

THE MINUTES OF THE REGULAR MEETING OF JANUARY 9, 2020

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 9, 2020, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager and Ms. Lauren DeVore – Planner III.

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

Ms. Cornwell noted that staff had some minor changes to the minutes as circulated to correct some typos. Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the minutes from November 14, 2019 meeting as revised. Motion carried 5-0.

OLD BUSINESS

2018-34 – Keastone Bay – Baywood, LLC and Sussex Realty Company

A Coastal Area/cluster subdivision to divide 310.97 acres +/- into 675 single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The property is located on the northwest and southeast sides of Green Rd., approximately 360 ft. northeast of Banks Rd. Tax Parcels: 234-17.00-170.00, 172.00, 173.00, 174.00, 234-18.00-68.00, 234-24.00-1.00 & 234-24.00-2.00. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell announced that this item was placed on the agenda to announce that the record for receiving comments closed on January 8th at 4:30 pm. Most of the comments received have been submitted and included in the Commission's paperless packet and those that were received after the preparation of the packets have been forwarded to the Commissioners. It was noted that the record was held open for a specific period and those days have passed. The record for the application is now closed.

2019-25 Workman's Crossing – Dunn Investment, LLC

A standard subdivision to divide 11.483 acres +/- into 5 single-family lots to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County. The property is lying at the northeast corner of Pepperbox Rd. and Brittingham Rd. Tax Parcel: 532-15.00-11.00. Zoning District: AR-1 (Agricultural Residential District).

Ms. Cornwell noted that, at the time this was put on the agenda staff were anticipating the soil feasibility study being available. However, the Applicant has not been able to provide it to staff yet. As such, it was suggested that the Commission may wish to defer on this item to allow further time for submission of the requested documents.

Ms. Wingate moved to defer consideration of the application, second by Ms. Stevenson. Motion carried unanimously 5-0.

C/U 2199 OA – Rehoboth, LLC

An Ordinance to grant a Conditional Use of land in a CR-1 Commercial Residential District for multi-family (224 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.793 acres, more or less. The property is lying on the south side of John J. Williams Hwy. (Rt. 24), approximately 0.29 mile east of Warrington Rd. 911 Address: N/A. Tax Parcels: 334-12.00-127.01 and 127.10.

The Commission discussed the application which has been deferred since December 12, 2019.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use 2199 for OA REHOBOTH, LLC for multi-family units based on the record made during the public hearing and for the following reasons:

1. The Applicant is proposing a Conditional Use to develop a residential rental apartment containing 224 units on land located between Route 24 and Old Landing Road behind the Rehoboth Mall on the west side of Route 1.
2. Under the 2018 Sussex County Comprehensive Plan, the site is in the Coastal Areas and is surrounded by Coastal and Commercial Areas which are "growth areas" as designated on the future land use map.
3. The plan states that a range of housing types should be permitted in Coastal Areas and that higher density residential development of up to 12 units per acre can be appropriate in locations where: 1) Central water and sewer are utilized, 2) the site is near sufficient commercial uses and employment centers, 3) it is in keeping with the character of the area, 4) it is along a main road or near a major intersection, 5) there is an adequate level of service, or 6) where there are other relevant considerations.
4. Central water will be provided by Tidewater Utilities and central sewer will be provided as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. The County Engineering Department indicated that adequate wastewater capacity is available to serve the proposed development.
5. The site is centrally located in the Route 1 commercial corridor near numerous retail and service, commercial uses and employment centers. The site is adjacent to the Rehoboth Mall, Delaware Eye Institute, and Beebe Hospital Campus and there are 3 DART bus stops within walking distance of the site.
6. The site is an undeveloped "infill" parcel predominantly surrounded by commercial uses and commercially zoned land with residential uses to the south. The site is currently zoned CR-1 which permits by right any of the permitted uses listed in the CR-1 district.
7. The site is located near the intersection of Route 1 and Route 24, two principal roadways in Eastern Sussex County and will have access to Route 24.
8. DelDOT determined that the developer could contribute to an area wide study fee in lieu of a Traffic Impact Study. The estimated vehicle trips per day generated by the proposed use is less than traffic that would be generated by other uses currently

- permitted by the existing CR-1 zoning. The Applicant will dedicate land and contribute to the cost of a DelDOT planned connector road from Route 24 to Old Landing Road.
9. The proposed apartment development will provide a local housing option for moderate income residents who constitute a significant percentage of the workforce in the Lewes-Rehoboth area but, because of the high price of homes and lack of rental units, are unable to live near their place of employment. This results in long commuting time, increased transportation costs, and increased traffic.
 10. The proposed development at this location is in accordance with the goals of the housing element of the Comprehensive Plan and is consistent with the recommendations of the Sussex County Housing Opportunities and Market Evaluation Report.
 11. The proposed development is strongly supported by the Delaware State Housing Authority since it will provide a more affordable housing product in the coastal resort area where the need for workforce housing exists. Based on the site's location in a DSHA defined "Area of Opportunity", where employment opportunities, major roadways, and supportive infrastructure exist, DSHA deems the site an excellent location for more affordable housing product and rental units are vital to any well-balance community.
 12. The Applicant has addressed the items to be considered by Section 99-9(c) of the Subdivision Code and the Environmental Assessment and Public Facility Evaluation Report.
 13. With the conditions imposed, the proposed Conditional Use meets the purposes of the Zoning Ordinance, the Comprehensive Plan and Title 9 Chapter 69 of the Delaware Code in that the proposed Conditional Use is essential and desirable for the general convenience and welfare and promotes the health, safety, morale, convenience, order, prosperity, and welfare of the present and future residents of Sussex County.
 14. There was no evidence that the use will adversely affect neighboring properties.
 15. No parties appeared in opposition to this application. Rather, the Commission received evidence of support from the neighboring Sterling Crossing community.
 16. This recommendation is subject to the following conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties:
 - A) The maximum number of residential apartment units shall not exceed 224 units located in no more than 7 buildings.
 - B) All entrances, intersections, interconnections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
 - C) The Applicant shall dedicate land and contribute to the cost of a DelDOT planned connector road from Route 24 to Old Landing Road.
 - D) The development shall be served as part of a Sussex County Sanitary District. The developer shall comply with all requirements and specifications of the County Engineering Department.
 - E) The development shall be served by central water.
 - F) Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These

facilities shall be operated in a manner which is consistent with Best Management Practices.

- G) Recreational amenities, including a community clubhouse, outdoor swimming pool, playground, and enclosed dog park shall be completed prior to the issuance of a building permit for the 4th multi-family building.
- H) Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
- I) If required by the school district, the location for a school bus shelter shall be coordinated with the local school district's transportation manager. The location of the bus stop shelter shall be shown on the Final Site Plan.
- J) No outdoor construction activities or deliveries of dirt, fill, or similar material shall occur at the site except between the hours of 7:30 am through 7:30 p.m. Monday through Friday and between 8:00 am through 5:00 pm on Saturdays. There shall be no construction, site work, grading, or deliveries at the site on Sundays.
- K) The design of interior drives shall meet or exceed Sussex County road design standards and requirements.
- L) The use shall comply with all Sussex County parking requirements.
- M) One lighted entrance sign, not to exceed 32 square feet per side, shall be permitted.
- N) Space in the community clubhouse or in 1 unit shall be permitted as an on-site management office.
- O) The Applicant or its assigns shall be responsible for the maintenance of interior drives, parking areas, buildings, buffers, stormwater management, recreational amenities, and all open space.
- P) A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Sussex County Office of Planning and Zoning. The Staff shall approve the Revised Preliminary Site Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.
- Q) 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.
- R) The Final Site plan shall include a landscape plan for all buffer areas showing all the landscaping and vegetation to be included in the buffer areas.
- S) The Final Site Plan shall be subject to the review and approval of the Planning & Zoning Commission.

