

THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 14, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 14, 2019, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

Prior to the commencement of the regular meeting of the Commission, Mr. Robertson administered the Oath of Office to Mr. Mears. Chairman Wheatley then called for a short recess.

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. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager, and Ms. Jennifer Norwood – Planner I.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Agenda as revised. Motion carried 4-0.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Minutes of the October 11, 2018 as revised, January 10, 2019, and January 24, 2019 Planning and Zoning Commission meeting as submitted. Motion carried 4-0.

OLD BUSINESS

C/U 2162 Yellow Metal, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and C-1 General Commercial District for a paving construction business with an office and equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39.630 acres, more or less. The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.64 mile west of Gravel Hill Road. 911 Address: 20288 Broadogs Place, Georgetown. Tax Parcel: 135-11.00-31.00.

The Planning Commission discussed the application which has been deferred since January 10, 2019.

Ms. Stevenson moved that the Commission recommend approval of C/U 2162 for Yellow Metal, LLC in an AR-1 and C-1 District for a paving construction business with an office and equipment storage based upon the record made during the public hearing and for the following reasons:

1. The use is situated on a 39.63-acre parcel of land. It has C-1 frontage on Route 9, but the bulk of the site is to the rear situated among other larger parcels of land. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties.
2. There are other commercial and contracting uses in this area of Route 9. This conditional use is appropriate for this location along Route 9.
3. No retail sales will occur from the property.

4. The Applicant provides construction services throughout the Delmarva Peninsula, with a focus on site preparation, paving, seal coating, line striping and roadway work for residential, agricultural and commercial uses.
5. The applicant has stated that most of the work is offsite, so there is not a lot of activity that occurs on this site during the day.
6. The site is large enough that with the buffering required by this approval it will not be visible from surrounding properties and will not adversely affect nearby properties or uses.
7. The use will not have an adverse impact on the traffic or area roadways.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a paving construction business with an office and the storage of equipment associated with that use.
 - B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas.
 - C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.
 - D. There shall not be any outside storage of paint, seal coating or other liquid materials associated with the use.
 - E. No retail sales shall occur from the site.
 - F. No vehicle or equipment repairs shall occur outside.
 - G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.
 - I. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
 - J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.
 - K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.
 - L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the applicant's vehicle and employees' vehicles, must only be parked within the designated areas.
 - M. No outside burning of any materials shall occur on the site.
 - N. No materials such as asphalt, stone, or millings shall be permanently stored on the site.
 - O. No junked, in-operable or untitled vehicles shall be located on the site.
 - P. The applicant has stated that there will be milling operation proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:
 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.

2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.
 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m., Monday through Friday. No milling operations shall occur on Saturday or Sunday.
 4. Milling operations shall only occur in the central area of the site, as far away from the property boundaries as possible.
 5. No more than 50 tons (approximately 2 dump truck loads) shall be milled and stored on the site at any one time. These materials shall be located on a concrete pad which is no longer than 50 by 100-feet in size. The concrete pad shall be clearly shown on the Final Site Plan.
 6. The pile of millings shall not be higher than 10-feet.
- Q. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- R. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and stipulations stated in the motion. Motion carried 4-0.

2018-24 Good Will Farm – Joseph M. and Karen M. Zduriencik and Joel Daniel Gusky

A cluster subdivision to divide 56.41 acres +/- into 104 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The properties are lying on the west side of Bayard Road approximately 1,200 feet north of Double Bridges Road. Tax Parcels: 134-18.00-55.00, 134-19.00-5.00 and 6.00. Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since January 24, 2019.

Ms. Wingate moved that the Commission grant Preliminary Approval for Subdivision 2018-24 for Joseph and Karen Zduriencik and Joel Daniel Gusky (Good Will Farm) based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The lots will have a minimum area of 7,500 square feet.
2. The proposed subdivision will have 104 lots on approximately 56.41 acres. This results in a density that is within the permitted density in the AR-1 Zone.
3. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has adequately addressed the requirements of Section 99-9C of the Code.
4. The project will be served by central water.
5. The project will be served by Sussex County sewer.
6. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.

