

## THE MINUTES OF THE REGULAR MEETING OF OCTOBER 24, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 24, 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: Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Seth Thompson – acting on behalf of the Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager, and Mrs. Jennifer Norwood – Planner I.

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

Ms. Cornwell noted that there were some minor revisions to the minutes of September 26, 2019 and October 1, 2019.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minutes of September 26, 2019, Planning and Zoning meeting. Motion carried 5-0.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minutes of October 1, 2019, Planning and Zoning meeting. Motion carried 5-0.

### OLD BUSINESS

Mr. Thompson recused himself for the following item of Old Business.

#### **C/U 2186 Mountaire Farms of Delaware, Inc.**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and GR General Residential District for sludge and wastewater spray irrigation to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 351.86 acres, more or less.** The property is lying on both sides of Mount Joy Rd., approximately 52 ft. west of Townsend Rd, and being on both sides of Townsend Rd., approximately 157 ft. south of Mount Joy Rd., and being on the southeast corner of Mount Joy Rd. and Townsend Rd, the northeast corner of Maryland Camp Rd and Townsend Rd, and the southwest corner of Maryland Camp Rd. and William Street Rd. 911 Address: N/A. Tax Parcels: 234-28.00-1.00, 2.00, and 3.00.

The Commission discussed this application, which was deferred for further consideration at the meeting of October 10, 2019.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use # 2186 for Mountaire Farms, Inc., for sludge and wastewater spray irrigation based upon the record made during the public hearing and for the following reasons:

1. The property is a large parcel consisting of approximately 351.86 acres more or less and is located in a Low-Density Area and Coastal Area. The Low-Density Area designation recognizes that business development should be largely confined to businesses that address the needs of single-family residences and agriculture. The Coastal Area designation recognizes that development can be accommodated provided that any special environmental concerns are addressed.
2. The Applicant seeks to use its property for sludge and wastewater spray irrigation. The Applicant currently spray-irrigates wastewater on other lands and seeks to spray irrigate wastewater on this property as well. The Applicant has no intention to increase the amount of wastewater it spray-irrigates and intends to use this property to allow for better load and nutrient management.
3. The Applicant will also use the property for sludge application. The application of sludge and wastewater spray irrigation will be used to assist in the growing of crops. This use is consistent with the underlying zoning of the property.
4. There were concerns raised by opposition about the effect of the sludge and wastewater spray irrigation application on water. The Applicant will be subject to regular monitoring by DNREC and will have to comply with DNREC's requirements. These monitoring requirements include monthly reports to DNREC and unannounced visits from DNREC to inspect the site. No ponding or runoff is allowed.
5. The Applicant will use an existing pipeline for wastewater transport and wastewater will not be trucked to the site thereby limiting the traffic impact. Sludge will be trucked to the site with an estimated 2-3 loads per day. As such, the traffic related to the sludge should be minimal. The sludge transport is regulated by DNREC permits as well.
6. There is no indication that the use, if in compliance with DNREC regulations, will have any adverse impact upon the area or neighboring or adjacent properties. To the contrary, it will be consistent with the agricultural uses on nearby properties which utilize wastewater spray irrigation and sludge application.
7. The use will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways.
8. The use is of a public or semi-public character that will be a benefit to Sussex County.
9. This use is subject to the following conditions:
  - A. The application of sludge and wastewater spray irrigation shall be subject to DNREC and other state and federal regulatory approvals.
  - B. The application of sludge and wastewater shall be limited to sludge and wastewater from Mountaire Farms.
  - C. There shall not be any stockpiling of sludge materials or wastewater on site.
  - D. The maximum number of sludge and wastewater applications on the property shall be subject to the approval of DNREC and other regulatory agencies with jurisdiction over this use.

- E. This conditional use shall be valid concurrent with DNREC's permits for this use. If the DNREC permits shall be terminated or expire, this conditional use shall also terminate and expire.
- F. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
- G. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to apply the sludge and wastewater spray irrigation on this property.
- H. The failure to abide by these conditions shall result in the termination of the conditional use approval.
- I. The Applicant shall submit a Final Site Plan, which shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried to recommend approval for the reasons and conditions stated in the motion. Motion carried 4-1 with Ms. Wingate dissenting.

#### PUBLIC HEARINGS

Mr. Thompson described the rules and procedures for Public Hearings before the Planning & Zoning Commission.