Motion by Ms. Stevenson and seconded by Mr. Hopkins to approve CU 2199 – OA Rehoboth LLC for the reasons and the conditions as stated in the motion. Motion carried 5-0.

C/Z 1900 Michael P. Justice, Trustee

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 16.1 acres, more or less. The property is lying on the west side of Parker House Rd., approximately 0.35 mile south of Beaver Dam Rd. 911 Address: N/A. Tax Parcel: 134-16.00-51.00.

The Commission discussed the application which has been deferred since December 12, 2019.

Mr. Mears moved that the Commission recommend approval of C/Z 1900 for **MICHAEL P. JUSTICE** for a change in zoning from GR-General Residential to a GR-RPC based upon the record and for the following reasons:

1. The property is currently zoned GR – General Residential.
2. The proposed development will not have more than 45 single-family units on 16.1 acres. This proposed density is 2.82 units per acre, which is less than the maximum density permitted by GR zoning. This density is also similar to other nearby developments.
3. The applicant has stated that he is essentially requesting approval for what would be a cluster subdivision in the AR-1 Zone. But, since clustering is not available in the GR District, he is seeking approval of a similar design through an RPC.
4. The County Engineering Department has indicated that adequate wastewater capacity is available for the development. Central water will also be provided.
5. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 39%, or almost 6 acres of the site, as open space. This includes nearly 1.5 acres of existing forest that will be retained.
6. The project will not adversely affect the neighborhood or surrounding communities. There are existing developments in the immediate area with similar characteristics.
7. According to the County’s current Comprehensive Plan, the project is in the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.
8. While there were concerns expressed during the public hearing about drainage, the Sussex Conservation District will perform a thorough review of the project with the project’s engineers to address stormwater and drainage on the site and how it leaves the site. This should result in a drainage improvement for the area from what currently occurs on the undeveloped land that does not have any stormwater system in place.
9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
10. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 45 single family units.
 - B. A homeowners association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
 - C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements or in accordance with any further modifications required by DelDOT based on its review of the Traffic Impact Study.
 - D. The RPC shall be served by Sussex County sewer. The Developer shall

- comply with all requirements and specifications of the County Engineering Department.
- E. The RPC shall be served by central water for drinking water and fire protection, as required by applicable regulations.
 - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on at least one side of the streets within the RPC.
 - H. A 20-foot-wide vegetated or forested buffer shall be established along the perimeter of the site. This may include the existing trees. There was testimony during the hearing about the need to improve the drainage along the northwest boundary of the site in an area that is currently wooded. In this area, the buffer shall be located outside of the area needed for these drainage improvements.
 - I. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
 - J. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
 - 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. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas. The landscape plan shall also include the existing forested areas that will be maintained.
 - M. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.
 - N. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
 - O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears and seconded by Ms. Wingate to recommend approval of C/Z 1900 Michael P. Justice, Trustee for the reasons and conditions as stated in the motion. Motion carried 5-0.

C/Z 1901 Mary and Victor Rico

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR1 Agricultural Residential District to a MR Medium-Density Residential District for a certain parcel of land lying and being in Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County, containing 0.927 acres, more or less. The property is lying on east side of Sunset Ln. north side of John J. Williams Hwy. (Rt. 24), approximately 0.28 mile northeast of Camp Arrowhead Rd. 911 Address: 20797 Sunset Ln., Lewes. Tax Parcel: 234-7.00-100.00.

The Commission discussed applications CZ 1901 and CU 2200 which have been deferred since December 12, 2019.

Ms. Stevenson moved that the Commission recommend denial of Change in Zone #1901 for **Mary and Victor Rico** for a change in zone from AR-1 to MR based upon the record and for the following reasons:

1. This rezoning application is combined with a Conditional Use application to allow multi-family units within existing structures that were previously single-family condominium units.
2. Based on the record, the applicant bought both of the single-family units and then converted them to multi-family units without proper zoning or other permits.
3. The Applicant is not seeking MR zoning because it is an appropriate land classification for the area. Instead, the Applicant is primarily seeking MR Zoning to correct or ratify his illegal construction activities on the property.
4. There is no other MR zoning in this immediate area.
5. This property is less than an acre in size. And, a lot of the property area is taken up by the roadway that serves the other existing units and adjacent properties. The property is much too small for a stand-alone rezoning to MR and the density that would be permitted under the MR zoning, or the 7 units that this Applicant is seeking along with the parking requirements for those units under the Zoning Code.
6. These units are located along a private road that other nearby properties use. This road cannot handle the additional traffic that would be possible under MR Zoning.
7. The rezoning to MR would have significant adverse impacts upon the other units within this four-unit condominium as well as other neighboring and adjacent properties.
8. This denial affects innocent people and families who may be living in the units that the Applicant has illegally constructed. Presumably these people are occupying the units with the assumption that they are legal. For that reason, it is also recommended that the County not take any enforcement action to remove the illegal units until July 1 of 2020. This will allow the people occupying the units plenty of time to find other housing and will not disrupt families with school-age children during the school year.

Motion by Ms. Stevenson and seconded by Ms. Wingate to recommend denial of C/Z 1901 Mary and Victor Rico for the reasons stated in the motion. Motion carried unanimously 5-0.

C/U 2200 Mary and Victor Rico

An Ordinance to grant a Conditional Use of land in a MR Medium-Density Residential District) for multi-family (7 units) to be located on a certain parcel of land lying and being in Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County containing 0.927 acres, more or less. The property is lying on the east side of Sunset Ln. on the north side of John J. Williams Hwy (Rt. 24), approximately 0.28 mile northeast of Camp Arrowhead Rd. 911 Address: 20797 Sunset Ln., Millsboro. Tax Parcel: 234-7.00-100.00.

The Commission discussed applications CZ 1901 and CU 2200 which have been deferred since December 12, 2019.

Ms. Stevenson moved that the Commission recommend denial of Conditional Use #2200 for **Mary and Victor Rico** for a Conditional use to allow 7 Multi-Family Units on 0.927 acres of land based upon the following reasons:

1. This recommendation is based upon the record and it is also based upon the reasons and the recommended denial of CZ #1901 seeking to rezone the property from AR-1 to MR. Because the Commission recommended denial of the MR Zoning, the Conditional Use is not possible in the AR-1 District. As a result, this Conditional Use should be denied.
2. As stated in the denial of the MR Rezoning, the denial of this Conditional Use affects innocent people and families who may be living in the units that the Applicant has illegally constructed. Presumably these people are occupying the units with the assumption that they are legal. For that reason, it is also recommended that the County not take any enforcement action to remove the illegal units until July 1 of 2020. This will allow the people occupying the units plenty of time to find other housing and will not disrupt families with school-age children during the school year.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend denial of Conditional Use #2200 for the reasons stated in the motion. Motion carried 5-0.

