted from his family having had to use diesel fuel to operate farm equipment.

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

Mr. Collins asked if there was a buffer around the farm.

Mr. Shanahan stated that the buffer is wooded at the rear of the property and that the conditional use area will be 1500 ft. from the roadway and will not be seen from the road.

The Commission found that there was no one present who wished to speak in favor of or in opposition to C/U 2383.

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 2383 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/U 2384 Consolidated Edison Development, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 19.61 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 74.96 ACRES, MORE OR LESS. The property is lying on the west side of South Main Street (Rt. 13A), approximately 380 feet north of Rifle Range Road (S.C.R. 545). 911 Address: 18374 South Main Street, Bridgeville. Tax Map Parcel: 131-14.00-29.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's conceptual site plan and exhibits, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that there is one letter of opposition.

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2384 is the Bridgeville A project located at 18374 South Main Street in Bridgeville, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 19.61 acres of an overall 74.96 acre property; that the setback is approximately 685 ft. from South Main Street with access by a 20 ft. wide gravel driveway; that the site is mainly undeveloped with some residential properties east of property; that there are no wetlands on the property; that the site is owned by Karen L. Walls and has been in her family for over 70 years; that Ms. Walls is present this evening and requested that the following be read into the record this evening,

“My name is Karen L. Adams Walls, and I am the owner of the property located at 18374 South Main Street, Bridgeville, Delaware. This property was purchased by my parents, Maurice and Mildred Adams, and our family farm known as Grateful Acres was built in 1953. My father and Aunt, Mary Adams were the owners of Rapa, Inc. which was established by my uncles in 1926. As you can see our roots in Sussex County run deep. Until recently we have enjoyed continuing the tradition of raising and racing standard-bred horses, since we are now in our seventies, and this has become too labor intensive we began looking into different options to maintain the farm and to keep it green. Con Edison was the answer to our prayers, knowing that after the lease expires our land will be returned to its natural state while at the same time while at the same time helping the environment was a perfect solution for us. I truly appreciate your consideration in granting the permits needed for this community solar project. My grandchildren do as well, we look forward to keeping Grateful Acres in the family for generations to come. Respectfully yours, Karen Walls.”

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

Mr. Collins asked if there was a buffer around the farm.

Mr. Shanahan stated that there are no plans to buffer the site as it is 700 ft. from the road and there is adequate screening, it complies with both the previous and current Solar Ordinance with regard to setbacks.

The Commission found that there was no one present who wished to speak in favor of C/U 2383.

The Commission found that Demetrios Kaouris spoke in opposition to the application. Mr. Kaouris stated that he was present on behalf of Passwaters Farm, LLC and Bridgeville Villas, LLC; that Passwater Farm is the owner of the property west of the site and Bridgeville Villas is the owner of the property north of the subject site; that a letter was submitted into the record setting forth the basis for the opposition to this application including citation to the relevant portions of Sussex County Code; that there will be 200 townhomes developed directly to the north of the subject property; that the code provides that there should be a 50 ft. setback from all property lines and in the current plat is not existing; that the setback from any adjacent dwellings should be 200 ft.; that the townhomes would be roughly 52 ft. from the property line; that it is there position that the setback area should be at least 150 ft. along that property line; that this is one of the only solar projects that is adjacent to a municipality and should be taken into consideration by the Commission; and that they respectfully ask the denial of this Application and at a minimum add additional screening.

Mr. Shanahan stated that this application has been pending for over 15 months and for an abuttal to share their comments on the day of the public hearing without sharing a courtesy copy of the comments is less

than professional; that the attorney cited the current solar ordinance which was not applicable at the time the applications were filed; that when this application was filed, the setback from the street was 40 ft. and 10 ft. from the side and rear property lines; and that this application greatly exceeds those setbacks.

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 2384 Consolidated Edison Development, Inc. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

C/U 2385 Consolidated Edison Development, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS. The property is lying on the north side of West Line Road (S.C.R. 512), approximately 0.67 mile west of Delmar Road (Route 54). 911 Address: 8517 West Line Road, Delmar. Tax Map Parcel: 532-19.00-57.00.