#### **2019-19 Raymond V., Jr. and Patricia L. Radish**

A standard subdivision to divide 7.732 acres +/- into 3 single-family lots to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The property is located on the southeast side of Radish Rd., approximately 0.57-mile northeast of Mumford Rd. Tax Parcel: 133-20.00-154.00. 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 comments from the Sussex County Engineering Department - Utility Planning Division, a letter of no objection to recordation from DelDOT, an approved Soil Feasibility Study, and approval from the Office of the State Fire Marshal. Ms. Cornwell also noted that there was a request for a waiver from the forested landscape buffer requirements and the street design standards.

The Commission found that Mr. Raymond V. Radish, Jr. was present on behalf of the application; that he is seeking to subdivide the land to create parcels for his family members; that Ms. Wingate asked if the subdivision would have any impact on area roadways, or the school system, to which Mr. Radish advised that it would not. Ms. Wingate asked whether the access road would serve all of the lots, and whether a maintenance agreement would be created for this road. Mr. Radish confirmed that the maintenance agreement has not yet been prepared.

Chairman Wheatley outlined the importance of the maintenance agreement to future management of shared accesses and encouraged the applicant to look further into this.

The Commission found that no one wished to speak in favor to or in opposition to the application. Upon there being no further questions from the Commission, Chairman Wheatley closed the public hearing.

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

Ms. Wingate moved that the Commission grant Preliminary and Final Subdivision Plan approval of Subdivision 2019-19 for Raymond Radish, Jr. & Patricia Radish, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 3 lots and 1 residual parcel on 7.732 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. Given the small size of this Subdivision, a waiver from the street design and buffer requirements is appropriate.
7. This preliminary approval is subject to the following conditions:
  - A. There shall be no more than 3 lots and 1 residual parcel within the subdivision.
  - B. There shall be a recorded easement for the ingress and egress area setting forth the maintenance obligations for that easement area among the lot owners served by it.
  - C. All entrances shall comply with all of DelDOTs requirements.
  - D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to grant Final Subdivision Plan approval. Motion carried (5-0).

### **2019-20 Gale White**

A standard subdivision to divide 7.018 acres +/- into 3 single-family lots to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is located on the northwest side of the intersection of Russell Rd. and Deer Forest Rd. Tax Parcel: 430-17.00-15.12 (part of). 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 comments from the Sussex County Engineering Department - Utility Planning Division, and a Soil Feasibility Study.

The Commission found that Mr. Gale White was present on behalf of the application. That he did

not wish to add any further information into the record, other than to note that he is seeking to create parcels for his family members. Mr. Hopkins outlined that he is familiar with the area, and asked whether the subdivision would have any impact on the school system or area roadways, to which Mr. White outlined that it would not. Mr. White confirmed that all lots would be accessed from Russell Rd.

Ms. Cornwell noted that the applicant is requesting a waiver from the forested landscape buffer requirements.

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

Upon there being no further questions from the Commission, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed this application. Ms. Cornwell noted that a waiver from the buffer requirements is not needed in this case.

Mr. Hopkins moved that the Commission grant preliminary approval of Subdivision 2019-20 for Gale White, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 3 lots and 1 residual parcel on 7.018 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. Given the small size of this Subdivision, a waiver from the street design and buffer requirements is appropriate.
7. This preliminary approval is subject to the following conditions:
  - A. There shall be no more than 3 lots and 1 residual parcel within the subdivision.
  - B. All entrances shall comply with all of DelDOT's requirements.
  - C. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Hopkins, seconded by Mr. Mears to grant Preliminary Subdivision plan approval. Motion carried (5-0).

Ms. Cornwell announced that, at the Applicant's request, the following two items would be heard together. Chairman Wheatley clarified that, although the Public Hearings were being combined for the purposes of the Applicant's presentation, that the Commission would ultimately consider and vote on each application separately.

**C/U 2195 Gulfstream Development, LLC (Kent Apartments)**

**An Ordinance to grant a Conditional Use of land in a GR General Residential District for multi-family (45 apartment units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.93 acres, more or less.** The property is lying on the northwest corner of Parker House Rd. and Muddy Neck Rd. 911 Address: N/A. Tax Parcel: 134-16.00-382.00

Ms. Cornwell advised that, for the Conditional Use application, submitted into the record is an exhibit booklet, a site plan, letters from an appraiser regarding the property values in the area, comments from the Sussex County Conservation District, the results from the DelDOT Service Level Evaluation confirming that a Traffic Impact Study (“TIS”) is not required, Comments from the Sussex County Engineering Department – Utility Planning Division. 1 letter in support of the application and 821 letters in opposition have been received and entered into the record.