C/U 2203 Christopher F. Booth

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a tree and landscaping business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.227 acres, more or less. The property is lying on the north side of Omar Rd., approximately 0.36 mile west of Armory Rd. 911 Address: 30725 Omar Rd., Frankford. Tax Parcel: 433-7.00-13.01.

Ms. Wingate moved that the Commission recommend denial of Conditional Use # 2203 for **Christopher F. Booth** for a tree and landscaping business based upon the record made during the public hearing and for the following reasons:

1. This Application is for a landscaping business on a residential 1.227-acre lot in an area immediately adjacent to other residential properties.

2. The record indicates that the Applicant has been operating his small landscaping business from this property for some time without the proper approvals.
3. There was opposition to the Application from a neighboring property owner describing the current bad condition of the Property, and the neighbor expressed concerns that this would only get worse if the use is allowed to continue with a Conditional Use approval.
4. Photographs entered into the record show that there is a large accumulation of trash and junk throughout the rear area of the property and along the boundary with neighboring properties. There was also testimony that this area has attracted feral cats, rats and other vermin. Under these conditions, it is not appropriate to grant a Conditional Use on this property.
5. There is evidence in the record that the existing trash and junk and the proposed use and the materials, equipment and vehicles associated with it, adversely affects the neighboring and adjacent properties.
6. The current condition of the property and the proposed Conditional Use does not promote the health, safety and welfare of Sussex County and its residents.
7. The proposed use in this location does not satisfy the purpose of a Conditional Use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.
8. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial of C/U #2203 Christopher F. Booth for the reasons stated in the motion. Motion carried 5-0.

PUBLIC HEARINGS

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

Memorandum of Understanding Between Sussex County and DeIDOT

The MOU describes the coordination process between Sussex County and DeIDOT regarding the process of land use applications.

Ms. Cornwell stated that staff did receive some additional comments that were provided and sent via email regarding some changes from seven different people. Also, staff have received a letter from the American Council of Engineers, Delaware Chapter, who are supporting the MOU comments provided by members of the Property Business Alliance.

Chairman Wheatley stated that everyone is allowed one trip to the podium. Since this is a continuation of last hearing, if someone spoke the last time, then they have already had their trip.

The Commission found that Mr. Joe Caloggero with the Traffic Group, Vice President, Baltimore,

MD was present to comment on the MOU. He represents the working group that sent information to the Commission on January 7th. The working group is comprised of engineers and developers. On January 7th he submitted a revised MOU with a letter outlining the requested modifications and he had copies for everyone. Ms. Cornwell asked to have it emailed to staff.

Mr. Caloggerro stated that the goal of the revised MOU is to modify and document the process so that is more similar to the DeIDOT process and that would provide more clarity to the government staff, consultants, developers and especially the general public.

The Commission found that Mr. Richard Barasso from Milton, speaking as a private citizen not representing any group, was present to comment on the MOU. Mr. Barasso stated that the last public hearing resulted in a number of suggestions regarding the draft MOU for land development coordination. Mr. Barasso supports the County in exercising its authority and to fully develop its capabilities to best leverage the MOU as an instrument to help protect, preserve and enhance public welfare and safety. The best examples of the County meeting this responsibility was the work and implementation during the 2019 Comprehensive Plan process; that growth is putting pressure on the County's transportation system; that responding to this pressure requires combination of capacity improvements, implementation of better approaches to land use, and transportation coordination; that there are more than fifty strategies outlined in the transportation element in the Comprehensive Plan; that County Government was clear in acknowledging that change was needed; that additionally, over the next five years over a billion dollars on infrastructure will be spent in Sussex County; that the County's responsibility for direct oversight and engagement will be critical to ensure the maximum turn on investment for all who live here; that for years we have been told that the County had no authority over roads; that this was DeIDOT's responsibility; that, in the words of the draft MOU, Sussex County is solely responsible for land use in the County; that land use decisions drive and determine traffic levels; that traffic is the direct result of land use; that the County is therefore responsible for traffic; that his responsibility cannot be met without the responsibility to act; that this is why laws and regulations have been adopted over the years granting County government the authority to act on behalf of the residents in many areas; that until last year, the current MOU was unknown to the public and to many officials at both the County and State levels; that when it did come to light, it became much clearer that the County actually did have a great deal of unused authority to influence traffic impact decisions at least in certain circumstances; that in Paragraph B it states that the local government can specify what if any comments they have with regard to the Level of Service; that in the section regarding the basis of requirement Paragraph C, it states local agencies have more stringent TIS requirements than those provided in this section; that lastly, in the section entitled "Future Traffic in Paragraph D", DeIDOT and the local zoning land development agency will collaborate on roads and developments will be used to generate and distribute vehicle trips; that it is clear that the County has the authority to impose requirements as it relates to traffic impact studies; that to this point, Mr. Barrasso suggests in Paragraph 7 the MOU draft needs to be strengthened beyond just stating Sussex County conduct the TIS; that this section must be expanded to identify greater inclusion input by County agencies who, at the end of the day, are most knowledgeable about local issues; that at the very least, reference back to Chapter II in the manual is warranted; that the fact that Sussex County is responsible for the traffic in the County and have the authority to ensure that the traffic studies and improvements are done in the best interest of the residents; that beyond this MOU draft, there is the issue of capability in the county; that in public hearings, the County has

previously admitted that it lacks the knowledge and the expertise and the capability to best understand and review and scrutinize the traffic analysis improvement recommended by DelDOT; that considering the fact that Sussex County is the fastest growing county in the State, with severe traffic safety and issues, and has the largest backlog of improvements and as mentioned earlier that a billion dollars is needed to spend on infrastructure; that it is time for the County to resolve this lack of capability; that stating that the County does not have the capability, is viewed by many as an excuse; that the issues facing citizens could be more benefited by the investment in a contract traffic planner or consultant.; that Delaware State Police data for Sussex County, outlined that 2019 fatal traffic accidents have increased 36%; that combined with the 13% increase in personal injury crashes; that he draft MOU must be revised to reflect these realities; that the Commission must fulfill their obligations to its responsibilities, exercise its authority, develop capabilities to protect, to preserve and enhance community and individual property rights; that the public is looking forward to the details in the Commission's recommendations to Council resulting from these public hearings.

Mr. Cote from DelDOT stated that he had no further comments to make.

Upon their being no one else wishing to speak, Chairman Wheatley announced that the public hearing was closed for this item.

At the conclusion of the public hearings, the Commission discussed the MOU. Mr. Robertson suggested that the Commission defer consideration of this item to allow further consideration of the entirety of the record, including the comments from the working group. Mr. Robertson noted that the Commission needs to make a recommendation to County Council. Mr. Wheatley noted that there is another public hearing scheduled before County Council.