7. This clustered subdivision is superior to a standard subdivision. The clustering allows a significant amount of open space to be maintained along the frontage, which helps preserve the rural character of Bayard Road. These areas are part of the approximately 25 acres of open space that are preserved through the cluster design of this property. This represents approximately 44% of the entire site.
8. This preliminary approval is subject to the following:
 - A. There shall be no more than 104 lots within the subdivision. The lots shall be at least 7,500 square feet in size.
 - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project. This buffer shall increase to 30-feet in areas where the development borders any lands in agricultural use. These buffers shall not be required in areas where a tax ditch easement is adjacent to the project border. The Final Site Plan shall contain a landscaped plan for all of these areas, and no existing vegetation shall be disturbed in any of these buffer areas.
 - E. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - F. If not required by DelDOT, the developer shall install a multi-modal path along the frontage of Bayard Road to accommodate the bicycle and pedestrian traffic in the area. This shall include the frontage of Lot 104 along Bayard Road.
 - G. Lots 1, 2, 3, 78, and 79 shown as on the Preliminary Site Plan shall be relocated from the entrance of this subdivision to provide greater open space at the entrance design as a superior design.
 - H. There shall be sidewalks on at least one side of all streets within the subdivision.
 - I. The amenities shall include a swimming pool and clubhouse and they must be completed by the issuance of the 50th residential building permit.
 - J. The subdivision's lots shall be served by central sewer provided by Sussex County.
 - K. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - L. Construction activities, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturday.
 - M. If required by the local school district, the Applicant shall coordinate with the local school district's transportation manager to establish a covered school bus stop with a parking area.
 - N. The Applicant and Developer shall maintain as many existing trees outside of the buffer areas as possible. These tree preservation areas shall be shown on the Final Site Plan.

- O. The Applicant must obtain all of the necessary amendments to the tax ditches and their easements prior to the Final Site Plan approval.
- P. As stated by the Applicant, the Developer shall coordinate with DelDOT to relocate and redesign the Bayard Road/Central Avenue/Peppers Corner Road intersection in coordination with the construction of the entrance to this subdivision.
- Q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Ms. Stevenson stated she has listened to the audio and is prepared to vote.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval for the reasons and with conditions stated in the motion. Motion 4-0.

C/U 2155 Stockley Materials, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 158.74 acres, more or less. The property is lying on the southwest side of Seashore Highway (Route 18), approximately 0.72 mile southeast of Gravelly Branch Road. 911 Address: N/A. Tax Parcels: 231-6.00-21.00 and 22.01.

The Planning Commission discussed the application which has been deferred since January 24, 2019.

Mr. Hopkins moved that Commission recommend approval of Conditional Use 2155 for Stockley Materials, LLC for a borrow pit based upon the record made at the public hearing and for the following reasons:

1. This application is for 158.74-acre borrow pit. The area of the pit itself will not exceed 112 acres.
2. A need exists in the area for dirt, sand, and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
3. The site is surrounded by a large poultry operation, lands of the State of Delaware and wooded land in Agricultural Preservation. This is an appropriate location for this use.
4. The Applicant has the skills, experience, and equipment to provide dust control through the use of its water trucks and to keep the area roadways free of dirt and dust from trucks leaving the site.
5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
6. As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.

7. The pit area is at the end of a paved and gated roadway and is more than 1,200-feet from Route 18. The site is not visible from Route 18.
8. Vegetated buffers will be established along the boundaries of this land and lands of other ownership.
9. The use is subject to approvals from State Agencies including DelDOT and DNREC.
10. No parties appeared in opposition to this application.
11. A “dry hydrant” will provide a suction supply of water from the site for local fire departments.
12. This recommendation for approval is subject to the following conditions and stipulations:
 - A. No materials shall be brought from off the site for processing, mixing or similar purposes.
 - B. The excavated area shall not exceed 112 acres.
 - C. Water or a water truck shall be available to control dust from road traffic when conditions require.
 - D. The only entrance to the pit shall be a paved road from Seashore Highway (Route 18). The entrance shall be fenced or gated to prevent access.
 - E. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 - F. The project shall meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices and Best Available Technologies. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - G. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m., Monday through Friday and 6:00 a.m. until 2:00 p.m. on Saturdays. No Sunday hours shall be permitted.
 - H. No materials shall be stored on any access roads or within any buffer area.
 - I. No fuel shall be stored on-site.
 - J. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 - K. The proposed pit will have a 3 to 1 side slope down to a 10-foot level bench that will be approximately near or 1-foot below the static water surface. Below the water level, the borrow pit shall have 2 to 1 slopes. The depth of the proposed borrow pit will not exceed 65-feet.
 - L. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall include finished grading, seeding and planting schedules designed to create a pleasing appearance and protect existing and future developments.
 - M. The Applicant shall comply with all State and County erosion and sediment control regulations.

- N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked to that they are clearly visible to anyone nearing the site.
- O. The Applicant shall comply with all the restrictions set forth in Section 115-172B of the Sussex County Zoning Ordinance.
- P. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100-feet from any street lines, 200-feet from any dwelling of other ownership, and 50-feet from all other property lines or other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
- Q. No wetlands on the site shall be disturbed.
- R. This approval shall terminate upon the expiration of fifty (50) years from the date of adoption.
- S. Equipment within the borrow pit area shall be equipped with BBS-TEK white sound alarms or a similar system that adjusts to the ambient noise that provides a warning of imminent danger.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and stipulation stated in the motion. Motion carried 4-0.