**C/Z 1895 Gulfstream Development, LLC (Kent Apartments)**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.93 acres, more or less.** The property is lying on the northwest corner of Parker House Rd. and Muddy Neck Rd. 911 Address: N/A. Tax Parcel: 134-16.00-382.00.

Ms. Cornwell advised the Commission that, for the Change of Zone application, submitted into the record were an exhibit booklet, a staff analysis, comments from the Sussex Conservation District, and comments from the Sussex County Engineering Department - Utility Planning Division, the results from the DelDOT Service Level Evaluation confirming that a Traffic Impact Study (“TIS”) is not required. 1 letter in support of the application and 821 letters in opposition have been received and entered into the record.

Ms. Cornwell summarized the responses received. That the majority of letters in opposition were opposed to any change from AR-1 Zoning; that concerns were raised in relation to traffic impacts; that concerns were raised in relation to the use of the land for apartments.

The Commission found that Mr. David Hutt, an Attorney with Morris James, LLP, Mr. Bob Harris, a Principal of Gulfstream Development, LLC, Mr. Mike Coben, a registered/licensed engineer with George, Miles & Buhr, LLC, and Mr. Jeff Clark, a registered/licensed land use planner with Land Tech Planning, were all present on behalf of the application; that the application site is a 3.93 acre parcel of land located at the intersection of Muddy Neck Rd and Parker House Rd; that the parcel is located just outside the municipal limit of the town of Ocean View; that this application seeks to change the zoning of a portion of the property to GR (“General Residential Zoning District”); that the Conditional Use application is for multi-family; specifically that three buildings with 45 apartment units are sought; that the applicant has noted the opposition to the scheme; that a form letter appears to have been signed by hundreds of individuals; that many of the letters of opposition appear to have used this form-type letter; that there is a difficulty in understanding the nature/timing of all of the objections, and whether these objections were submitted to the office of Planning & Zoning prior to, or after the submission of the Applicant’s exhibit book and additional supporting materials; that Mr. Hutt wishes to address those additional materials and reports as part

of his presentation to demonstrate the thought and effort that has been put into the application; that the existing perimeter buffer of the parcel would remain largely intact; that the Service Level Response from DelDOT did not identify a need for a Traffic Impact Study; that the PLUS response did not raise any objection from DelDOT; that a supporting letter from the Delaware Housing Authority is also part of the record; that housing opportunity is a vital issue for the eastern side of Sussex County, where there are limited opportunities for limited-income housing; that the Applicant recognized that this parcel can assist to meet that housing need within Sussex County; that Mr. Clark outlined that to the north of the site is zoned land HR-1 High Density Residential; that to the south and west is the Shady Dell subdivision that contains both single-wide and double-wide manufactured homes; that there are some stick-built homes in that development, which is zoned GR; that there is a seasonal produce stand across Muddy Neck Rd; that most of the properties to the east are within the jurisdiction of Ocean View; that the supplemental data submitted by the Applicant includes a field investigation carried out by Mr. Jim McCully of Watershed Eco that identified a ditch on the western portion of the site; that this area would not be disturbed by the development; that there were no rare, threatened or endangered species living on the site; that there is existing 8" sewer lateral that has been extended into the property from Mimosa Street from the adjoining Shady Dell Subdivision; that Sussex County Engineering has confirmed that there is sufficient capacity to accommodate the proposed number of dwelling units; that there is adequate potable water supply to serve the development, including service for fire protection; that a letter from Tidewater Utilities has been submitted into the record in the Exhibit Book; that the proposed buildings would be 50' x 150' and each would be three story in height; that this building size is below the 170' maximum; that this size is in keeping with the adjacent Providence Residential Planned Community; that each building would have a total of 15 residential units with a total of 5 units on each floor; that there would be a mixture of 2-bed units and 3-bed units with approximately 40% of the total units being 3-bed in size; that adequate area would be provided for perimeter fire access; that the driveways and circulation and parking areas have been designed to exceed minimum Code requirements; that the development requires 90 spaces minimum; that 116 spaces would be provided; that a single commercial vehicle entrance is proposed and aligns with Butler Blvd. across the street; that a meeting was held with DelDOT and the entrance has been reviewed and is considered to be acceptable by DelDOT; that a TIS is not required; however, the Developer will be required by DelDOT to improve Muddy Neck Rd. and Parker House Rd. across the entire site frontage; that this would include 11' travel lanes and 8' shoulders on development road frontages; that both of these roads are major collector roads; that the Developer must dedicate a minimum 40' of right-of-way and to include a 15' permanent easement; that a shared-use path or sidewalk will be also required; that existing utility poles will be relocated to allow for the improvements; that the PLUS review is included in the Exhibit Book; that the site is within a Level 2 State Strategies area and that the State of Delaware has no objection in principle to the use; that there are no known archaeological site within the parcel; that pervious pavements are to be used to avoid the need for stormwater management areas; that there are amenities to be located near the road with additional parking; that the existing wooded fringe would be preserved; that the buffer obstructs views into the site; that a landscaping plan would be provided; that landscaping would be maintained by a management company; that the State of Delaware identified during the PLUS process that the proposal represents an opportunity to provide a more affordable type of housing product in an area with little affordable housing; that the State Housing Authority is supportive of the project; that Mr. Hutt outlined that considerable effort and thought has been put into the design of the proposal; that the surrounding lands around the proposal are predominantly zoned GR; that

