

## THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 28, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 28, 2019, 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. Samantha Bulkilvish – Planner I.

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

### OLD BUSINESS

**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.

Ms. Wingate moved that the Commission recommend denial of C/U 2157 for Country Lawn Care & Maintenance, LLC (c/o Gerald and Stephania Dougherty) for a Conditional Use for a landscaping business based upon the record and for the following reasons:

1. This application is for a Conditional Use to operate a landscaping business on land that is zoned AR-1.
2. The site is within a residential subdivision that has developed with single-family homes on large lots.
3. The applicant is the owner of the property and has been operating the landscaping business from the site without any approvals. As a result, the applicant received a violation notice from Sussex County and applied for a Conditional Use.
4. According to the record, the applicant's use would include parking and storage of vehicles, trailers, and equipment used in the business, and as a meeting place with parking for employees who pick up the company's equipment to head out to job sites in the morning and return in the evening.
5. There are no other business or commercial uses in existence within the subdivision where the property is located.
6. There are no other business or commercial uses in this area of Hollymount Road.

7. There was opposition from the owners of neighboring properties within this subdivision that the use would be inconsistent with the residential nature of the subdivision and the area of Hollymount Road.
8. There was testimony from neighbors opposing the application that it would adversely affect the use and enjoyment of their properties as a result of the additional traffic coming to and from the property by employees and the noise and traffic generated by the vehicles and equipment on the site including motor noise, equipment banging and back-up warnings.
9. There was testimony in the record that there are recorded Restrictive Covenants in the chain of title to this property and the adjacent lots prohibiting any commercial uses on the property. These Restrictions are recorded in the Sussex County Office of the Recorder of Deeds at Deed Book 2709 Page 113. They state that “No commercial activities are permitted”.
10. Absent any compelling evidence to the contrary, Sussex County should not ignore restrictive covenants that prohibit a use. Because there are Restrictive Covenants prohibiting this Conditional Use, this application should be denied.
11. There are other more appropriate locations for this use that are not within a residential subdivision and where the proposed use would be more consistent with the surrounding area.
12. For all these reasons this Conditional Use application should be denied.

The motion by Ms. Wingate to recommend denial of the application did not receive a second. Mr. Mears abstained. Chairman Wheatley pointed out that Mr. Mears was not on the Commission at the time of the original hearing.

The Commission held a discussion regarding Ms. Wingate’s motion; that Mr. Hopkins stated there are other conditions that may have been broken; that this is a situation where a young family has been operating the business for a number of years from the site; that he has concerns about how denial impact the family and the business; that Mr. Wheatley stated the Restrictions that are in the chain of title are there for a reason; that whether they have been broken or not broken or ignored or not enforced that is not a decision for the Commission to make; that the Commission makes a recommendation to Sussex County Council and Sussex County Council would have a different hearing and may take a different view to the Commission; that Mr. Wheatley cannot second a motion; that Ms. Stevenson stated that based on the fact that a business had operated at this location previously and then the applicant’s family then moved in, and had expanded the business, that in her view it seemed that the restrictions regarding commercial activities had been abandoned.

Chairman Wheatley declared that Ms. Wingate’s motion had failed for lack of a second.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 2-2. The motion failed due to the lack of 3 affirmative votes.

Ms. Stevenson indicated that, in light of the previous motion, that she would be willing to second Ms. Wingate’s original motion, if she wished to make it again.

Ms. Wingate moved that the Commission recommend denial of C/U 2157 for Country Lawn Care & Maintenance, LLC (c/o Gerald and Stephania Dougherty) for a Conditional Use for a landscaping business based upon the record and for the following reasons:

1. This application is for a Conditional Use to operate a landscaping business on land that is zoned AR-1.
2. The site is within a residential subdivision that has developed with single-family homes on large lots.
3. The applicant is the owner of the property and has been operating the landscaping business from the site without any approvals. As a result, the applicant received a violation notice from Sussex County and applied for a Conditional Use.
4. According to the record, the applicant's use would include parking and storage of vehicles, trailers, and equipment used in the business, and as a meeting place with parking for employees who pick up the company's equipment to head out to job sites in the morning and return in the evening.
5. There are no other business or commercial uses in existence within the subdivision where the property is located.
6. There are no other business or commercial uses in this area of Hollymount Road.
7. There was opposition from the owners of neighboring properties within this subdivision that the use would be inconsistent with the residential nature of the subdivision and the area of Hollymount Road.
8. There was testimony from neighbors opposing the application that it would adversely affect the use and enjoyment of their properties as a result of the additional traffic coming to and from the property by employees and the noise and traffic generated by the vehicles and equipment on the site including motor noise, equipment banging and back-up warnings.
9. There was testimony in the record that there are recorded Restrictive Covenants in the chain of title to this property and the adjacent lots prohibiting any commercial uses on the property. These Restrictions are recorded in the Sussex County Office of the Recorder of Deeds at Deed Book 2709 Page 113. They state that "No commercial activities are permitted".
10. Absent any compelling evidence to the contrary, Sussex County should not ignore restrictive covenants that prohibit a use. Because there are Restrictive Covenants prohibiting this Conditional Use, this application should be denied.
11. There are other more appropriate locations for this use that are not within a residential subdivision and where the proposed use would be more consistent with the surrounding area.
12. For all these reasons this Conditional Use application should be denied.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated. Motion carried 2-2. The Motion failed due to the lack of 3 votes.

Mr. Robertson explained that the Commission's rules state that it requires 3 affirmative votes to approve any matter within the jurisdiction of the Planning and Zoning Commission, this is Rule 5.5; that failure to receive 3 affirmative votes shall be deemed to disapprove any matter; that since

it did not receive 3 votes it is equivalent to disapproval of that application.

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. Motion carried 2-2. The Motion failed due to the lack of 3 affirmative votes.

**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).

The Planning Commission discussed the application which has been deferred since February 14, 2019.

Ms. Wingate moved the Commission grant Preliminary Approval for Subdivision 2018-26 for SweetBay – Gary C. and Anna G. Meiklejohn based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a Subdivision within the Environmentally Sensitive Developing Area and the AR-1 Zoning District. Although the minimum permitted lot area is 7,500 square feet, the lots have an average size of 8,651 square feet.
2. The proposed subdivision will have no more than 65 lots on approximately 43.81 acres. This results in a gross density of approximately 1.48 units per acre which is below the maximum density permitted in the AR-1 Zone and the Environmentally Sensitive Developing Area.
3. This subdivision will not have a significant impact on the neighboring properties or area roadways. It is also consistent with other nearby residential developments.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
5. The project will be served by central water and sewer.
6. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
7. The development will include approximately 28.23 acres of open space which is approximately 64% of the site. Part of this open space includes the preservation of approximately 22.67 acres of forested areas, which is 51.9% of the existing woodlands on the site.
8. The subdivision incorporates a landscaped or forested buffer of at least 30-feet in width from the boundary of the property.
9. This Preliminary Approval is subject to the following;
  - A. There shall be no more than 65 lots within the subdivision.
  - 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 30-feet in depth shall be installed along the entire perimeter of the project. This buffer may overlap areas that are currently wetlands or wooded areas that will be preserved. The Final Site Plan shall contain a landscaped plan for all of these areas.
- E. The subdivision shall be served by Sussex County for sewer service.
- F. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- G. Street design shall meet or exceed Sussex County standards.
- H. All entrances, intersections, roadway improvements and multimodal facilities required by DelDOT shall be completed by the applicant as required by DelDOT.
- I. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- J. Construction activities and deliveries of dirt fill or other similar materials shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 2:00 p.m., Saturdays. There shall not be any of these activities on Sundays.
- K. The Final Site Plan shall indicate all forested areas that will be preserved.
- L. There shall not be any construction activities within 50-feet of any wetlands.
- M. The Applicant shall coordinate and cooperate with the local school district's transportation manager to establish a school bus stop or shelter.
- N. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Ms. Wingate seconded by Ms. Stevenson and carried unanimously to grant Preliminary Approval for the reasons and with conditions stated in the motion. 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.

The Planning Commission discussed the application which has been deferred since February 14, 2019.

Ms. Wingate moved the Commission recommend approval of Conditional Use 2158 for Millsboro Solar, LLC for a solar array farm in an AR-1 District based upon the record made at the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code and it meets the purposes of a Conditional Use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties.
3. The proposed solar generation facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance or repair of the solar panels.
4. No noise. Dust or odor will be generated by the facility.
5. This recommendation is subject to the following conditions:
  - A. No storage facilities shall be constructed on the site.
  - B. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
  - D. The site shall be secured by fencing with a gate with a ‘Knox Box’ to accommodate emergency access by the local fire company or other emergency responders.
  - E. There shall be a vegetated buffer between the boundary of the conditional use area and the perimeter fence to screen the use from the view of neighboring properties. This buffer shall be at least 30-feet wide, with at least 12 evergreen trees and 10 shrubs per 100 linear feet. This buffer shall be located along Nine Foot Road, Fox Run and the northeast border of the site between Nine Foot Road and Fox Run.
  - F. Any transformers or similar equipment shall be centrally located on the site away from all nearby residential uses.
  - G. All grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
  - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Ms. Wingate 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.

