

THE MINUTES OF THE REGULAR MEETING OF DECEMBER 12, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 12, 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. Lauren DeVore – Planner III.

Ms. Cornwell noted that the order of items on the agenda was changed so that **C/U 2199 OA – Rehoboth, LLC could be heard first.**

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

OLD BUSINESS

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

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

Ms. Cornwell advised the Commission that the results of the Traffic Impact Study (“TIS”) have been received and the record is now open for 15 days for written comments regarding the TIS.

2019-8 Azalea Woods – Shingle Point Properties, LLC and Natelli Communities

A cluster subdivision to divide 316.02 acres +/- into 610 single-family lots to be located on a certain parcel of land lying and being in Georgetown Hundred and Broadkill Hundred, Sussex County. The property is located on between Shingle Point Rd. and Gravel Hill Rd., north of Lewes-Georgetown Hwy. (Rt. 9). Tax Parcels: 135-11.00-32.04, 49.00, 56.00 and a portion of 135-11.00-48.00. Zoning Districts. AR-1 (Agricultural Residential District) and C-1 (General Commercial District).

The Planning and Zoning Commission discussed the application which has been deferred since November 14, 2019. Ms. Stevenson stated that she had some concerns regarding the property boundaries and whether fencing or property line markers should be required as part of the Subdivision Plan if it were to be approved. Ms. Stevenson also stated that she wished to further consider the timeframe in which the subdivision would take to be implemented if it were approved.

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

2019-16 Estates at Milton Crossing – William T. Sammons, Sr., Mary Jane Sammons, William T. Sammons, Jr., and Bonnie Voshell (formerly Sammons)

A cluster subdivision to divide 102 acres +/- into 87 single-family lots to be located on a certain parcel of land lying and being in BroadKill Hundred, Sussex County. The property is located on the northeast side of Reynolds Rd., approximately 920 ft. southeast of Draper Rd. Tax Parcels: 235-8.00-31.00, 26.00, and 26.03. Zoning District. AR-1 (Agricultural Residential District).

The Planning and Zoning Commission discussed the application which has been deferred since November 14, 2019.

Ms. Stevenson moved that the Commission grant Preliminary Approval of Subdivision 2019-16 for the Estates at Milton Crossing, based upon the record and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District.
2. The proposed subdivision will have no more than 87 lots on 102 acres. This density is well below the maximum density that is permitted in the AR-1 zone.
3. All lots will be at least ½ acre in size.
4. Based upon the record and with the conditions of approval, this subdivision will not have an adverse impact on the neighboring properties or area roadways.
5. 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.
6. Approximately 47% of the site will remain as open space. Of that approximately 32 acres of the open space is adjacent to wetlands and adjacent areas that are in Agricultural Preservation. This area also includes extensive tree preservation. These design features result in a superior design of this clustered subdivision as compared to a standard subdivision.
7. The project will be served by individual wells and septic systems.
8. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
9. Although the site has frontage along Route 1, there will not be any vehicle access to Route One. Instead, the entrance to this development will be from Reynolds Road.
10. This preliminary approval is subject to the following:
 - a. There shall be no more than 87 lots within the subdivision.
 - b. The developer shall establish a Homeowners 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. There shall be a 40-foot buffer installed along Route 1, a 30-ft buffer along area lands in agricultural use, and a 20-ft buffer around the remainder of the perimeter.

In each case, at least 20 feet of the buffer area shall be landscaped or forested, including the use of existing forest. The Final Site Plan shall contain a landscape plan for all these areas.

- e. The development shall comply with all DelDOT entrance and roadway improvement requirements. There shall not be any entrance onto Route 1.
- f. Street design shall meet or exceed Sussex County standards. There shall be sidewalks on at least one side of all streets in the development.
- g. Road naming and addressing shall be subject to the review and approval of the Sussex county Mapping and Addressing Department.
- h. Construction, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Saturday.
- i. The Applicant shall coordinate with the local school district regarding the location of a covered school bus stop with off-street parking areas for parent pick-up. The location and details of this area shall be shown on the Final Site Plan.
- j. The development shall be served by its own on-site amenities including a pool and pool house.
- k. All amenities shall be completed and open for use prior to the issuance of the 40th residential building permit.
- l. The Final Site Plan shall depict all forested areas that will be preserved.
- m. The Final Site Plan and the recorded Restrictive Covenants for this development shall include the Agricultural Use Protection Notice.
- 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.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval for the reasons and the conditions stated in the motion. Motion carried 5-0.