Motion by Ms. Stevenson, and seconded by Ms. Wingate to defer action on this item. Motion carried unanimously 5-0.

Chairman Wheatley announced that the Commission has agreed to combine the hearings for both of the next two applications, 2019-2 Old Mill Landing South and 2019-13 Old Mill Landing North. This is for the presentation only. Chairman Wheatley noted that the Commission considers them separately and when they are voted on, they will be voted on separately.

2019-2 Old Mill Landing South

A cluster/coastal area subdivision to divide 145.43 acres +/- into 156 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. Tax Parcel: 134-21.00-6.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell noted that the Applicants went through the PLUS Land Use service, and was forwarded to the Technical Advisory Committee and those agency comments are included in the record together with other agencies comments included in the packet. There is also a site plan for the preliminary subdivision, and Exhibit Booklet and staff would note that 100 letters were received in opposition to the Application. The concerns raised largely relate to traffic impact, the

environmental impact and potential over development in the area.

2019-13 Old Mill Landing North

A cluster subdivision to divide 37.60 acres +/- into 71 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. Tax Parcel: 134-21.006.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell noted that this Application also went through the PLUS Land Use Service with the State and had also been forwarded to the Technical Advisory Committee and staff have those agency comments together with other agencies comments included in the packet. There is also a site plan for the preliminary subdivision, and Exhibit Booklet and staff would note that 100 letters were received in opposition to the Application. The concerns raised largely relate to traffic impact, the environmental impact and potential over development in the area.

The presentation for the Old Mill Landing applications was introduced by Mr. J. Fuqua, Esq., attorney for the applicants; also present were Mr. Preston Schell, Mr. Zachary Crouch of Davis, Bowen & Friedel, Mr. Ed Launay, Environmental Resources, Inc. and Mr. Ed Otter, Ed Otter, Inc. Mr. Fuqua noted that an Exhibit Book was submitted for the record containing the summary of the subdivision applications. Mr. Fuqua also submitted proposed findings of fact and proposed conditions of approval for consideration by the Commission. Mr. Fuqua noted that these were the same for both applications.

Following the Applicant's presentation, Ms. Stevenson asked whether the Applicant's expect to have to bring a lot of fill onto the site. Mr. Crouch replied that, based on some preliminary analysis, it will be a balanced site, but the site would have a large pond as seen on the map on the right-hand side which has an elevation of between 10 and 12. Mr. Crouch confirmed that there is enough material there to be distributed around the site; that most of the site is pretty high except for a few locations.

The Commission asked about the density of the project and whether the total number of 227 dwellings was divided by 145.43 acres to arrive at the density. Mr. Crouch explained that, for the gross density, you have to subtract the tidal wetlands as these lands cannot be counted.

Chairman Wheatley noted that Mr. Marc Cote, a representative from Delaware Department of Transportation was present to answer any transportation questions from the Commission.

Chairman Wheatley assured all of those members of the public in attendance that they would get an opportunity to speak to the applications should anyone wish to do so; that prior to anyone speaking, the Commission wished to obtain a show of hands in favor and a show of hands in opposition; that some members of the public were currently seated in the lobby due to the room capacity being exceeded; that inside the Council chamber there were 5 hands in favor and 125 hands against; that, for those members of the public seated at the time of the count outside the Council chamber in the lobby, there were zero hands in favor and 12 hands against; that the total count was therefore 5 hands in favor and 137 hands against.

The Commission found that Mr. Jack Tucker, Frankford, spoke in favor of the applications; that he has lived here since 2001; that he thanked the Schell Brothers for investing in the neighborhood; that he has spoken to many of the people who belong to the coalition of residents, but he feels that they don't care about the project; that he asked that the Commission ask the people speaking in opposition to tell them which town they are from and how long they have lived here.

The Commission found that Mr. Greg Warrington from Magnolia, Delaware, spoke in favor of the applications; that he is a one-third owner of property which has been in his family for 100 years. He explained that he is selling the property because his children are grown. He provided a family history of their time on the property.

Ms. Cornwell noted that there was no one outside in the lobby that wanted to speak in favor of this application.

The Commission noted that there was at least one organized group in attendance that wished to speak in opposition of the applications. The Commission found that Ms. Jeanette Akhter spoke in opposition of the applications. She lives in the Refuge development right across the street from the proposed development and is part of the Dirickson Creek Friends who have been working on the creek and studying it for several years. They have done cleanups and plantings and monitored its health along with the wildlife. She proposed 3 amendments that she considers should be included in the application if approved. They are: 1.) Preservation of hydric soils. 2.) Appropriate full evaluation and preservation of eligible historic sites and 3.) A new traffic impact study. Her presentation included a slide show of the area. She introduced Anna Von Lindenberg who spoke on the environmental aspects of the project.

The Commission found Ms. Von Lindenberg was present in opposition to the applications; that she has lived here since 2012. She spoke about how fragile the environment is and how densely populated it has become. She was a volunteer lead for the DE Center for the Inland Bays *Your Creek Project* which culminated in the 2016 State of Dirickson Creek Report; that, as proposed, the 1-mile stretch along Dirickson Creek would be environmentally impacted. She spoke about recent flooding during storms and how it would become more severe and frequent along Dirickson Creek in the coming years; that the creek is already at 13% impervious surfaces as of 2016 and its watershed cannot self-repair; that the creek has already been designated as impaired per the Federal Clean Water Act; that residents can testify about trees that have died on their property and the overall atrophy of wetlands; that one of her concerns was taking the trees down; that she also mentioned amending the proposal to avoid the increased risk of flooding; that level IV infrastructure and trees are not recommended for development and hydric soils are not recommended for the development proposed; that there is not money set aside for the infrastructure should these homes be built.

The Commission found that Susan Buckler, of Selbyville was present in opposition to the applications; that her concerns included the impact that the development will have on the water quality and pollution levels of Dirickson Creek; that the removal of the trees, the installation of the marina and boat slips, and standing water that may affect her property; that there are three monitoring sites on the creek; that the results are worse upstream due to the lack of tidal flushing which happens naturally; that trees and wetlands help to filter the toxins out of the water; that

upstream is surrounded by developments and still some farmland; that this results in higher bacteria levels; that in July 2019 there was a major fish kill in the creek due to these levels; that DNREC closed off the creek to commercial and recreational harvesting of shellfish; that she referred to a pamphlet published by Center for Inland Bays and suggested that the Commission review the document.

The Commission found that Ms. M. Levesque of Old Mill Bridge Rd, Frankford was present in opposition to the applications; that one side of her property borders the application site; that she is concerned about the potential impacts to the contiguous forest on this part of the inland bay; that these cannot be replaced by replanting; that forests prevent erosion and flooding; that only nature can create a healthy forest and that it cannot be artificially created; that they should not be removed; that she requests that the Commission prohibit the loss of mature woodlands.