#### PUBLIC HEARINGS

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

#### **2018-28 Ocean Meadows – Estates at Cedar Grove, LLC**

A cluster subdivision to divide 70.23 acres +/- into 136 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the northwest side of Beaver Dam Road, approximately 477 feet south of Kendale Road. Tax Parcels: 234-2.00-2.00 and 234-2.00-2.02. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan, comments from the Technical Advisory Committee (“TAC”), the Sussex Conservation District, Office of the State Fire Marshal, Sussex County Public Works Department, Delaware Electric Cooperative, Department of Agriculture, Sussex County Department of Engineering Utility Planning Division, Public Health Department, Division of Health, the State of Delaware Preliminary Land Use Service (“PLUS”) and an exhibit booklet.

The Commission found that Mr. Jim Fuqua, an Attorney with Fuqua, Willard, Stevens, and Schab, Ms. Megan Conner, with Stone Mark, and Mr. Jason Palkewicz, with Solutions IPPEM were present on behalf of the application; that Mr. Fuqua stated 100 lots of the 136 lots have already been approved; that this is a corrective application for the 136 lots; that on July 2016 the Commission granted Preliminary Approval for Subdivision 2016-2 and the approval was for a 100-lot cluster subdivision on the same parcel of land; that the development was to be called the Estates at Cedar Grove and Final Subdivision approval was granted on March 2018; that no lots have been sold in the subdivision; that the proposed application is basically the same but to increase the number of lots from 100 to 136 lots and the name of the subdivision has been changed to Ocean Meadows; that the permitted density in a AR-1 cluster subdivision is two lots per acre; that this parcel contains 70.23 acres, that 140 lots are permitted; that the proposed 136 lots are less than the density that is permitted; that the previous proposed subdivision showed a large open space located on the northwest portion of the site and the original proposed subdivision application was based on a misunderstanding of the language of cluster subdivision; that there was some confusing code provisions for a cluster subdivision; that there are three possible ways to do an AR-1 cluster subdivision; that the first way is a standard cluster subdivision, the second way is a superior design AR-1 cluster, and third way is the Environmentally Sensitive Developing District Overlay Zone (“ESDDOZ”) option; that the County has not previously been many superior design applications requested; that this is likely because it requires a yield plan to be done showing how many 20,000 square foot lots that can fit on the site; that the number becomes a cap on the total number of permitted lots for the development and that it would typically result in about a 25% reduction in the number of permitted lots; that a copy of the minutes for Subdivision 2016-2 was submitted into the record; that the Applicant has met the superior requirements and that a yield plan had been submitted, resulting in the 100-lot cap; and that the previous subdivision application was treated as a superior design cluster.

The Commission found that Mr. Robertson stated that County Council introduced an Ordinance on February 25, 2019 to address some of the language the cluster subdivision aspects of the County Code; that both of the cluster subdivision paths require the Commission to find that a superior design has been achieved; that the second path has a list of requirements to satisfy or show that an applicant meets the superior design requirements; that a standard cluster subdivision does not have any of those enhanced requirements; that the Ordinance is confusing in the way it is drafted; and that this proposed subdivision is a standard cluster subdivision that shows general superiority to a 3/4-acre lot, which is a regular subdivision.