C/U 2157 Country Lawn Care & Maintenance, LLC (C/O Gerald and Stephania Dougherty)
An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.26 acres, more or less. The property is lying on the north side of Hollymount Road, approximately 0.42 mile east of Beaver Dam Road. 911 Address: 30435 Hollymount Road, Harbeson. Tax Parcel: 234-11.00-78.07.

The Planning Commission discussed the application which has been deferred since January 24, 2019.

Mr. Robertson stated there was a question raised in the previous meeting about whether there are any restricted covenants that affected the property and that this was referred to by some of the speakers to the application; that the Applicant's attorney provided some information regarding the deeds to the property; that an independent title search was performed; that this property was originally 247.5 acres that J.D. Townsend owned; that Mr. Townsend sold the property to Spring Breeze, LLC; that Spring Breeze, LLC subdivided off strip lots and recorded a set of covenants against the strip lots that have frontage on Hollymount Road; that the specifically the four lots in question are 9A, 10A, 11A and 12A; that the four lots were subject to covenants that Spring Breeze, LLC specifically placed on the four lots; that the covenants were recorded in book 2709 page 113; that number 17 in the recorded restrictions states "No commercial activities are permitted"; that the County does not enforce restrictive covenants; that the County does not routinely check to see if the deed restrictions exist or not; that the County does not normally undertake a title search on an applicant's property, to see if there are any restrictions that exist with regard to any of the

properties that come before the Planning and Zoning Commission; however where the matter of covenants comes up as part of the record then that part of record needs to be considered; that the Planning and Zoning has considered some of the other covenants in the past; that there are recorded restrictions in the record; that the Planning and Zoning Commission cannot ignore the restrictive covenants; that the Planning and Zoning Commission will have to take into consideration during their decision;

Ms. Stevenson asked about the comments raised in the hearing regarding whether restrictive covenants had been complied with at other properties in the area, and the comments about restrictive covenants potentially being abandoned.

Mr. Robertson stated that the Court of Chancery would normally determine if the covenants have been abandoned in whole or whether certain provisions have been abandoned; and that the chain of the title in this case goes back to Spring Breeze, LLC and its original 247.5-acre parcel.

Mr. Hopkins and Ms. Stevenson discussed the comments raised by speakers in the previous hearing in relation to the total number of lawn mowers previously operated from the property by the previous owners. Ms. Stevenson and Ms. Wingate both stated that they would like more time to consider this application.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to close the record and defer action for further consideration. Motion carried 4-0.

C/Z 1870 Coroc/Rehoboth III, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 10.001 acres, more or less. The property is lying on the north side of Holland Glade Rd., approximately 575 ft. east of Coastal Hwy. (Rt. 1). 911 Address: N/A. Tax Parcel: 334-13.00-325.36.

The Planning Commission discussed the application which has been deferred since January 24, 2019.

Mr. Hopkins moved that the Commission recommend approval of Change in Zone 1870 for Coroc/Rehoboth III, LLC for a change in zone from AR-1 to C-3 (Heavy Commercial) based upon the record made during the public hearing and for the following reasons:

1. C-3 (Heavy Commercial Zoning) is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is at the rear of the C-1 properties fronting along Route One that are currently used for retail purposes. This location is appropriate for this type of Zoning.
3. This location is currently used for overflow parking and stormwater management from the adjacent C-1 Zoning. This application is a reasonable extension of the existing C-1 District and the Applicant has stated that there will be interconnectivity with its existing C-1 property.

4. As stated by the Applicant there will be interconnectivity between this site and the existing C-1 retail area that is adjacent to it.
5. The site will be served by central water and Sussex County sewer.
6. The site is in the Environmentally Sensitive Developing Area and Highway Commercial Area according to the Sussex County Land Use Plan. This type of commercial use is appropriate in these areas according to the Plan.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order, prosperity and welfare of the County.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Mr. Hopkins seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and conditions stated in the motion. Motion carried 4-0.

PUBLIC HEARINGS

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

2018-26 Sweetbay – Gary C. and Anna. G Meiklejohn

A cluster/ESDDOZ subdivision to divide 43.81 acres +/- into 65 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The properties are lying on the north side of Zion Church Road, approximately 1,750 feet west of Bayard Road. Tax Parcels: 533-11.00-81.00 and 533-11.00-82.01. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were an exhibit booklet, Subdivision Plan, comments from the Sussex Conservation District, Sussex County Department of Engineering Utility Planning Division, Department of Agriculture, Office of the State Fire Marshal, Division of Health, numerous Divisions of DNREC, the State of Delaware Preliminary Land Use Service (“PLUS”) comments, and Applicant’s response to these.