there is a mixture of uses in the wider area, but that the remaining AR-1 lands are now actually unique in that little AR-1 remains; that the Site Plan demonstrates that all area and bulk requirements of the County can be met; that the building envelope is sufficient to accommodate the buildings whilst meeting Building Code requirements; that up to 12 dwelling units to the acre is potentially permitted; that the proposal is consistent with adjoining land uses and area zoning; that there are no wetlands on the property; that the response from DelDOT was supportive and a TIS was not required as the threshold of 500 vehicle trips a day was not met; that DelDOT considered the impact to be negligible; that highway improvements would be provided in accordance with DelDOT's requirements; that both of the adjoining roads are classified as major collector roads; that the Comprehensive Plan recognizes that Sussex County is the fastest growing county in the State of Delaware; that market prices for housing and apartments are increasing and that safe and decent housing is out of reach for many households; that the fourth chapter recognizes that there is a need to expand affordable housing opportunities, especially near commercial areas; that there are seven growth areas identified, including the Coastal Area, in which the application site is located; that this region does have ecologically and environmentally sensitive areas; that a range of housing types are permitted, including multi-family housing; that medium and higher density could be supported in areas where water and sewer are available; that this application addresses many of these objectives within the Comprehensive Plan; that Level 2 State Strategies also recognizes the need for a variety of housing types; that Chapter 8 (Housing) recognizes that most housing on the eastern side of the County is unaffordable for recent college graduates and first-time buyers, and that a variety of studies are being undertaken in relation to this; that 8.2 of the Plan talks about the strong demand for housing and the impact of price increases; that the shortage of affordable housing is a very real problem in Sussex County; that there is an identified need for workforce housing, especially in the eastern areas of the County; that workers currently have to live further away, placing increased demands on roads and transportation infrastructure; that the proposal is to provide market-rate housing and not low-income housing; that the housing would be for year-round workers and not seasonal workers; such as newly graduated police officers looking for a place to live; that an appraiser has analyzed the site and surrounding uses and concluded that the proposal would not have a negative impact; that the nearby business uses would not be negatively impacted; that the Applicant has reviewed some of the comments submitted to the Office of Planning & Zoning; that the application site is not surrounded by single-family homes per se; that townhouses are themselves a form of multi-family; that many of the letter outlined an expectation that the parcel should remain AR-1; that Mr. Hutt believes that, historically, many of the surrounding properties were zoned AR-1 and they were subsequently, over time, allowed to rezone to the current zoning; that proposed findings of fact and conditions of approval were submitted into the record for the Commission's consideration.

Mr. Mears asked how often the county has approved a density of 12 dwelling units to the acre. Ms. Cornwell mentioned that there have been several over the past four and a half years; that Mr. Mears asked how the price of the units would be calculated; that Mr. Robert Harris for Gulfstream Development LLC stated that rental rates are calculated from the general rental rates of other properties in the area; that in this case there aren't many other apartments in the area to compare to; that there are other types of housing units available between \$1800 to \$2500 per month in the wider area; that County-wide rental rates are available; that the median rental rate for a 2-bed unit is \$987 per month, that the 3-bed county-wide rate is \$1,347 per month; that the Applicant's proformas are based on those numbers; that they wish to hit the median; that Mr. Mears outlined his