Mr. Fuqua stated that the applicants are essentially requesting to undo the superior design aspects of the previously approved subdivision and make it a standard cluster subdivision; that there is

evidence and statements in Subdivision application 2016-2 as well as the Commission decision and findings which are set forth in the Commission minutes; that on May 26, 2016, July 14, 2016, and July 28, 2016, are equally applicable to this application and request they would be incorporated into the record; that the proposed subdivision has additional lots there are remains of a voluntarily buffer of 100-feet from the lots to the wetlands; that the original plan was 100 lots and the new proposed plan is for 136 lots; that the average lot size of the original plan were 10,278 square feet and the proposed new plan average lot size is 9,489 square feet; that the original open space was approximately 38-acres and was 55% of the site; that the new proposed plan has 27-acres of open space which is 39% of the site; that the cluster subdivision requires a 30% open space and the proposed subdivision would exceed the requirements; that the rest of the proposed subdivision would remain the same as the original application; that the original subdivision was going to be served by Tidewater Utilities for sewer and the proposed subdivision would be served by Tidewater Utilities for sewer and there was a proposed findings and conditions similar to Subdivision 2016-2 submitted for the record; that there where conditions and findings are identical Subdivision 2016-2 and were submitted into the record; that there are some changes made to the conditions and findings which include Condition A would change the number of lots from 100 to 136 and added a new Condition Q to state that the recreational area amenities which are a pool and clubhouse would be completed prior to the issuance of the 70<sup>th</sup> building permit; that the original subdivision did not have any interconnectivity; that the streets would be private; that if you have private streets and interconnect with another subdivision with private streets, it causes some concerns; and that Mr. Palkewicz stated the applicant would be okay with a secondary emergency access to the subdivision as an alternative to the main entrance.

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

That the Commission found Mr. Greg Bennett and Mr. Martin Dreibelbis spoke in opposition to the application; that Mr. Bennett stated the Ridings at Rehoboth has agreement with the developer and Tidewater to permit an easement for sewer; that Tidewater has a treatment facility in the Riding at Rehoboth Subdivision; that they had entered into an agreement with Tidewater and the developer on September 17, 2017; that the Ridings at Rehoboth homeowner's association and Tidewater entered into a memorandum of understanding; that Tidewater agreed that within 90 days of the execution of the document (September 17, 2017) that Tidewater would obtain from a licensed independent professional engineer that the wastewater treatment plant and the drift field within the Ridings at Rehoboth would be made operational; that there was no notification from Tidewater that the facility would be able to handle the 100 homes or 136 homes; that Tidewater has not obtained a report from any license independent professional engineer and that residents have now obtained a report, they have shared the information agreement with the Ridings at Rehoboth; that the Ridings at Rehoboth has concerns that the drift fields and treatment facility on the their property may not be able to handle the extra homes because there has not been an independent report undertaken; that the Ridings at Rehoboth have concerns with the existing infrastructure; that Mr. Dreibelbis stated he has concerns with open space that is located adjacent to his property; that he was told the 37-acres would be undisturbed woodlands when it was approved for the 100-lot subdivision; that the old subdivision plan shows a lot of undisturbed woodlands; that the proposed subdivision is adding a street and 4 lots to the rear of his property;



that he has issues with the 4 new lots to the rear of his property and not the 32 lots; that he would request to delete the road and the 4 lots that border the Ridings at Rehoboth; Mr. Palkewicz stated there is a minimum 20-foot buffer and the road is 30-foot away from the right-of-way to the property line; and that there would be 115-feet from the front of the house to the property and a wooded buffer.

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

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

**2018-30 Janet R. Swain**

A standard subdivision to divide 4.034 acres +/- into 2 single family lots with residual to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the north side of Sherman Avenue, approximately 775 feet east of North Old State Road and on the south side of Susquehanna Avenue, approximately 625 feet east of North Old State Road. Tax Parcel: 330-15.13-1.00. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan, comments from the Sussex Conservation District, and Sussex County Engineering Department of Utility Planning Division. Seven letters were received in support of the application and were submitted into the record. The Applicant is requesting a waiver for topography, forested landscape buffer and the street design requirements.

The Commission found that Mr. Doug Annad, Surveyor with Doug Annad Surveying was present on behalf of the application; that Mr. Annand stated the parcel is 3.628-acres; that after the application was submitted for the proposed Subdivision, a lot line adjustment was approved and recorded; that the proposed application is to subdivide the lot into three parcels; that the proposed Subdivision would consist of two new lots and one residual lot; that one of the lots is vacant and fronts on Susquehanna Avenue and the other two lots already existing dwellings on them and they would front on Sherman Avenue: that the proposed lots would meet the frontage and setback requirements; that the Applicant has received DNREC approval for Lot 2; that the Applicant has a letter of no objection from DelDOT for the project; that the Applicant is requesting a waiver from the 20-foot forested landscape buffer and a topographic survey; that the Applicant would meet all the requirements of Ordinance 99-9C of the Sussex Code; that a letter was received by the Sussex County Engineering Department stating the proposed Subdivision of land is not in an area where the Sussex County Engineering Department has a plan or a scheduled to provide sanitary sewer service; and that two existing dwellings have existing septic systems for each dwelling.