The Commission found Mr. Jim Fuqua, Attorney with Fuqua, Willard, Stevens and Schab, Mr. Tom Natelli, Jr., for the applicant, and Mr. Jason Palkewicz, with Solutions IPEM were present on behalf of the application; that Mr. Fuqua stated that an exhibit booklet was submitted for the record; that the exhibit booklet contains a summary of the proposed subdivision, section 99-9C report, the Environmental Assessment and Public Facilities report, and the Applicant’s PLUS response; that this is an application for a AR-1 (Agricultural Residential District) Environmentally Sensitive Developing Area/cluster subdivision to be called Sweetbay; that the application proposes 65 single family lots on a parcel containing 43.81 acres; that the land is located on the north side of Zion Church Road, approximately 1,750 feet west of Bayard Road and approximately 1.9 miles northwest of Route 20 and Route 54 which is the intersection that forms the main entrance of Americana Bayside; that the parcel is located adjacent to the Ashton Oaks property seen by the Commission in October, 2018; that the Land Use Classification per the 2008 Comprehensive Plan

is located in the Environmentally Sensitive Developing Area which is a growth area; that the Plan states that a range of housing types are permitted in that area and the site is located near mixed residential area; that the nature of the area surrounding the site is a mixture of agricultural, woods, residential and commercial uses; that the majority of the properties on the north side of Zion Church Road are zoned AR-1; that the majority of the properties on the south side of Zion Church Road are zoned GR (General Residential District); that there are several parcels on both sides of Zion Church Road that are zoned C-1 (General Commercial District) and CR-1 (Commercial Residential District); that across from the site is a 33 acre parcel that was approved as a Conditional Use in 2008 for a health care and medical office complex and the Conditional Use has expired; that to the east of the site is the Ashton Oaks property; that a single-family cluster subdivision with a minimum 7,500 square foot lots is permitted use if served with central water and sewer; that fire protection and central water would be provided by Artesian Water Company; that the sewer would be provided by the Sussex County Johnson Corner sewer district; that the stormwater management facilities would be designed and constructed per DNREC regulations, Sussex Conservation District and use Best Management Practices; that there was a subsurface exploration study conducted by GEO Technology Associates Inc. that determined soil conditions for appropriate stormwater management location areas; that a wetland delineation was performed by Ed Lamey with Environmental Resources Inc.; that the wetland delineation did identify that 11.67 acres of Federal non-tidal wetlands are located at several locations on the site; that the delineation was submitted to the Army Corp of Engineers and a preliminary jurisdictional determination was issued by the Army Corp of the Engineers office; that the site is located in Zone X and AE of the floodplain; that all of the lots are located in the X zone and would be out of the floodplain; that there are none known archeological sites or historical sites on the property; that there are no endangered or threatened species or habitat on the site; that DelDOT would accept an area wide study fee in lieu of a Traffic Impact Study (TIS); that DelDOT also reserve the right to require a Traffic Operational Analysis (TOA) if they find it is needed as part of the actual entrance review; that DelDOT would require dedication of a 40-foot Right-of-Way from the center line and a 15-foot permanent easement along the frontage; that the Applicant would be required to construct a shared use path in the easement area; that the development entrance would be designed per DelDOT requirements including turn lanes; that there is an existing signal agreement with DelDOT and several developers to fund the construction of a traffic signal at the Bayard Road and Zion Church Road intersection; that the signal would be installed per DelDOT when it is warranted; that the property is located in the Indian River School District; that the property is located in the fire service area of the Roxana Volunteer Fire Department; that the permitted gross density of an AR-1 ESDA/cluster subdivision on 43.81 acres would be 95 lots or 2.178 lots per acre; that Sweetbay is proposing 65 lots with a gross density of 1.48 lots per acre; that the entrance would be off of Zion Church Road; that there would be separated entrance and exit lanes with landscaping in the center and located to left of the entrance would be a school bus stop along the exit land; that a 100-feet of depth is for open space along the road frontage; that there would be a 30-foot forested landscape buffers along the east and west boundaries of the property; that the rest of the property is bordered by wetlands; that there is 50-foot buffer from Baston Branch; that there are no wetlands located within any of the line lots; that there are two cul-de-sacs and they would not be looped/connected, due to wetlands and an existing wetlands ditch being located in the middle; that most of lots would be adjacent to open space; that the lots would range in size of 7,500 square feet

to 12,500 square feet and the average lot size is 8,650 square feet; that there is a total of 28 acres of open space which is approximately 64% of the site; that the proposed subdivision streets would be private; that the streets would be built to Sussex County design standards with curb and gutter and sidewalks on one side of the streets and appropriate street lighting; that the amenities would consist of two parks and one would include a tot lot; that both parks would contain benches; that the amenities would be completed by the 40th building permit; that the development would have a homeowner's association (HOA); that the HOA would be responsible for collecting assessment and enforcing the community restrictions, maintaining the streets, entrances, buffers, landscaping, recreational areas, stormwater management facilities and other common areas; that the development would be built in two phases; that proposed findings of fact and conditions were submitted into the record; that the proposed subdivision is in compliance with the Comprehensive Plan, the Zoning Ordinance, the Subdivision Ordinance and is in character with existing uses in the area;

Ms. Wingate asked whether a pool and/or clubhouse would be provided.