familiarity with the area and that he believes that there are some rental apartments in the wider area; that Mr. Mears asked Mr. Hutt about his thoughts on the proposed density; that Mr. Hutt outlined that this site checks all of the boxes for a site that can bear a higher density; that he doesn't think that it would set a precedent as not every property would check all the boxes in the way this site does; that a large amount of land in the area has already been developed and there are limited opportunities for further development; that Mr. Mears asked about the potential for sub-letting and Mr. Hutt confirmed that a mechanism would be in place to prohibit sub-letting of apartments; that Ms. Wingate asked if the area is served by DART for bus service to which Mr. Hutt replied that it is not; that Mr. Hopkins asked if a second egress was possible; that Mr. Clark confirmed that DelDOT would not allow this; that Ms. Stevenson asked if the units were to be second houses for retirees, to which Mr. Hutt replied that there would be no discrimination of occupiers; that Ms. Stevenson noted that, from the submitted information, the soils on site were identified as being poorly draining; that Mr. Clark outlined that a pervious pavement solution was to be put forward to avoid open stormwater management areas; that stormwater management would be undertaken below the surface; that Mr. Hopkins asked for the square footage of the units; that Mr. Harris stated that the 2-bed would be 1,040 sf. and the 3-bed is 1,400 sf.

Mr. Whitehouse asked Mr. Hutt if he could confirm whether the units would be age-restricted, to which Mr. Hutt confirmed that none of the units would be age-restricted.

Ms. Cornwell read a written response from DelDOT into the record, including DelDOT's expectation that the applicant contribute to a potential roundabout development in the vicinity of the application site, should this come forward. Ms. Cornwell noted that the word "affordable" had been mentioned repeatedly and asked if Mr. Hutt could confirm whether the units would be market rate units, to which Mr. Hutt confirmed that the units are market-rate units. Ms. Cornwell outlined to the Commission that there would be no mechanism to ensure affordability.

Chairman Wheatley asked for clarification as to the proposed 6-month lease term; that this might encourage seasonal occupation; that Mr. Hutt outlined that some year-round workers might travel around, such as nurses in training, and that a 1-year minimum lease might discourage these types of workers from living in this location; that Mr. Harris outlined that a lot of thought has gone into this, and that college graduates or other similar occupiers are not looking to be locked in for a 1-year period; that May-September occupation would not be permitted.

The Commission found that one person wished to speak in favor of the applications; that Ms. Cheryl Detweiler stated that her employer hires workers for 6-month terms; that the area is growing and there is a population boom; that she thinks affordable housing is a fantastic idea.

That the following people wished to speak in opposition to the applications:

Mr. Patrick Emlet outlined that he was involved in obtaining signatures from local residents as part of the form-letter, that he did submit 650 letters of opposition as part of his group; that he did inform participants as to the nature of the proposals before they signed the form-letter; that he wished to point out that the online map was not entirely accurate; that the Providence development has 49 townhomes on 12 acres and not 45 homes; that the form letters were obtain from over 31 different communities; that there are 12 communities and 6 businesses, amongst other individual

units, relying on SCR. 361 for access; that there is already a large amount of development in the area; that there are developments being added that rely on access from a single access point; that traffic makes it dangerous to walk and/or cycle; that the gulfstream proposals have only a 10' setback to adjoining property lines, and that no new buffers are proposed and there is no room for trees to be provided, that he is concerned about the lack of stormwater management areas and potential increases for flooding; that the site layout plan shows the removal of trees; that he is concerned that the proposed Conditional Use and Change of Zone do not address the deficits in the infrastructure in the area and should therefore not be approved.

Mrs. Diana Emlet spoke in opposition to the Applications. Mrs. Emlet stated that no one was forced to sign the letters of objection; that she thought that a form-letter had more substance than a petition with a list of signatures; that Mrs. Emlet stated that, if the applications were approved, there should be a 30' buffer along the tree line, even if this restricts the size of the units; that the proximity of the buildings would create the potential for light spill and pedestrian trespass; therefore the residents of Providence and Shady Dell are requesting a privacy fence to be installed; that Ms. Emlet stated that she had spoken to Ms. Jessica Watson at Sussex Conservation District and that it was her understanding that retention ponds would be required; that the tax ditch must also be maintained as this is important to drainage; that she also has concerns with locations of trash dumpsters as adjoining residents would not wish to see these placed in proximity to existing dwellings.

Mr. Mears asked Mrs. Emlet to confirm, when she went door to door to obtain signatures, what information she presented to local residents. Mrs. Emlet confirmed that she explained to residents that she was concerned by the 45 homes proposed on this site and had asked residents whether they would be happy with the proposal. Mrs. Emlet explained that she had spoken to at least one resident that did not wish to object. Ms. Stevenson asked Mrs. Emlet if she could clarify the nature of the previous application on this site from 10 years ago that was referred to and Mrs. Emlet stated that this was for a shopping center and that the previous application was denied.