The Commission found that no one spoke 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 grant Preliminary and Final Approval of Subdivision 2018-30 for Janet R. Swain based on the record made during the public hearing and for the following reasons:

1. This is a three lot Subdivision with frontage on Susquehanna Avenue and Sherman Avenue.
2. Two of the three lots have existing homes on them. There is a septic feasibility letter for Lot 3.
3. The lots comply with all of the requirements of the Subdivision Code.
4. The subdivision will not adversely affect area roadways or nearby properties.
5. Given the small size of the subdivision, a waiver from the vegetative buffer requirements is appropriate.
6. No parties appeared in opposition to the application.
7. A waiver from the topography requirements for the Site Plan is appropriate given the small size of this subdivision and because there are two existing homes on the proposed lots.
8. Because all agency approvals have been received, it is appropriate to grant both Preliminary and Final Site Plan Approval for this application.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to grant Preliminary and Final Subdivision approval for the reasons and with the conditions stated in the motion. Motion carried 5-0.

**C/U 2160 Procino-Wells & Woodland, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a professional office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.91827 acre, more or less.** The property is lying on the north side of Savannah Road, approximately 878 feet west of Dove Road. 911 Address: 1519 Savannah Road, Lewes. Tax Parcel: 335-12.06-3.00.

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

The Commission found that Tim Willard, an Attorney with Fuqua, Willard, Stevens, and Schab, and Ms. Amber Woodland, partner with Procino-Wells and Woodland were present on behalf of the application; that Mr. Willard stated the Applicants are going to keep the look of the house but use it as an office; that there are a lot of offices on Savannah Road; that the house was built in 1934: that the house had housed an old magistrates office from the 1930s to the 1940’s; that the home consists of approximately 1,700 square feet which is the proposed office space; that they would have nine parking spaces with most of the parking in the back of the site; that there may be one or two employees at the site; that there would not be a lot of traffic; that the Applicants intend to keep as many of the existing trees they can; that a Traffic Impact Study (TIS) was not warranted; that they would like a downward-lighted sign; that they have submitted proposed findings for the record; that the proposed Conditional Use would not adversely affect the neighborhood; that Ms.

Woodland stated the hours of operation are from 8:00 a.m. to 4:30 p.m., Monday through Friday; that they are proposing the hours of operation to be 7:00 a.m. to 7:00 p.m., Monday through Friday and weekend by appointment only; and that they would provide handicap parking in the front and a ramp in back of the property.

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

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

Ms. Stevenson moved that the Commission recommend approval of Conditional Use 2160 for Procino-Wells & Woodland, P.A. for a professional office based upon the record made during the public hearing and for the following reasons:

1. The proposed Conditional Use is similar in character to many other offices in this area of Savannah Road. It is in character with the long history of development of medical and professional office space along Savannah Road.
2. The use as a professional office in this location will benefit the health, safety, and welfare of present and future residents of Sussex County residents by providing such a use in a convenient location.
3. The applicant intends to utilize the existing structure on the property as a law office. This is consistent with other business and professional uses along Savannah Road.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
5. The use is in a Developing Area according to the Sussex County Comprehensive Land Use Plan. This use is appropriate in that according to the Plan.
6. This recommendation is subject to the following conditions:
  - A. The use shall be limited to professional offices only.
  - B. As stated by the Applicant, the use shall occur within the existing structure that will be renovated by the Applicant, while maintaining its residential appearance from Savannah Road.
  - C. The hours of operation will be between 7:00 a.m. and 7:00 p.m., Monday through Friday and weekends by appointment only.
  - D. Any dumpsters shall be located to the rear of the property and screened from view of neighboring properties and roadways.
  - E. The Applicant shall comply with all DelDOT requirements concerning entrance, traffic, and roadway improvements.
  - F. All exterior lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - G. As stated by the Applicant, the existing fencing shall be maintained around the site.
  - H. With the exception of the required handicapped spaces, all parking shall be located in the rear of the property behind the office. The parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
  - I. One lighted sign will be permitted on the property. The sign shall be no larger than 32 square feet per side.

- J. 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 Ms. Wingate 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.