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

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2385 is the Delmar B project located at 8517 West Line Road in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 17.21 acres of an overall 29.45 acre property; that the setback is approximately 425 ft. from Delaware Avenue with access by a 20 ft. gravel driveway; that the site is mainly undeveloped except for a single-family dwelling occupied by the landowners daughter; that there are portions of wooded area to the east, west and north; that there are some wetlands to the south and western sides of the property and all development is outside of the wetlands; that the site is owned by William J. and Janet James who purchased the property in 2010 as it was adjacent to their then existing property where they continue to reside; that Mr. James and his daughter were present earlier this evening but had to leave; that he met with Mr. & Mrs. James on the occasion of their 60th wedding anniversary; and that they are hopeful that this Conditional Use permit will be granted so that they may have the rental income for many years to come so that they can maintain the two family properties and keep them in the family.

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

There were no questions from Commission members.

The Commission found that there was no one present who wished to speak in favor of or in opposition to C/U 2385.

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 2385 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/U 2386 Consolidated Edison Development, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 53.891 ACRES, MORE OR LESS. The property is lying on the east and west side of Cast Rite Drive on the south side of Bacons Road (S.C.R. 515), approximately 0.39 mile west of Country Walk. 911 Address: 35204 Cast Rite Drive, Delmar. Tax Map Parcel: 532-6.00-32.00.

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

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2386 is the Delmar C project located at 35204 Cast Rite Drive in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 24.53 acres of an overall 53.89 acre property; that the setback is approximately 350 ft. from Bacons Road with access by a 20 ft. gravel driveway; that the site is mainly undeveloped except for a single-family dwelling occupied by the landowner; that there are portions of wooded areas with wetlands to the western side of the property and all development is outside of the wetlands; that the site is owned by Robert Blaney; that Mr. Blaney was present earlier but has left; that he asked that the following statement be entered into the record on his behalf,

“To whom it may concern, Pursuant to Delaware’s agenda to go green and utilize solar technology to generate electricity rather than fossil fuels – i.e., heavy oils, coal, and even natural gas seems to be a rational approach rather than nuclear generation which is fraught with too many fears and technical problems. Desiring to contribute my small part to alleviate the problem of airborne pollution, when I was approached by Consolidated Edison after consideration, I agreed to their proposal. Long-term the land can be returned to agricultural use as the decommissioning will leave no contamination of the soils or groundwater. Ruralness of the area will be preserved, if solar proves to be the long-term solution to society's energy needs this project will play a role in that endeavor. Thank you, Robert Blaney.”

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

There were no questions from Commission members.

The Commission found that there was no one present who wished to speak in favor of or in opposition to C/U 2386.

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 2386 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

C/U 2387 Consolidated Edison Development, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 17.04 ACRES, MORE OR LESS. The property is lying on the north and south sides of Hastings Lane and the west side of Bi-State Boulevard (Rt. 13A), approximately 0.37 mile north of Old Crow Road (S.C.R. 503B). 911 Address: 10311 Hastings Lane, Delmar. Tax Map Parcel: 532-13.00-22.00 (p/o).

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

The Commission found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2387 is the Delmar D project located at 10311 Hastings Lane in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 16.97 acres of an overall 54.49 acre property; that the setback is approximately 410 ft. with access by a 20 ft. gravel driveway; that the site is undeveloped and currently used as part of the family farm; that there are no wetlands on the property; that the site is owned by Rufus Lester (Skip) Ammons and his wife Charlotte Ammons who live on the property with their daughter and son-in-law who operate the farm and farm seed and equipment business at this location; that Mr. Ammons is present this evening; and that the Ammons family asked that he read the following statement into the record on their behalf,

“To whom it may concern, my wife and I ask that you consider the approval of a solar panel project on a small acreage of our family farm. My wife's parents purchased this farm in 1945 with the intent of it being a family farm for generations to come. We are the second generation and upon our death, our two children will become the third generation. At this time, we have grown grandchildren who represent the fourth generation. We presently have three generations living on the farm. We see this project to be a win-win thing, it will bring financial stability to the farm operation, and it will provide financial support in the form of discounts on electric bills to the surrounding community. We also have strong feelings not only about the present but also future need for electric power. Thank you for your consideration in this matter. Lester and Charlotte Ammons.”

Mr. Shanahan stated that before he closed on this and the six other conditional use applications, he would like to take the opportunity to thank Director Jamie Whitehouse and Planner Michael Lowrey for their guidance and assistance with these applications and the processes over the last 15 months; and that is has been appreciated.