Mr. Mears noted that, based upon the speakers so far, there appears to be differences of opinion in relation to whether the tree buffer was being retained in its entirety and whether the development proposals were similar in nature to the adjoining Providence development. Mr. Jeff Clark, explained that the narrowest part of the buffer is 15' and this is not for the full length of the north boundary.

The Commission found that Mr. Tom Maly spoke in opposition to the application; that he is an Oceanview Councilman and a 16-year resident of the area; that the open spaces in the area and woodlands have been gradually replaced by over eleven residential communities; along with individual residential homes and small businesses that all use Muddy Neck Rd. as their primary means of access; that the same is true of Parker House Rd.; that congestion has caused problems with safety, including access by emergency services and that two solar-powered warning signs were installed in 2019; that overhead street lighting is being installed; that the area has seen a dramatic increase in traffic and that this is continuing to grow; that adding 45 residences with approximately 70 vehicles will not help this situation and will lead to increased pressure on emergency evacuation routes when they next come to be tested in an emergency; that the Delaware State Police (Troop 4) is some distance away and additional crews are required locally to cater to

the increase in emergency calls; that the proposal are for growth but not smart growth; that a copy of the comments made was submitted for the record;

The Commission found that Ms. Judith Bray spoke in opposition to the application; that Ms. Bray stated she owns part of the existing ditch and that she experiences flooding from the Providence community; that she has called SCD multiple times for the ditch to be cleared out; that she has been informed that there is little point clearing out the ditch until other drainage matters are addressed in this location along Muddy Neck Rd; that she is concerned that the proposed hardscape is going to exacerbate the existing flooding problems; that Mr. Wheatley stated that he encouraged Ms. Bray to speak to her State Representative as the existing problem is a problem that spans multiple agencies. Chairman Wheatley asked Mr. Clark to speak to the drainage of the site; that Mr. Clark stated that drainage is heavily regulated by the State/Conservation District and that the developer will not be permitted to make an existing hydrological problem worse than it currently is.

The Commission found that Ms. Cindy Santiago spoke in opposition to the applications; that Ms. Santiago lives in Southampton which is located to the south-east of the site; that she has concerns with potentially irreversible damage to the ecosystem in the area; that wildlife does not have to be rare or endangered to be vital to our existence; that AR-1 plays a key role in planning communities; that AR-1 land is needed to provide habitats for wildlife; manage ecosystems and to reduce light pollution; that this site is home to fox, deer, wild turkeys and also the legally protected American Bald Eagle, which has been seen going in and out of the property routinely; that there has been a gradual erosion of open spaces; that this is changing the look and feel of rural communities into noisy and urban communities; that urbanization comes with new challenges to deal with in the future; that ecosystems are important to rural areas.

The Commission found that Mr. Dale Weese, president of the Shady Dell Park Residents Association, spoke in opposition to the applications; that Mr. Reese stated that Shady Dell Park is a private community that is responsible for its own roads and their upkeep; that the community is opposed to any pedestrian or vehicle connection to its community; that additional vehicle trips would add to wear and tear to Shady Dell Park's roads, which would create a financial burden on the residents in that development; that the residents of Shady Dell Park therefore request that the applications be denied; that the proposed change of zone and Conditional use would result in overdevelopment of the site, and that the proposals would result in 3 times the number of people currently potentially permitted to live on an AR-1 parcel; that the zoning change is not in the best interests of adjoining residents.

The Commission found that Mr. Nicholas Skokowski spoke in opposition to the application, that he has concerns with flooding from the site; that the properties along the north side of Dogwood Drive have a ditch running behind those properties; that he can attest to foxes and deer having habitats on the site; that Shady Dell Park has covenants relating to open space and trees; that there is very little green space shown on the proposed site plan for residents to congregate; that he has concerns with the proximity of residents congregating and the distance from his home, which is less than 100' away; that he has concerns that the applicant is potentially trying to guilt the Commission into looking favorably on the low-income housing proposed. Chairman Wheatley pointed out that the proposal is for market-rate housing and not low-income or affordable housing.

Mr. Skokowski stated that he also has concerns with the previous lack of mowing on the property, and where residents would congregate outside the buildings. Chairman Wheatley noted that a pool was to be provided. Mr. Skokowski stated that he was concerned with the size of the pool given the potential number of residents.