**C/U 2161 Howard Weston Development Company, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a professional office for accounting, tax preparation, and bookkeeping services to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.9468 acre, more or less.** The property is lying on the north side Lewes-Georgetown Highway (Route 9), approximately 0.38 mile west of Sweetbriar Road. 911 Address: 29065 Lewes-Georgetown Highway (Route 9), Lewes. Tax Parcel: 334-4.00-80.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, an exhibit booklet, comments from Sussex Conservation District Utility Planning Division the results from DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required, and comments from the Sussex County Engineering Department Utility Planning Division. Two letters were received in support of the application were submitted into the record.

The Commission found that Mr. Dennis Schrader, an Attorney with Morris, James, Wilson, Halbrook and Bayard, LLP, Mr. John Travis and Mr. Dave Roberts, with Howard Weston Development Company were present on behalf of the application; that Mr. Schrader stated that the property is located across the road from the Habitat for Humanity ReStore site; that the property is a 1-acre parcel; that the property is located in an AR-1 (Agricultural Residential District); that a single-family house with a garage is currently located on the parcel; that the proposed Conditional Use application is to allow the applicant’s to have an accounting office; that the area is slowly evolving into an commercial area which includes Hopkin’s Dairy Farm, a gun shop, Millman’s Hardware and Appliances, the Moose Club, antique store, and etc.; that the proposed Conditional Use is to convert a single-family dwelling to allow for accounting services and tax preparation; that the single-family dwelling consist of 1,344 square feet and includes of three bedrooms, a living room, kitchen, and restrooms; that the proposal is to make the three bedrooms into offices, use the living room as a reception area and the kitchen and restrooms would remain the same; that they have the ability to provide eight parking spaces for the clients; that the proposed hours of operation are from 7:00 a.m. to 9:00 p.m., Monday through Friday, 7:00 a.m. to 5:00 p.m., Saturdays and no hours on Sunday; that the property would be landscaped; that the applicants are requesting a sign with LED lighting and it would be controlled by a timer to be on during the hours of operation; that Mr. Travis stated he typically does tax preparation by appointment only and some of the clients drop off information; that there would typically be three employees with two customers at a time; that the hours of operation would be less after tax season; that the proposed sign would be turned off each night except during tax season and the sign would be turned off when close they each night; that the proposed use is a public and semi-public use; that the proposed use is consistent with the State Spending Strategies and the Comprehensive Plan; that the proposed use would not

have any impact to the neighboring properties; that there would be lighting in the parking area and it would be downward screened; and that the parking area would be paved.

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

At the conclusion of the public hearings, 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 1872 T.S. Smith & Sons, Inc.**

**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 Northwest Fork Hundred, Sussex County, containing 25.6694 acres, more or less.** The property is lying on the west side of Sussex Highway (Route 13), south side of Fawn Road, east side of Main Street, and north side of Redden Road. 911 Address: 8899 Redden Road, Bridgeville. Tax Parcel: 131-10.00-89.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, comments from Sussex Conservation District, the results from DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required, and comments from the Sussex County Engineering Department Utility Planning Division. One letter was received in opposition with concerns about the clean hands’ Ordinance as they believe there is some signage on the property that is not in compliance with the Code, were entered into the record.

The Commission found that Mr. John Roach, Engineer with John B. Roach Engineering and Mr. Charlie Smith, co-owner of T.S. Smith & Sons were present on behalf of the application: that Mr. Smith stated the property has been in the family since 1907; that there are other farms in the area; that that it was a hard decision to make to save the rest of the farm and place this parcel up for sale; that the rest of the farm has been placed in Agricultural Preservation; that a church is interested in 10-acres of the site and the Sussex County Emergency Services is interested in possibly placing a satellite station; that he would like to change the zoning of this parcel so it would be similar to the other zoning in the area; that to the north of the site is Messick and Grey which is a machine shop with a retail outlet; that on Main street and western border of the property is Zoned C-1 (General Commercial District) which includes McDowell’s towing, a vacant commercial site, and Weller’s Utility Trailers; that the site across the highway is Zoned C-1 (General Commercial District) and that is where their farm market is located; and that the field to the south of this site is used for agricultural use.

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

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

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

## OTHER BUSINESS

### **2018-3 Fox Haven II – Phase 1**

#### Final Subdivision Plan

Ms. Bulkilvish advised the Commission that this is a Final Subdivision Plan for Fox Haven II. This Subdivision Plan is for Phase 1 which is for 47 single-family lots out of a total of 95 approved lots. The Fox Haven II Subdivision is located off Johnson Road and can be accessed by a connection and continuation of Fox Tail Road at the southern end of the Fox Haven Subdivision. Tax Parcels: 533-11.00-48.00, 45.01 & 518.00. Zoning: GR (General Residential). Staff are in receipt of all agency approvals.