The Commission found that Mr. V. Lanciotti who lives in Swann Cove West on Dirickson Creek was present in opposition to the applications; that he spoke to the potential impacts on the wetlands; that he also serves on his local Home Owner's Association; that the creek is already experiencing a decline in biodiversity; that many species including migratory birds need trees for reproduction; that billions of birds have been lost nationwide due to habitat loss; that this site is part of the Atlantic Flyway which is important for birds including the American Bald Eagle; that eagles nests are believed to be present on the land; that photos of eagles flying, roosting and perching were shown to the Commission.

The Commission found that Mr. Carl Nelson was present in opposition to the applications; that he lives in Frankford Delaware facing onto the creek; that he serves as part of his HOA; that he has enjoyed the creek for over 30 years; that his career was in commercial development and construction; that he has recently retired as a senior vice president; that he is a qualified engineer; that he a member of the American Society for Civil Engineers and that he is a LEED accredited professional; that he seeks to amend the development; that he thinks that the State's recommendations in the PLUS review should be a requirement of the development and that all hydric soils should not be built on; that all houses in investment level 4 should be removed; that green technology should be used in stormwater management; that he is very concerned about the loss of trees.

The Commission found that Ms. B. B. Shamp who lives in Swann Keys was present in opposition to the application; that she is a retired teacher of world history; that this is a historical site; that she has concerns about potential flooding in the Swann Keys development; that she has concerns relating to the impact on the history and identity of the creek and the lands associated with the application site; that creek is a shallow bathtub; that flood waters flow into Swann Keys; that she displayed an image of the projected tidal inundation map with levels at 3 feet and 6 feet storm surge; that a future hurricane can bring such a storm surge; that she displayed a map of the flood plain; that she outlined the history of the Black Foot tribes and the Nanitcoke tribe; that Native Americans lived on these lands; that a 1990 DelDOT study confirms this; that the sites could be protected through a land trust; but this would not protect the other 7 archaeological sites which are proposed to be built on; that she is requiring a Phase I and II Cultural Resources Survey to include deep radar imaging and Native American Surveys.

The Commission found that Ms. Daley, who lives in Swann Cove was present in opposition to the applications; that she stated that she is a retired educator; that she has concerns about the dramatic impact on traffic; that she believes that the TIS should be updated as the application indicates that 2,318 vehicle trips would be created if approved, which is 1,818 more trips than the 500 trips per day recommended for the creation of a TIS; that DelDOT should require an updated TIS and not rely on the 2014 study; that matters have changed since 2014; that the anticipated build out date is 2024; that she outlined the specific concerns she had in relation to nearby intersections including the Rt. 54 intersection; that there is no provision for widening of Rt. 24; that the study does not consider Herring Way and Old Mill Rd intersection.

Mr. Marc Cote of DelDOT explained how DelDOT arrived at a conclusion as to the acceptability of the 2014 TIS; that they have considered what has changed in the area since 2014; that DelDOT is aware of improvements needed to improve the roads; that this includes the re-alignment of curves on Old Mill Bridge Rd; that a new TIS letter is being prepared; that DelDOT has changed its regulations since 2014; that peak hour trips were considered based on the new trip distributions which are more accurate; that DelDOT has a significant trip demand model that is used; that this provides a more accurate traffic model/distribution.

The Commission found that Ms. Lynn Wyville was present in opposition to the applications; that she is representing the 350 homes within Swann Cove; that she asked that no more communities are approved until a new TIS is prepared; that she outlined how the current levels of traffic have impacted Swann Cove; that this community is unlike any other development adjacent of Dirickson Creek; that it is unique because it has a back road that allows traffic to cut through to Walgreens and the Food Lion store; that traffic travelling in an east direction cuts through her development; that in the summer time this problem is worsened; that she believes that the developments will make this problem worse; that she has been working with the State of Delaware and speed humps are being considered.

The Commission found that Ms. Laura West was present in opposition to the applications; that she lives in the Waters Run community in Selbyville; that she previously lived in Swann Cove; that she is a runner and a cyclist; that she used to be able to run up and down Old Mill Bridge Rd; that she described a particular vehicle collision event that forced her to stop running along that road; that she is requesting a way to improve vehicle safety before approving any more developments.

The Commission found that Mr. Mohammed Akhter was present in opposition to the application; that he is a member of Community Support, Inc. which responds to disasters in communities; that he is concerned about the environmental risks and potential flooding; that individually the development can be considered to be okay, but what about the cumulative impacts of multiple developments; that he did not receive the report in a timely manner; that he asked the Commission to extend the comment period for two weeks so that the community downstream can submit additional responses.

The Commission found that Ms. P. Mikolaitis was present in opposition to the applications; that she is a homeowner on Dirickson Creek; that she is part of the Homeowner's Association for that community; that her property faces the ditch where everyone crashes when they miss the curve; that the road is only two lanes and has ditches on the sides; that she is concerned about the time it

takes for response to emergencies by police and other agencies; that the proposal could make this worse.

The Commission found that Mr. Butch Wienhold, President of the Swann Keys Homeowner's Association was present in opposition to the applications; that he is concerned with potential flooding and increased runoff; that Swann Keys is 2' below any other property; that flooding results in one way in and one way out to the development; that more houses will result in more flooding; that the sewer pumping station is affected by flooding.

The Commission found that Mr. Scott Lacosse was present in opposition to the applications; that he is a short-term resident; that there is explosive growth in the County; that there is not robust medical infrastructure and that homes have exceeded projections by 30%; that disruptive navigation technologies route motorists into developments; that infrastructure should outpace development.

The Commission found that Mr. Keith. Steck, Vice President of the Delaware Coalition for Open Government was present in opposition to the applications; that he believes that there is nothing in the record that states that the attorney has reviewed this application; that he asked where the review was located; that he believes that this should be a key document;

Chairman Wheatley noted that the County Code does not require such a report to be prepared in advance of a hearing, but that the purpose of the hearing is to determine whether a proposal accords with the Zoning Code and Subdivision Code. Mr. Steck also raised his concerns that a TAC meeting document from 2018 was not included in the online documentation.

The Commission found that Ms. Doris. Pearce, who lives in Keenwick on the Bay was present in opposition to the applications. She is a member of the Southern Delaware Community Action Group that represents 29 communities. Her group is in support of the application to amend the subdivisions.

The Commission found that Mr. Jerry Koontz, who lives in The Refuge in Selbyville was present in opposition to the application; that he has concerns in relation to the impact on schools; that they are already overcrowded; that the proposed homes are to be marketed to families with children.

The Commission found that Mr. Edward Ways was present in opposition to the applications; that he does not think that the improvements offered by the Developer are sufficient; that residents are clearly very concerned by this development; that infrastructure should be improved prior to any additional homes being built.

The Commission found that Mr. Greg. Kimble, who lives off Millers Neck Rd was present in opposition to the applications; that his father previously tried to get this parcel declared as a preserve but could not gain any traction for that idea; that he referenced an Army Corps of Engineer's report which has previously deemed none of the soil types as being suitable for building; that he submitted copies of soils maps from the soil quality report for consideration.

The Commission found that Mr. David Valentino was present in opposition to the applications;

that he owns the parcel to the north west; that he is concerned about potential flooding impacts to his property. Chairman Wheatley provided a short summary of the Sussex Conservation District approval process, and how that Agency is involved in the subdivision application process. Chairman Wheatley also suggested that Mr. Valentino may wish to reach out to that agency and/or the State to discuss his concerns further.