The Commission found that Ms. Karen Yingling spoke in opposition to the applications, that Ms. England questioned whether tax credits had been sought for the units and whether the applicant would be doing this. Ms. England also asked the target AMI (“Average Median Income”) for the units. Chairman Wheatley outlined that it was the Applicant’s position that the accommodation was to be market-housing and would not necessarily be tied to AMI. Ms. England outlined that she has checked with Fairway/Fairdeal housing, and that she believed a 2-bed, 2,100 sf. unit was being targeted for \$1,500 per month and that a 3-bed unit was \$1,800 to \$1,900 per month.

The Commission found that Mr. Tom Salonick was present in opposition to the applications; that Mr. Salonick has concerns with the intersection of Parker House Rd and Muddy Neck Rd; that visibility is very poor – especially when turning left; that he believes that the DelDOT study does not correctly account for summer-time traffic which can be very different to winter traffic; that he thinks that the access point would greatly diminish visibility at the intersection; that 198’ is the stopping distance at 35 mph and he thinks that the proposals would create a safety hazard.

The Commission found that Mr. John Zarek was present in opposition to the applications; that he stated that he does not fully understand how the units can be claimed to be affordable if they are to be priced at the market-rate; that the rent rates quoted also seemed to be greater than those of existing rental units currently available in the Providence development; that Chairman Wheatley commented that he understood the Applicant’s position to be that the units would generally be more affordable than other housing types in the area such as a single-family homes, but that this could be an assumption on his part that would be in need of clarification; that Mr. Zarek commented that flooding is a major issue in the area and the increase in hard surface could, in his opinion, exacerbate the existing problems; that Mr. Zarek believes that the property should not be developed at all.

Chairman Wheatley asked the Mr. Hutt and Mr. Harris to speak to their earlier comments as to how the proposed housing would be classified as being “affordable”. Mr. Hutt outlined that, in his presentation, he addressed a definition within the Comprehensive Plan as to the different forms that affordable housing can take, and that although this is not a form of housing that it is to be controlled through the County’s affordable housing program, that it still constitutes an affordable form of housing; that the earlier comment regarding tax credits is relevant, but that this development would not be eligible for such credits; that the size of the scheme at 45 units, does not have the necessary scale to justify an application under the County’s program, which has a significant reporting and management requirement which typically lends itself to larger developments. That Mr. Harris confirmed that the scale of the scheme is not enough to warrant applying under the County’s affordable housing program and that schemes need to be over 150 units to warrant such an application.

The Commission found that Mr. Ed Brosstek was present in opposition to the application; that he was a professional Soil Conservationist for 45 years prior to his retirement; that he has reviewed

many plans for pervious pavement; that such pavements typically require well-drained soils; that the soil under the application site does not drain well and has a high water table; that this will reduce the effectiveness of the drainage, especially when heavy rainstorms saturate the ground; that there is also a risk with porous pavement that heavy trucks such as garbage trucks would eventually seal off the pores over time, reducing effectiveness; that such a system requires regular cleaning.

The Commission found that Mr. Ron Schaum was present in opposition to the applications; that he takes issue with the claim that Tidewater Utilities can cope with the additional units; that he has experienced problems with water pressure; that he can attest to the drainage problems experienced in the locality; that he thinks that the infrastructure problems should be resolved first, before new development/dwellings are added and density increased.

The Commission found that Mr. Donald Swartz was present in opposition to the applications, that he lives in Shady Dell Park; that there is a produce-sale use opposite, and that he has concerns that there may be a future housing development on that parcel in future. Ms. Cornwell confirmed that there were no applications currently filed for that parcel.

The Commission found that Ms. Theresa Merritt was present in opposition to the applications; that she submitted a bespoke letter of opposition and did not sign the form-letter; that she has concerns with impacts on schools and traffic.

The Commission found that Ms. Judith Crist was present in opposition to the application; that she has concerns that service employees are typically seasonal renters and that the applicant has indicated that this is a group of potential occupiers being targeted; that she also believes that the developers should be required to contribute to road improvements in the vicinity.

The Commission found that Mr. Frank Ziemra was present in opposition to the application; that he has concerns with the location of the proposed ingress/egress and that he thinks that aligning the access with the boulevard opposite will result in increased vehicle conflict in a location with poor visibility; that he believes that a Traffic Impact Study should have been undertaken.

The Commission found that Mr. Thomas Douglas was present in opposition to the application; that he had signed form letter but that he ensured that he understood the proposals before signing; that he has owned and rented apartments in the past; that during his time in property management that he never allowed a 6-month lease; that he always had a 1-year lease with anyone occupying for less than this period forfeiting their last month's rent and security deposit; that Mr. Douglas also has concerns with the potential number of occupiers and the potential for car ownership to be very high; that there is not sufficient parking for large numbers of visitors; that he has concerns for the potential for pedestrian/vehicle conflict and the potential for increased injuries and fatalities.