C/Z 1897 Preston Dyer

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.97 acres, more or less. The property is lying on the north side of Lewes-Georgetown Hwy. (Rt. 9), approximately 428 ft. east of Josephs Rd. 911 Address: 28855 Lewes-Georgetown Hwy. (Rt. 9), Lewes. Tax Parcel: 334-4.00-37.01.

The Planning and Zoning Commission discussed the application which has been deferred since November 14, 2019.

Mr. Mears moved that the Commission recommend approval of Change in Zone # 1897 for **Preston Dyer** for a change in zone from AR-1 to C-2 (Medium Commercial Zoning District) based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant's property is currently zoned AR-1, but it is in an area along Route 9 where other commercial zonings and commercial uses exist. This is an appropriate location for C-2 zoning.
3. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
4. The site is in a "Commercial Area" according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
6. No parties appeared in opposition to the rezoning application.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, 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 stated in the motion. Motion carried 5-0.

C/Z 1896 Fenwick Commons, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 13.33 acres, more or less. The property is lying at the southwest corner of Lighthouse Rd. (Rt. 54), and Sand Cove Rd, and the east side of Sand Cove Rd., approximately 211 ft. south of Lighthouse Rd. (Rt. 54). 911 Address: N/A. Tax Parcel: 533-19.00-52.00.

The Planning and Zoning Commission discussed the application which has been deferred since November 14, 2019.

Ms. Wingate moved that the Commission recommend approval of Change in Zone # 1896 for **Fenwick Commons, LLC** for a change in zone from AR-1 to MR (Medium Residential Zoning District) based upon the record made during the public hearing and for the following reasons:

1. The Planning and Zoning Commission previously recommended approval of this rezoning on November 16, 2017.
2. The project is located in the Coastal Area according to the County Comprehensive Land Use Plan. MR Zoning is appropriate in this Area according to the Plan.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The property is surrounded by land that is currently zoned MR-1. In addition, there are other properties in the area that are zoned MR-1, along with C-1 and B-1 as well as the

Bayside project. This rezoning is an infill of MR zoning, and it also consistent with other zoning and land uses in the area.

5. The rezoning to MR-1 will not have an adverse impact on neighboring properties or the community.
6. No parties appeared in opposition to this application.
7. MR zoning is appropriate for this site because medium density development is appropriate in areas where central water and sewer are available. In this case, sewer service will be provided by Sussex County and adequate wastewater capacity is available. Water service will be provided by a publicly regulated water company.

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

C/U 2197 Fenwick Commons, LLC

An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family (62 duplex units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 13.33 acres, more or less. The property is lying at the southwest corner of Lighthouse Rd. (Rt. 54), and Sand Cove Rd., and the east side of Sand Cove Rd., approximately 211 ft. south of Lighthouse Rd. (Rt. 54). 911 Address: N/A. Tax Parcel: 533-19.00-52.00.

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

Ms. Wingate moved that the Commission recommend approval of **C/U #2197 for Fenwick Commons, LLC**, for multi-family dwellings in an MR - Medium Residential Zoning District, based upon the record made during the public hearing and for the following reasons:

1. This Application is very similar to Conditional Use #2098 that received a recommendation of approval from this Commission for 52 units on November 16, 2017.
2. This Application seeks the approval of 52 single family duplex-type structures on 13.3 acres. This results in a density of approximately 4 units per acre.
3. The property is in an area where other residential development has occurred, including the large mixed-use Bayside Development and other single family and multi-family developments. Bayside Phase 7 has also recently received approval for 48 multi-family units across Route 54 from this site. This project is consistent with these nearby uses.
4. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “*a range of housing types*” are acceptable here, including medium and high densities when a site is near commercial uses, is served by central water and sewer, and where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
5. The proposed development will not have an adverse impact on the neighboring properties or roadways.