Mr. Fuqua states that the proposed subdivision is more of an entry-level purchaser scheme and the design sought to keep costs as low as possible for the occupiers; that Mr. Natelli stated the base price would be in the \$240,000 to \$260,000 range; and that the goal is to try to keep the operating cost low and with a pool and clubhouse the active amenities would impact the lots.

That the Commission found that Mr. Jack Cain spoke in favor to the application; that Mr. Cain stated he is the President of Baston Creek Estates HOA; that on behalf of the Baston Creek Estates HOA are strongly in favor of the application, and had voted unanimously on the matter; that there were a number of residents present at the meeting; that the Baston Creek Estates HOA has had the pleasure of working with Mr. Natelli for the past four years; that Mr. Natelli does do the right thing; that he would be delighted to have single-family homes as their neighbors; and that he likes the number of lots that are proposed in the subdivision and he likes the amount of buffer area.

That the Commission found that no one spoke in opposition to the application.

Chairman Wheatley stated that, as there were a large number of Batson Creek Estates residents present at the meeting that did not wish to speak, it would be helpful to understand the approximate number of residents present in support of Mr. Cain's comments. Following a count of hands, the Commission found that there were 20 people in attendance at the hearing in support of the application.

At the conclusion of the public hearings, the Commission discussed this application.

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

C/U 2158 Millsboro Solar, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District

for a solar array facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 91.304 acres, more or less. The property is lying on the north side of Nine Foot Road, approximately 0.27 mile west of Gum Tree Road, and on the south side of Nine Foot Road, approximately 0.2 mile west of Gum Tree Road. 911 Address: N/A. Tax Parcels: 233-15.00-57.01 & 57.02.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, Site Plan, comments from the Sussex Conservation District, Sussex County Engineering Department of Utility Planning Division, and results from the DelDOT Service Level Evaluation response indicating that a Traffic Impact Study (“TIS”) was not required.

The Commission found that Ms. Linda Nwadike, Engineer with SunEnergy 1, LLC, Ms. Carla Rickards and Andrew Willey, owners of property were present on behalf of the application; that Ms. Nwadike stated SunEnergy is one of the top five solar developers in the United States; that this is a proposed six-megawatt project; that the land is zoned AR-1 (Agricultural Residential District); that SunEnergy would lease the farm land; that a fence and landscape buffers would be provided along the roads; that they are proposing a landscaping buffer and that, for every 100 linear feet, there would be 12 evergreen trees, 10 shrubs with additional ornamental grass; that they have talked to the adjacent land owners in regards to the proposed solar array facility; that the late Mr. Rickards wanted utility scale solar for this land and has passed away since starting on this project; that Mr. Rickards’ family would like to continue with the project; that the closest solar panel would be 200-feet from the house and 500-feet from adjacent house that is not owned by the land owner; that the property is located in a low-density area; that the property is located in the State Spending Strategies Level 4; that DelDOT did not require a Traffic Impact Study (TIS); that this would be there first project in Delaware; that there is two solar facilities in the area and one was approved one year ago; that SunEnergy tries to hire local constructors for the project; that there would be no water and sewer on the site; that there would be no noise after construction is completed; that the construction would take approximately five months; that only a few people would visit the site after the construction is completed; that Mr. Willey stated he is Mr. Rickards’ grandson; that Mr. Rickards was pro-solar, and pro clean energy and the family would like to proceed with his wishes; that Ms. Nwadike stated the panels have a warranty of 25 years; that after 25 years the energy efficiency of the panels lowers due to degradation but would still work at up to 80%; that SunEnergy would monitor the panels from the headquarters from a scanner system and would have a local person would check on the panels if there are any issues; that SunEnergy would be working with Delmarva Power; and that it would take five years for the system to return and pay for itself.

The Commission found that no one spoke in favor of to the application.

The Commission found that Ms. Adrienne Miller and Mr. Bryan Miller spoke in opposition to the application; that Ms. Miller and Mr. Miller stated they are adjoining neighbors and that Ms. Nwadike had not spoken to them about the project; that they have concerns with the look of the fence and/or tree line; that they had concerns with their property value; that they have concerns with the potential medical impacts from electromagnetic radiation and that Mrs. Miller has had

previous health issues; that they had purchased their property a little over two years ago; that they wanted to live in a rural area; that there is some negatives to the project such as noise, appearance of the panels instead of vegetation; and that they do not want to see solar panels.