The Commission found that Mr. Michael Payan was present in opposition to the applications; that he raised concerns as to the time limits imposed to speakers;

The Commission found that Mr. William Fowler was present in opposition to the applications; that he thinks that the additional traffic is unacceptable; that he thinks that the development applied for does not fit in with the character of the area; that he questions whether there should be a masterplan for the area; that the community should not be responsible for increasing infrastructure such as fire, roads and schools.

The Commission found that Ms. Maria Payan was present in opposition to the application; that she raised concerns that there was no room tonight to accommodate all of the speakers at the start of the meeting; that everyone should be able to participate.

The Commission found that Mr. Richard Ryan, who owns a chicken farm adjacent to the project, was present in opposition to the applications; that he questioned what measures would be in place to stop people from coming onto his farm during the night; that he would like a speed limit sign installed. Mr. Wheatley explained that Mr. Cote from DelDOT was present and could speak to Mr. Ryan's concerns.

Mr. Marc Cote from DelDOT explained the part of DelDOT's website that enables residents to report specific issues with any location in Sussex County and that DelDOT will then investigate the matters raised; that the Traffic Studies section deals with interactive speed signage.

The Commission found that Mr. M. Smith, who lives in Keenwick West was present in opposition to the applications; that he lived in New Jersey previously and has seen planned development and sustainable development; that he thinks that there is a lot of development taking place and being approved; that there doesn't seem to be a lot of work being done to develop supporting infrastructure; that he loves living in Delaware.

Upon their being no one else wishing to speak, Chairman Wheatley closed the public hearing for both applications

At the conclusion of the public hearings the Commission discussed the subdivision applications 2019-2 and 2019-13.

Ms. Wingate moved that the Commission defer action on application 2019-2 Old Mill Landing South. The motion was seconded by Ms. Stevenson and carried unanimously. Motion carried 5-0.

Ms. Wingate moved that the Commission defer action on application 2019-13 Old Mill Landing North. The motion was seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2205 Frank Passwaters

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for an auto-motorcycle repair to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.8711 acres, more or less. The property is lying on the southwest side of Railroad Ave. and Greely Ave., 911 Address: 8870 Railroad Ave., Lincoln. Tax Parcel: 230-6.00-1.02

Mr. Whitehouse noted for the record that staff have received a site plan, a staff analysis and a response from DelDOT confirming that a Traffic Impact Study (“TIS”) is not required.

Ms. Cornwell noted that, in addition, the Commission has just received a letter from an interested party raising concerns about the application and it will be entered into the record.

The Commission found that Mr. Passwaters was present to speak regarding his application; that the use is operating and that a Conditional Use is needed to allow it to continue; that he keeps the property clean and tidy; that he has renovated the house and erected a pole barn; that there used to be chicken houses on the property; that there is an oil business on the adjoining parcel.

Mr. Hopkins questioned the acreage associated with the bike shop and Mr. Passwaters confirmed that the property is 4.9 acres and that includes the dwelling; that Mr. Passwaters has been in business for 14 years but not at that location; that he just purchased the property two years ago; that he worked in a shop on Calhoun Rd; that he is now in another facility in Milford; that he needs to get out of and get into his own place.

Mr. Passwaters was asked by Mr. Hopkins if it would also be cars in addition to bikes which Mr. Passwaters confirmed that it would be; that he has no employees; that he has a towing company, also; that he will not be towing cars onto the property; that he will just be repairing them; that he is expecting no more than 3-5 cars on the lot if the shop is full; that there will be no more than 10 in total; that he was asked if there would be a sign and he stated that he has no sign on the other facility; that he just does business by word of mouth; that he is also a crane operator for 38 years; that he will not be in there all the time; that the use would be from 7:30 to 4:30 Monday through Saturday work; that if approved, a 4x8 size sign is allowed; that he has one tow truck that will be parked on the property and actually in the building; that he has a containment unit for waste oil that will be inside the building and has a company that comes in and pumps it out; that there will be a bathroom but no dumpster; that he tries to recycle everything that he can including the old parts and cardboard.

Ms. Stevenson asked whether the work would be done under a roof. Mr. Passwaters replied yes and that his customers are drop offs; that there is an office building and a place to wait.

Mr. Mears asked if the crane ever came to the property. Mr. Passwaters stated yes but it will be parked at his house. Mr. Hopkins asked Ms. Cornwell if he can park the crane at his house. Mr. Passwaters noted that it doesn't come there every day, but the crane is a 350-ton crane. Ms. Cornwell said that staff would have to look into the Code further to determine if this is permitted.

The Commission noted that there was no one present wishing to speak in favor of this application.

The Commission found that Mr. Dean Jacobs was present in opposition to the application; that Mr. Jacobs lives across the street from the applicant; that he has no problems with him having a business; but that the only problem is there will be a lot of noise coming from Harley Davidson motorcycles; that he moved from Kent County in 1998 because he wanted to be in the country; that the Applicant's truck is a flat-bed diesel that smells.

Ms. Stevenson asked about the noise concerns that had been raised. Mr. Passwaters noted that there were railroad tracks nearby and he was not going to be racing the motorcycles; that there is also noise from an oil company nearby. Chairman Wheatley noted that there would be at least some noise associated with vehicles coming and going.

Upon their being no one else wishing to speak, Chairman Wheatley announced that the public hearing was closed for this application.

At the conclusion of the public hearings the Commission discussed this application. Mr. Robertson suggested that the Commission may wish to defer consideration to allow time to consider conditions.

Motion by Mr. Hopkins and seconded by Ms. Wingate to defer consideration of application CU 2205 Frank Passwaters. Motion carried 5-0.

C/Z 1902 - John C. Stamato c/o Ribera Development, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an CR1 Commercial Residential District to an HI-1 Heavy Industrial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 15 acres, more or less. The property is lying on the southeast corner of Lewes-Georgetown Hwy. (Rt. 9). and Steiner Rd. 911 Address: N/A. Tax Parcel: 135-16.00-23.00 (portion of)

Mr. Whitehouse noted that staff has received a concept plan and an exhibit booklet from the Applicants. There is a Staff analysis on file and results from the DeDOT Service Application confirming that a TIS is not required. Ms. Cornwell noted that there is also a letter from Mr. Keith Steck raising concerns with the Application that was submitted earlier in the meeting.

Mr. Fuqua spoke on behalf of the Applicant, John Stamato and Ribera Development, LLC. Mr. Fuqua noted that an Exhibit book was submitted containing relative information about the Application including an Environmental Assessment and Public Utilities Report; that this location is a little bit different with some interesting things in this Application; that this Application is requesting rezoning of an undeveloped 15-acre parcel of land from CR-1 Commercial Residential to HI-1 Heavy Industrial; that the land located approximately 2 miles east of the town of Georgetown; that it is near the intersection of Route 9 and Steiner Rd. and is 800' south of Route 9 and approximately 460' of frontage on the east side of Steiner Rd; that, as provided in the 2019 Comprehensive Plan, the land is running east from the town of Georgetown designated as being

in the development area and mixed in there are a few parcels in the commercial area; that coming out of Georgetown there is the developing area up to Shingle Point Rd. and then again from Shingle Point east to Gravel Hill Rd., the lands are basically in the commercial area; that the exception to that is a 12-acre parcel on the north side of Route 9 which is in the industrial area; that there is also a very large area adjacent to the town limits of Georgetown that is designated as being in the Industrial Area and that is the location of the Delaware Coastal Airport and Coastal Business Park owned by Sussex County; that the goal of Sussex County is to encourage economic development and job creation; that, in addition, the County Business Park is set up for lease sites where this Application is creating sites that could be purchased.