The Commission found that Ms. Paula Kasteran was present in opposition to the applications; that Ms. Castrin has experience in analyzing statistical data from the National Crime Information Center; that she has concerns with the potential for crime; that it should be taken as fact that there is less crime per capita associated with single-family dwellings when compared with multi-family

dwellings; that she does not wish to lose security or quality of life; that she appreciates the existing wildlife in the area and does not wish to lose existing habitats.

Ms. Stevenson asked Ms. Cornwell if she could speak to earlier comment made about water potentially being piped from the adjoining properties onto the application site. Ms. Cornwell stated that she was not aware of an outfall on the property but staff could, if necessary, obtain this information.

Upon there being no further questions from the Commission, Chairman Wheatley closed the public hearing for the applications.

At the conclusion of the public hearings the Commission discussed the applications.

Mr. Mears discussed items relating to stormwater management and the proposed pervious surfacing. Mr. Mears also outlined his own experience of extreme weather and the impacts on surface water management. Mr. Wheatley noted that modern stormwater management regulations are now stricter than they were in the past. Ms. Cornwell confirmed that the stormwater management design must be reviewed and approved by the Sussex Conservation District.

Mr. Mears commented that an approval in this location could be setting a precedent for future developments in the future on nearby parcels. Chairman Wheatley outlined that the Commission does have ability to impose conditions on the Conditional Use application. Chairman Wheatley also asked how a denial of the change of zone would affect the application. Ms. Cornwell noted that, if the GR zoning were denied, that the permitted density would likely be reduced to the underlying AR-1 zoning.

Ms. Wingate commented that market-rate housing was not as affordable as she would like in this location. Chairman Wheatley noted that, looking at the nearby parcels, that very few were undeveloped, and it was unlikely that many other residential developments would be seen in future in this area. Mr. Mears noted that many of the nearby parcels were in the jurisdiction of the town of Ocean View.

Mr. Wheatley commented in relation to the drainage for the development, and the comments made about the high-water table and the potential for this to reduce the effectiveness of any permeable-type drainage system to be used on the site. Ms. Cornwell outlined that any stormwater management design, must be approved by Sussex Conservation District.

In relation to application CU 2195, Mr. Mears moved that the Commission defer consideration of the application to a future meeting date, seconded by Mr. Hopkins and carried unanimously. Motion carried (5-0).

In relation to application CZ 1895, Mr. Mears moved that the Commission defer consideration of the application to a future meeting date, seconded by Ms. Wingate and carried unanimously. Motion carried (5-0).

#### OTHER BUSINESS

**2005-52 & 2008-25 Marsh Island Subdivision**

Revised Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Revised Subdivision Plan for a cluster subdivision to consist of 152 lots. The revisions are for proposed changes to the lot and street layout, the addition of street names, changes in sidewalk layout, the removal of bioswales and the provision of revised stormwater management facilities. The Revised Preliminary Subdivision Plan noting these changes was approved by the Planning and Zoning Commission at their meeting of August 23, 2018. The Final Subdivision Plan (2008-25) to increase the plan from a total of 139 lots to 152 lots (for an increase of 13 lots) was approved by the Planning and Zoning Commission at their meeting of December 13, 2012. The Revised Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 234-7.00-132.00, 132.05, 132.06, 132.07, & 351.00. Zoning: (AR-1) Agricultural Residential. Staff are in receipt of all updated agency approvals for the revisions and therefore the revised plan is eligible for consideration as a Final Subdivision Plan.

Motion by Mr. Mears and seconded by Ms. Stevenson to approve the Final Subdivision Plan. Motion carried unanimously (5-0).

**Massey's Landing Manufactured Home Park**

Revised Site Plan

Mrs. Norwood advised the Commission that this is a Revised Site Plan for a non-conforming manufactured home community and a separate marina. This plan seeks to document and record the number and location of manufactured homes and marina slips within the park. The alteration, extension or replacement of any non-conforming manufactured home or accessory structure will be expected to comply with the required setbacks, separation, height, and maximum allowable lot coverage. The plan identifies the number and approximate location of structures on each manufactured home site to provide the community and the Staff to better manage this Manufactured Home Park in the future. Tax Parcel: 234-25.00-31.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Mr. Mears and seconded by Ms. Wingate to approved the revised Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried unanimously (5-0).

Meeting adjourned at 9:18 p.m.