The Commission found that Ms. Nwadike stated that the only noise would be during the construction; that after construction there would be a humming noise from the transformers which are located on the interior of the site; that they would be willing to add more landscaping; that the panels do not have emissions or radiation; that the panels are made with sand and glass and it is not toxic: and that some people have sheep that graze in the area and eat the grass; that the panels are regulated by the Environmental Protection Agency.

At the conclusion of the public hearing, the Commission discussed this application.

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

C/Z 1871 Masten Realty, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a B-2 Business Community District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 3.0 acres, more or less. The property is lying on the east side of South Rehoboth Boulevard, approximately 0.51 mile south of Southeast 2nd Street. 911 Address: 6103 South Rehoboth Boulevard., Milford. Tax Parcel: 330-11.00-46.01.

Ms. Cornwell advised the Commission that submitted into the record is a staff analysis, comments from the Sussex County Engineering Department of Utility Planning Division, and the results from DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required. One letter was received by Mr. Robert Rescigno with questions about parking on the north side of the property. Ms. Cornwell stated this is an application for a Change in Zone, if the application is approved, it would come through a Site Plan process and the number of parking spaces and location would be reviewed by the Planning and Zoning Commission. Mr. Rescigno also had questions if the parcel is the road that borders their property and does the road go back to the woods, that he thought there was a second parcel that was the Masten residence, he also concerns about the private road, rezoning of additional properties, the liquor store which is adjacent to the property and it is zoned AR-1 (Agricultural Residential District). Ms. Cornwell stated this is a legal non-conforming use and is existed prior to the zoning going into effect in 1970, he had questions about the impact decision on the rezoning for the liquor store and was entered into the record.

Mr. Robertson explained that this is an application for a change in zone; that whilst there is conceptual information presented in the form of a Site Plan, this is not the matter interest; that the issue is whether if B-2 (Business Community District) is appropriate for this site; that if the Planning and Zoning Commission and County Council approve the application; and that the Site

Plan would come back to the Planning and Zoning Commission as an other business item for review.

The Commission found that Mr. Jamie Masten the Applicant was present on behalf of the application; that Mr. Masten stated that he currently has a small office on Route 113 with limited parking; that he lives right behind this parcel; that the property is located adjacent to a liquor store; that the existing would make a nice office; that the existing dwelling is 5,200 square feet; that he would keep the look like a house; that the application did go to the State of Delaware Preliminary Land Service (PLUS); that the property is located in the State Spending Strategies Level 1 area; that he was asked to look into annexation to the City of Milford and it was not viable; that the City of Milford would require a 6-foot tree line buffer around the entire property; that he would like to preserve the open space of the yard; that there is no commercial in the area; that adjacent to the property is a liquor store and an old gas station; that across the street from the site is the Country Club with a commercial kitchen and bar; that the area is transitioning to commercial; that there is a new church being built to the north of this site; and that he would like to keep the parcel the way it is.

The Commission found that no one wished to speak in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

Mr. Hopkins moved that the Commission recommend approval of Change in Zone 1871 for Masten Realty, LLC for a change in zone from AR-1 to B-2 (Business Community) based upon the record made during the public hearing and for the following reasons:

1. B-2 (Business Community Zoning) is designed to allow office, retail shopping and personal service uses that serves a relatively small area, including low-density and medium-density neighborhoods.
2. The site is in the Town Center Area according to the current Sussex County Comprehensive Plan and it is surrounded by this classification on the north, south, east, and west, with a portion of the western boundary running along the boundary with the City of Milford. B-2 uses are appropriate in the Town Center Area according to the Plan.
3. The site is located along South Rehoboth Boulevard in an area where there is a mix of small businesses including a liquor store next door and residential uses. This location is appropriate for B-2 Zoning.
4. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
5. No parties appeared in opposition to the application.
6. The property next to a liquor store, is no longer suitable for residential use.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and conditions stated in the motion. Motion carried 5-0.

Mr. Robertson recused himself from the next application.

C/Z 1873 Captain's Way Development, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a GR-RPC General Residential District – Residential Planned Community to a GR-RPC General Residential District – Residential Planned Community to allow for amendments to conditions of approval for CZ 1721 (Ordinance No. 2295) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 154.72 acres, more or less. The property is lying on the northeast side of Milton Ellendale Highway (Route 16), approximately 0.34 mile east of Hollytree Road. 911 Address: N/A. Tax Parcels: 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, Site Plan, and comments from Sussex Conservation District Utility Planning Division.