Mr. Fuqua outlined that the lands on both the north and south sides of Route 9 are zoned C-1 General Commercial and that is to a depth of 600'; that the exception to this is the 12-acre parcel on the north side that is zoned LI-2 Light Industrial and the other exception is a 25-acre parcel with frontage on Steiner Rd. south of Route 9 which is zoned CR-1; that this 15-acre parcel is part of the CR-1 zoned 25-acre parcel; that the land is being purchased from Mr. & Mrs. D. Parsons who own a total of approximately 51 acres, 26 acres of which are zoned C-1; that 4 No. 2-acre lots have been carved out of that the front of Route 9; that the rear of that land is the 25-acre parcel that is zoned CR-1 and these 15 acres in the rear portion of the CR-1 zoned land; that t Applicant is requesting rezoning of that parcel to HI-1 Heavy Industrial which to his knowledge are fairly rare applications.

The HI-1 zoning is in contained in Section 115-109 of the Zoning Code; that the purpose of that HI-1 Zoning District is to provide for a variety of industrial uses, but to restrict or prohibit industries which have characteristics that likely would produce serious and adverse effects; that the uses permitted by right includes any use permitted in the LI-2 Light Industrial District and also a specific list of uses that are found in the Zoning Ordinance Section 115-110 A, B, C; that the HI-1 District has a protective provision that requires that any potential hazardous use can only be permitted after a public hearing approval by the Board of Adjustment; that the Board of Adjustment is required to not permit such a use unless the public health, safety, morals and general welfare are properly protected, and the necessary safeguards are provided for the protection water areas of surrounding property and people; that there is a list of potentially hazardous uses Section 115-111 of the Ordinance; that while there is a variety of industrial operations permitted in the HI-1 District any type of use that is deemed potentially hazard has much more review level to it requiring a public hearing before the Board of Adjustment.

Mr. Fuqua outlined that the Application is a rezoning Application and there is no specific use being proposed for the site at this time; that even if there was a specific plan use for the property; that once the land is rezoned, any use permitted by the Zoning Code would be permitted on that land; that the issue before the Commission is not a specific use but whether this particular 15-acre parcel of land is appropriate for HI-1 zoning; that the Applicant believes it is appropriate for a number of substantial reasons; that the site is surrounded by lands of C-1, CR-1 and LI-2 and an extensive list of retail, storage and commercial uses are already permitted uses in the area surrounding the site and actually on the site itself; that in those lands zoned commercial, there is a much more intensive commercial use; that there a lot of construction or semi-industrial type of uses; that in the immediate vicinity of the site are the business locations of Magee Plumbing, AP Croll & Sons,

Peninsula Paving, Route 9 Industrial Center, and the Gravel Hill DelDOT yard.

Mr. Fuqua outlined that the site has convenient access to Route 9 that connects to Steiner Rd: that this is significant under Section 99-5 of the Sussex County Subdivision Ordinance; that this section identifies the major arterial roadways in Sussex County; that Route 9 is the only major arterial roadway running east-west direction in all of eastern Sussex County.

Mr. Fuqua outlined that the 15-acre parcel is adjacent to, and has 1600' of frontage, along the railroad line operated by the Delmarva Central Railroad; that the rail line has an interesting history; that it was originally operated as the Queen Anne Railroad; that it started in 1894 and provided service between Queenstown, MD and Lewes, DE; that over the years there were a number of changes in ownership and changes in operation; that as of 2016, the rail service was being operated by the Delaware Coastline Railroad and provided rail service to the SPI facility that was at the end of the line next to entrance to Cape Henlopen State Park in Lewes, that in September 2016 the swing bridge that provided the track crossing over the Lewes-Rehoboth Canal was determined to be structurally unsound and closed to rail traffic by DelDOT; that the swing bridge was originally built in 1869 and unique in that when closed, it was parallel to the canal and manually cranked out and would extend across the canal and connect the north and south side; that after closure, DelDOT determined that the repairs to the bridge would be too costly and since there was no need for rail service into Lewes, the entire railroad line from the entrance from Cape Henlopen State Park to Cool Springs was discontinued and abandoned as a railroad line, that the railroad right-of-way was incorporated into the Lewes-Georgetown Rails to Trails project; that a paved bike path now exists from the State Park almost to Route 9 Cool Springs and that trail will eventually extend all the way to Georgetown, that, in January 2019, Delmarva Central Railroad took over operations of the rail under contract from the State of Delaware and that includes the track from Georgetown to Cool Springs which remains open and operating, that the Delmarva Central Railroad is called a short line but it interchanges with the Norfolk Southern Railway and the Maryland Delaware railway for more extensive service if needed, that products carried by the rails include grain, propane, building materials, and occasionally coal to the Indian River Power Plant, that the rail service is part of this zoning Application which plans for the future by creating a 15-acre site zoned HI-1 with transportation options of using Route 9 for truck traffic and Delmarva Central Railway for rail service.

Mr. Fuqua outlined that it is planned to subdivide the parcel into three parcels containing 3.5 acres each, that discussions have taken place between the Applicant and Delmarva Central Railroad to create a 50' wide railway access easement across the rear of the property, location of a spur track from the main track to serve the three parcels; that Artesian Water has a water line on Route 9 which will be extended to the site to provide central water for domestic use and fire protection; that Artesian resources will provide central sewer to the site; that DelDOT indicated in their letter dated July 29, 2019 that the rezoning application be considered without a Traffic Impact Study at this time and they reserve the right to determine if a need for a TIS be required and they would evaluate that when more specific land development is proposed; that the Applicant does anticipate that the entrance approvals for this site will require intersection improvements on Route 9 and Steiner Rd. and some roadway improvements on Steiner Rd; that stormwater management facilities will be designed and constructed in accordance with DNREC regulations; that there was

an Environmental Assessment Report that was prepared by Pennoni Associates; that among the findings in the report were that the side soils were suited for the uses being considered; that there are no wetlands located on the site and the site is located in Zone X of the FEMA Flood Maps and is located outside of the designated flood plans; that the only question before the Commission is the rezoning of the property to HI-1; that if approved, the plans for any future development of these parcels would back before the Commission for preliminary and final site plan review.