Mr. Shanahan stated that he was ready to address any questions from the Commission members.

There were no questions from Commission members.

Mr. Robertson noted that the last three applications are zoned General Residential which is the highest density, however, all of them are in farmland which asks the question, why was this land zoned General Residential?

Mr. Wheatley stated that the Commission has seen several solar arrays that have been approved by County Council but has yet to see site plans submitted for approval. He asked if the plans are speculative and unsure if they will be chosen by the power company to put a solar array on each one of these sites and not necessarily Con Edison, but the industry in general.

Mr. Shanahan stated that with regard to the industry, there are a lot of “developers” who once the Delaware legislation was approved became land prospectors with the idea of getting as many sites as possible; that they will never develop them, but then will approach Con Edison; that Con Edison and RWE are not in the speculation business; that most of their projects that are permitted are constructed and operated; that he cannot guarantee that it will happen in Delaware; that all of these sites are vetted with a solar site assessment; that an interconnection study is also conducted; that by the time it comes before the Commission, Con Edison is fairly certain that it will be interconnected; and that he has worked in a number of states but he has never worked with a company that is as difficult and as slow as Delmarva Power.

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

Ms. Wingate made a motion to reopen the public hearing to allow for public input, seconded by Mr. Collins. Motion carried 4-0

The Commission found that there was no one present who wished to speak in favor of C/U 2387.

The Commission found that Mr. Steve Harrison spoke in opposition to the application. Mr. Harrison stated that his neighbor, Frank Messick was present that evening but had to leave and left a list of questions regarding the location of the power line, transformers, etc., and asked if this was part of this hearing.

Chairman Wheatley said that it may be that the Applicant must get approval for the land use first and then they have to submit a preliminary site plan which would show the location of transformers and power lines.

Mr. Harrison stated that he lives across the street from the subject property; that he and his wife have lived there for 43 years; that he doesn't want to look out his window and see a solar farm; that he wants to see a corn field or deer grazing in the field; and that he is unsure what a solar farm would do to property values.

Mr. Websly Darbouze, Engineer with Colliers Engineering & Design stated that the site has two proposed transformer pads where all the electrical equipment will be and that is shown on the concept plan.

Mr. Robertson asked how close the transformer pad is to the neighboring dwelling.

Mr. Darbouze stated that it is approximately 50 ft. from the dwelling on the adjoining property.

Chairman Wheatley stated that the Commission does have the right to set conditions and that they may request that the transformer be set further away from the neighboring dwelling.

The Commission found that Ms. Sheree Hammerer spoke in opposition to the application. Ms. Hammerer stated that when she looks out between her neighbor's homes she can see agriculture fields, deer, and trains; that her family has lived in Sussex County since the late 1600s; that her father built her house and she was born and raised there; that after her parents died, she and her husband bought the house and reside there now; that it is not anything against the Ammons family but that she does not want to look out from her property and see a solar farm; and that there are about 10 houses who will have this in their back yard.

Ms. Wingate asked if it would make a difference to the opposition if there was a condition for a woven fence to be placed on the subject property.

Ms. Hammerer stated that she was not sure because she likes to be able to look across the fields.

Mr. Collins asked if a landscaped buffer would make a difference.

Ms. Hammerer stated that it may matter to the homes that back up to the proposed solar farm; that she also had concerns about radiation or buzzing noise from the solar panels; that she has concerns about the animals in the fields; that it seems like farmlands are being taken for developments or projects like this; and that although she can't speak for her neighbors she is sure they would appreciate it if there was something done about the glare and the panels moving up and down.

The Commission found that Mr. Vincent Hammerer spoke in opposition to the application. Mr. Hammerer stated that he noted there were a lot of impact studies done but none on the property values of the area and how property values will be affected; that he thinks property values will be impacted and will the County reassess for tax purposes if that happens; that the picture shown is misleading as it does not show the dwellings in close proximity to this proposed solar farm; that he noted except the Bridgeville application, the other applications that were presented this evening had very few dwellings in close proximity to the subject sites; and that his wife's family has lived in Sussex County since the 1600s which should be taken into account when making a decision.

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

In relation to C/U 2387 Consolidated Edison Development, Inc. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Meeting adjourned at 10:23 p.m.

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