The Commission found that Mr. Pret Dyer, Member of Captain's Way Development and Mr. Mark Davidson, with Pennoni Associates were present on behalf of the application; that Mr. Dyer stated they have a desire to change the clubhouse; that they would like to amend Condition 'F' to change the following language to amenities contain within Phases 1, 2 and 3 shall be open and available for use by residents prior the construction of the 2nd Phase of construction; that in the original conditions in the rear section of Phase 6 of the project that there are additional amenities; that they would not be able to access the amenities because the roads would not be completed; that they would like to relocate the clubhouse to a new area and more visible upon arrival to the project; that the amenities to be built in Phases 1, 2 and 3 shall include a clubhouse with a parking lot, outdoor pool, tot lot, dog park, one pickle ball court, a natural surface walking path, the DART bus stop would be built along Route 16 and a school bus stop would be built within the clubhouse parking lot; that they would like to change Condition P to area to be used as a school bus shelter with parking for five vehicles shall be set aside in the parking lot for the community center; that both the DART bus stop and the school bus stop shall be constructed at the same time that DelDOT entrances are constructed; that they are working with the school district for the bus to come in and pick up the students and it is safer for the children and the bus; that they have rearranged the parking lot so the bus can navigate in the parking lot and subdivision; that the DART bus stop will still be located along Route 16; that the amendment to both of these conditions are to believed to be both consistent with, and an improvement to, the previous conditions that were granted; that their desire is to both accommodate the construction of the amenities; that Mr. Davidson stated they have been working with the school district and transportation manager from the Cape Henlopen School District; that they have given several different choices; that they are working through the process and looking into how they are going to accommodate the school bus; and that the Cape Henlopen School District has not yet agreed to the change.

The Commission found that no one wished to speak in favor of or in opposition to the application.

The hearing for this application was closed.

Motion by Mr. Hopkins, seconded by Ms. Wingate, and carried unanimously to forward this application to amend Condition F of Ordinance No. 2295 to state that the amenities contained with Phases 1, 2 and 3 shall be open and available to use by residents prior to the commencement of the 2nd Phase of construction and to amend Condition P to state the area to be used as a school bus shelter with parking for five vehicles shall be set aside in the parking lot for the community center, and that both the DART bus stop and the school bus stop shall be constructed at the time that the DelDOT entrance is also constructed and that this shall be per the approval of the Cape Henlopen District, to the Sussex County Council with recommendation that the application be approved for the reasons stated and conditions stated in the motion. Motion carried 5-0.

OTHER BUSINESS

2018-29 Westwood

Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for Westwood Property for three (3) single-family lots plus one (1) residual lot for a total of (4) lots as a standard subdivision on a 5.00-acre parcel and with access off Fitzgerald's Road (Sussex County Road 207). Zoning: AR-1 (Agricultural Residential). Tax Parcel: 130-6.00-55.01. Staff are currently in receipt of all agency approvals.

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

Osprey Point MR-RPC

Revised Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Preliminary Site Plan for the Osprey Point MR-RPC. The change of zone application (C/Z 1759) from Agricultural Residential (AR-1) to MR-RPC was originally approved by the Planning and Zoning Commission on June 23, 2016. This project originally sought approval for 339 units, including 180 townhomes but has since been reduced to 217 units and was approved at 217 single-family units. The revisions maintain all original Conditions placed on the project by the Planning and Zoning Commission by Ordinance 1759 and eliminates internal subdivision streets and lots. The proposed single-family lot area has been reduced from 50.94 acres to 45.37 acres. The passive open space has also increased from 51.46 acres to 59.88 acres. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: MR (Medium-Density Residential Zoning/RPC). Tax Parcel: 334-18.00-83.00. Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan with final approval by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 5-0.

S-17-43 Residences at Rehoboth Bay

Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for the Residences at Rehoboth Bay for a lot line adjustment and resizing and the relocation of amenities. The existing boat ramp, boat slips, and boat dock have been relocated to Lot 2 and therefore, the HOA of Lot 1 will not be responsible for its maintenance. The footprint of the Recreation Center has also

decreased in size from 3,900 square feet to 2,673 square feet. The Revised Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: M (Marine District). Tax Parcel: 234-7.00-108.00. Staff are in receipt of all agency approvals.

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

Coastal Tide (FKA The Arbors at Cottagedale) (C/U 1845)

Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for Coastal Tide for updated revisions to amenities. The revised submission encompasses a footprint modification to the approved pool house. The previously approved pool house had a square footage of 4,302 square feet. The revised footprint is 2,527 square feet for a difference of 1,775 square feet. The Revised Site Plan complies with the Sussex County Zoning Code. Zoning: MR (Medium-Density Residential Zoning District). Tax Parcel: 334-6.00-504.02. Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Subdivision Plan and as a Final Site Plan. Motion carried 5-0.