Mr. Fuqua stated that the Delmarva Central Railroad running from Georgetown to Cool Springs is the last remaining rail line extending into Eastern Sussex County; that the future of that rail line depends on users because without customers the rail operations will not be economically suitable or sustainable; that the Applicant has committed to development of this site and the utilizing of the rail line; that in the Comprehensive Plan the County also recognizes the need for rail service in the Mobility Section of the 2019 Comprehensive Plan, at Pages 13-10, that the Plan states that there is a need to consider how to mitigate the impact of truck traffic on other road users and communities that the trucks travel through and the Plan states that one means of reducing truck impact is to shift more freight to rail, that the Plan acknowledges that the opportunities to do that may be limited, that this happens to be one location that is the exception to the rule and that this location is adjacent to rail and takes advantage of what the intent is of that section; that the Applicant believes that HI-1 zoning is appropriate to service the types of businesses that would utilize rail transportation which are normally large bulk type deliveries; that the Commission knows from various Land Use Applications over the past few years and months that the Route 9 corridor between Georgetown and 5 Points is quickly developing; that if this parcel is to be rezoned, the time to do it is now.

Mr. Fuqua cited a letter in the Exhibit Book dated December 10, 2019 from Delmarva Central Railroad stating the railroad's support of this Application and the economic opportunities that the rezoning would create; that the proposed findings in support of the Application that were submitted for the Commission's consideration that for the reasons stated, the Applicant believes that the location of this parcel is appropriate for the requested rezoning and therefore requests a favorable recommendation from the Commission.

Chairman Wheatley asked whether there was anyone present wishing to speak in favor or opposition to CZ 1902.

The Commission found that Mr. Johnson spoke in favor of the Application; that he is co-owner of property on Shingle Point Rd. and Route 9; that the area that they will be developing is back away from Route 9 and still leaves the potential for the owner to do developing and more commercial on the front side which will allow for safer entering and existing; that one concern is the run-off of the water; that on page 11 of the Environmental Assessment, it shows the flow of the water from their property to Route 9 and across; that he has not been able to find out who built the ditch on his property; that it is an issue because of the way the water backs up on the southside of Route 9.

Upon their being no one else wishing to speak, Chairman Wheatley announced that the public hearing was closed for this application.

At the conclusion of the public hearings the Commission discussed Application CZ 1902.

Motion by Mr. Hopkins and seconded by Mr. Mears to defer consideration of application CZ 1902 John C. Stamato c/o Ribera Development, LLC. Motion carried 5-0.

OTHER BUSINESS

2018-28 Ocean Meadows Subdivision

Final Subdivision Plan

Mr. Whitehouse announced that this is a Final Subdivision Plan for the creation of a cluster subdivision to consist of one hundred thirty-three (133) single family lots located on the west side of Beaver Dam Road (Route 23) south of Fisher Road (S.C.R. 262). The plans include adding 33 lots to the existing 100 lot proposal which was approved by the Planning and Zoning Commission at its meeting of March 22, 2018. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at its meeting of March 14, 2019. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 234-2.00-2.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Ms. Stevenson moved that the Commission approve the Final Subdivision for Ocean Meadows 2018-28, seconded by Mr. Hopkins. Motion carried unanimously. Motion carried 5-0.

2018-31 Stagg Run Subdivision

Final Subdivision & Landscape Plans

Mr. Whitehouse stated that this is a Final Subdivision Plan and Landscape Plan for the creation of a cluster subdivision to consist of twenty-six (26) single-family lots located on the southeast side of Wilson Road (S.C.R. 244) and the west side of Savannah Road (S.C.R. 246). The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at its meeting of March 28, 2019. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 135-10.00-5.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Mr. Mears moved that the Commission approve the Final Subdivision Plan for Stagg Run Subdivision 2018-31, seconded by Ms. Wingate, Motion carried unanimously. Motion carried 5-0.

S-19-49 Ocean Park

Preliminary Site Plan

Mr. Whitehouse stated that this is a Preliminary Site Plan for the construction of three (3) retail/office/restaurant buildings and other site improvements. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 334-12.00-50.00 and 334-12.00-51.00. Zoning: B-1 (Neighborhood Business Zoning District). Staff is awaiting agency approvals.

Ms. Stevenson moved that the Commission approve the Preliminary Site Plan Ocean Park S-19-

49, seconded by Mr. Hopkins, with final approval by Staff upon receipt of all other Agency approvals. Motion carried unanimously. Motion carried 5-0.

2019-08 Azalea Woods Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse stated that this is a request to revise the wording of conditions of approval for the 610-lot major subdivision, located between Shingle Pt Rd. and Gravel Hill Rd. north of Lewes-Georgetown Hwy (Rt. 9). At its meeting of December 19, 2019 the Planning & Zoning Commission granted Preliminary Subdivision Plan approval subject to conditions. Condition C states that “*so that home construction proceeds reasonably on pace with road improvements, there shall be no more than 70 building permits issued in any one calendar year*”. The Applicant has submitted a request to modify or remove this condition to allow the market to determine the rate at which building permits may be issued. Tax Parcel: 135-11.00-32.04, 49.00, 56.00 and a portion of 135-11.00-48.00. Zoning: AR-1 (Agricultural Residential Zoning District) and C-1 (General Commercial Zoning District).

The Commission discussed the background of Condition ‘C’ and its purpose. Mr. Robertson outlined that the TIS review letter for the application included details of phasing and the requirements prior to the 101st Building Permit. That the desire was to ensure that the development does not out-pace the delivery of infrastructure improvements in the area.

Following the discussion, Mr. Robertson suggested that Condition ‘C’ of the approval of Subdivision 2019-08 Azalea Woods be deleted and replaced with the following: “*So that home construction proceeds reasonably on pace with road improvements, the developer shall comply with phasing set forth in Condition #1 and Condition #6 of DelDOT’s November 21, 2019 TIS review letter. Any changes to those phasing requirements shall require an amendment to this condition of approval*”. Motion by Mr. Hopkins and seconded by Mr. Mears to adopt Mr. Robertson’s suggestion as a motion. Motion carried 4-1 with Ms. Stevenson dissenting.

Isabella, LLC

Minor Subdivision off an existing 50’ easement

Mr. Whitehouse stated that this is a Preliminary Plan for a minor subdivision for the subdivision of one (1) lot, proposed Lot 3 will measure 1.73 acres +/-, the residual Lot 2AA will measure 17.24 acres +/-, and Tax Parcel 532-20.00-106.00 will measure 1.17 acres +/- . The Sussex County Board of Adjustment granted a front yard variance for the existing building on November 18, 2019, Case No. 12384. The Preliminary Subdivision Plan complies with the Sussex County Subdivision Code. Tax Parcel: 532-20.00-106.00, 532-20.00-107.00, & 532-20.00-107.08. Zoning: C-1 (General Commercial Zoning District) and AR-1 (Agricultural Residential Zoning District). Staff is awaiting agency approvals.

Ms. Wingate moved that the Commission approve Isabella, LLS Minor Subdivision off an existing 50’ easement with final approval by Staff upon receipt of all agency approvals, and seconded by Mr. Hopkins. Motion carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Robertson suggested that, given the size of the electronic packet, it would be helpful to break the packet into separate files. Mr. Whitehouse agreed to look into implementing this.

Ms. Wingate suggested that the staff memo for Old Business items could be enhanced by noting the date of any previous hearings/meets for the item.

Meeting adjourned at 11:24 pm