Ms. Wingate abstained.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

### **S-19-06 Southern Delaware Therapeutic & Recreational Horseback Riding, Inc.**

#### Final Site Plan

Ms. Bulkilvish advised the Commission that this is a Final Site Plan for the Southern Delaware Therapeutic & Recreational Horseback Riding, Inc. facilities including an office, caretakers house, and stables. Conditional Use 2103 was approved on November 7, 2017, for the commercial operation of therapeutic horseback riding. A variance was granted on October 15, 2018, for the required 200-foot from property lines for an existing horse stable. The Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 235-26.00-17.14. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

### **Canal Point MR-RPC**

#### Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for the Canal Point Residential Planned Community, to provide 2 No. dumpster enclosures within the existing parking areas and a pole shed within the existing amenity area to enable storage of pool equipment. The revisions to the site plan would result in a reduction of the approved 487 car parking spaces to a total of 447 parking spaces. The number one of the dumpster enclosures would be located within the 40-foot front yard setback to Hebron Road. The dumpster enclosures would include a 7-foot high solid fence. The revised Site Plan complies with the Zoning and Subdivision Code, and all conditions of approval for the RPC. A formal ballot was held by the Condominium Association during the week of October 15, 2018, and a letter has been submitted with the Revised Site Plan stating that 66.8% of residents have approved the proposed dumpster enclosure and beautification project. Zoning: MR-RPC (Medium-Density Residential Planned Community). Tax Parcel: 334-13.00-334.00

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

### **S-17-35 Coastal Station - Phase II**

#### **Preliminary Site Plan**

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for a four-story 71,421 square foot hotel and a 165,800 square foot mixed-use building containing retail and 63 condo units. This is phase two of an existing large-scale use that contains a gas station and convenience store, restaurant and retail space located at the southeast corner of the intersection of Coastal Highway and Holland Glade Road. Interconnectivity is not shown because the neighboring parcel is the Town of Rehoboth water tower. Connecting to this parcel is not feasible because public access to the water tower is not encouraged and would not benefit either property. This Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 334-13.00-325.08. Zoning: C-1 (General Commercial District) and CR-1 (Commercial Residential District). Staff are awaiting agency approvals.

Motion by Mr. Mears, 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 5-0.

### **S-19-07 Fenwick Light**

#### **Preliminary Site Plan**

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for 18 condominium units with amenities and parking on a 2.03-acre parcel located off Lighthouse Road. This Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 134-23.00-3.02. Zoning: C-1 (General Commercial District). 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 5-0.

### **Lands of Thompson**

#### **Minor Subdivision off a 50' easement**

Mr. Whitehouse advised the Commission that this is a minor subdivision off a 50-foot easement over an existing driveway to create two (2) lots measuring 1.688-acres +/- with a residual lot measuring 1.686-acres +/- located off of Heritage Road. There is an existing dwelling that will remain on the residual lands. Tax Parcel: 230-21.00-4.06. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

### **Lands of Savage**

#### **Minor Subdivision over the existing driveway**

Mr. Whitehouse advised the Commission that this is a minor subdivision over an existing driveway to create one new lot for their daughter. The existing dwelling was built in 1914. The proposed access will be 37-feet in width over an existing driveway. The Sussex County Council adopted Ordinance No. 2629 on February 5, 2019, that allows a private thoroughfare to be less than 50-

feet. The conceptual plan if approved will be reviewed by the Planning and Zoning Department for compliance with the Zoning Code prior to any final approvals. Tax Parcel: 235-14.11-49.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision over the existing driveway with final by staff subject to receipt of all agency approvals. Motion carried 5-0.

**Lands of Lankford**

Minor Subdivision off a 50' easement

Mr. Whitehouse advised the Commission that this is a minor subdivision off a 50-foot easement over an existing driveway to create two (2) lots, Lot A measuring 0.9188-acres +/- and Lot B measuring 3.5790-acres +/- with a residual lot measuring 1.1296-acres +/- located off of Mount Pleasant Road. There is an existing dwelling that will remain on the residual lands. Tax Parcel: 432-6.00-8.06. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson 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.

Meeting adjourned at 7:52 p.m.