S-18-49 Millsboro Self Storage

Preliminary Site Plan

This is a Preliminary Site Plan for a self-storage facility with 20 buildings totaling 46,775 square feet and an office/retail building totaling 9,866 square feet. This is a through lot with access from County Living Road. Some parking is in the front yard setback, but it appears to be for short term parking for the retail/office building. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial District). Tax Parcel: 133-16.00-75.02. Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 4-1.

S-19-02 Sussex Square

Preliminary Site Plan

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for a 9,999 square foot two-story office building and parking located off Route 9 at the front of the Sussex East Manufactured Home Park. The proposed office building is located in the portion of the parcel that is zoned B-1 (Neighborhood Business District). The Change of Zone was approved by County Council on March 20, 2018. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-165.00. Staff are awaiting agency approvals.

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

S-18-96 Orchard Plaza

Preliminary Site Plan

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for Orchard Plaza for a 55,000 square foot medical and dental clinic and office building and associated parking located off Old Orchard Road. The front portion of this property is zoned C-1 (General Commercial District). The rear portion of this property is zoned AR-1 (Agricultural Residential District) and was just denied by County Council on January 15, 2019, to be rezoned as C-2 (Medium Commercial District). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 335-8.00-29.00. Staff are awaiting agency approvals.

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

S-18-95 Lewes Crest

Preliminary Site Plan

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for a 33-unit townhome community with pool and associated parking. This is a through lot with access off Nassau Road. The parcel also fronts on Route 1 and qualifies the parcel for the Combined Highway Corridor Overlay Zone. The required forested buffer is shown on the site plan. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial District). Tax Parcel: 334-5.00-87.00. Staff are awaiting agency approvals.

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

S-18-93 Seaside Jewish Community

Preliminary Site Plan

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for a proposed one (1) story addition to an existing church measuring 2,186 square feet and other site improvements to be located at 18970 Holland Glade Road. The Preliminary Site Plan complies with the Zoning Code. Zoning District: AR-1 (Agricultural Residential Zoning District). Tax Parcel: 334-13.00-325.17. Staff are awaiting agency approvals.

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

Lands of Chalabala

Minor Subdivision off a 50' easement

Ms. Norwood advised the Commission that this is a minor subdivision off a 50' easement to create one lot measuring 2.25-acres +/- from an existing 9.77-acre +/- parcel off an existing 50'ft easement to be located off of Shingle Point Road. There are already two (2) parcels that access the existing 50' easement any further subdivision will require a major subdivision application. Tax Parcel: 235-25.00-40.04. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50' easement with final by staff subject to receipt of all agency approvals. Motion carried 5-0.

Lands of Lowe

Minor Subdivision off a 50' easement

Ms. Norwood advised the Commission that this is a minor subdivision off a 50' easement over an existing driveway to create one lot measuring 1.465 acre +/- parcel from an existing 9.756 acre +/- parcel located off of Bacons Road. Tax Parcel: 432-14.00-2.08. Zoning: AR-1 (Agricultural Residential Zoning District). Staff is in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50' easement as a Final Minor Subdivision. Motion carried 5-0.

Lands of Fitzgerald

Minor Subdivision off a 50' easement

Ms. Norwood advised the Commission that this is a minor subdivision off a 50' easement over an existing driveway to create one lot measuring 80.23 acre +/- from an existing 181.13 acre +/- parcel. The residual land will measure 100.90 acres +/- located off of North Union Church Road. Tax Parcel: 230-12.00-10.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff is in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' easement as a Final Minor Subdivision. Motion carried 5-0.

2007-36 – Ferris Courtyard Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request to revise the conditions of approval for the seven (7) lot Ferris Courtyard Subdivision, the Final Subdivision Plan for which was approved by the Planning & Zoning Commission at its meeting of April 28, 2011. It is requested that Condition 'H', which requires a sidewalk be provided, is deleted. In support of the request, five letters of no-objection have been received, from 6 of the lot owners for the 7 lots within the subdivision. Tax Parcel: 134-8.00-45.08.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Request to Revise Conditions of Approval to delete Condition 'H'. Motion carried 4-0. Ms. Wingate abstained.

2018-22 – Citations Meadow Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request to revise the wording of the conditions of approval for the Citations Meadow subdivision, which is a 49 single-family lot subdivision within the AR-1 (Agricultural Residential) Zoning District that was approved by the Commission at its meeting of December 20, 2018. At present Condition 'K' requires that construction begin no earlier than 8:00 AM Monday through Friday and on Saturday. It is requested that the wording of Condition 'K' be revised to change the start time from 8:00 AM to

7:00 AM. No other changes are requested. Tax Parcel: 133-19.00-30.00.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Request to Revise Conditions of Approval. Motion carried 5-0.

Meeting adjourned at 8:12 p.m.