6. The proposed density is within the allowable density in the MR District, and it is consistent with the densities of the nearby multifamily developments.
7. The project will have 48% open space, including preservation of 68% of the existing forest. The design also provides protection to the Hudson Family Cemetery on the site.
8. Although this is a Conditional Use, the items set forth in Section 99-9C of the Subdivision Code have also been favorably addressed by the Applicant.
9. The development will be served by central sewer provided by Sussex County.
10. This recommendation is subject to the following conditions:
 - A. The maximum number of residential units shall be 52.
 - B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.
 - C. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
 - D. The project shall be served by central water to provide drinking water and fire protection.
 - E. Interior Street design shall meet or exceed the Sussex County street design requirements.
 - F. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.
 - G. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (68% of the existing forested area, according to the Applicant). The landscape plan shall also include landscaping along the property's entire Route 54 frontage.
 - H. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7 am and 6 pm Monday through Saturday.
 - I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
 - J. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.
 - K. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using best management practices.
 - L. The Final Site Plan shall contain the approval of the Sussex County Conversation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - M. The developer, and then the HOA or Condo Association shall protect and preserve the Hudson Family Cemetery on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided in common with the amenity area parking lot for the Hudson family

members wishing to visit the cemetery. Access to the cemetery shall be shown on the Final Site Plan.

- N. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and with the stipulations stated in the motion. Motion carried 4-1 with Ms. Stevenson dissenting.

PUBLIC HEARINGS

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

C/U 2199 OA – Rehoboth, LLC

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

Mr. Robertson recused himself for this application, and Mr. Jamie Sharp conducted the hearing.

Ms. Cornwell advised the Commission that submitted into the record were an Exhibit Booklet, Site Plan, comments from DelDOT regarding the Service Level Evaluation, comments from the Sussex Conservation District, and comments and responses back to the PLUS letter. There was one letter in opposition to this Application.

That the Commission found that Mr. James Fuqua, Esquire, was present on behalf of the application and was representing the Applicant OA – Rehoboth, LLC., that present are Preston Schell, member of OA – Rehoboth, LLC, and Zach Crouch of Davis, Bowen and Friedel; that an Exhibit Book was submitted into the record; that this is an application for a Conditional Use for 224-unit apartment development, comprised of seven buildings containing 32 residential units each; that the development would be located on part of an 18.793 parcel; that the land is located behind the Rehoboth Mall on the west side of Route 1; that the parcel would be an infill parcel surrounded by existing development; that there are two partially-developed roads in this area; one is a private access road and the other is a connector road to the Beebe Medical facility which will become a public road maintained by DelDOT and will connect Route 24 to Old Landing Road; that the land is zoned CR-1 (Commercial Residential Zoning District); that the land can be developed for any use in the CR-1 Zoning District; that the Applicant plans to develop an apartment development on the eastern portion of the site and retain approximately 4.7 acres for future non-residential development; that the proposed 224 residential units will use all the

maximum allowable residential density there will be no residential development on the 4.7 acre portion of the site; that the apartment development will allow for an appropriate transition from the residential uses to the south and the commercial and medical uses to the north and west; that the residential development will result in less traffic than a commercial development; that under the strategies for State policies in spending, the property is designated as being in Investment Level II and is an area where growth is anticipated; that the office of State Planning has no objection to the proposed development; that under the Sussex County Zoning Ordinance the land is zoned Commercial Residential which permits a variety of commercial uses in addition to residential use; that multi-family units are a permissible use if a Conditional Use is obtained; that the Sussex County Comprehensive Plan states that this area is designated as the Coastal Area and is surrounded by other Coastal Area lands and other Commercially zoned lands; that the Comprehensive Plan states that there should be a range of housing types in the Coastal Area; that the Comprehensive Plan states that the higher density of 4 – 12 units per acre can be appropriate in certain locations; that the Comprehensive Plan states that the higher density is appropriate in areas that are served by central water and sewer, areas close to commercial uses and employment centers, sites that would be consistent with the character of the area, sites along main roads or near major intersections, and sites with adequate DelDOT service; that the Applicant's request for a Conditional Use meets the standards put forth in the Comprehensive Plan; that the site is currently cleared; that there are no wetlands on the property; that the site is not in the 100-year flood plain; that it is located in flood zone X; that there are not archaeological sites or historical registered buildings associated with the property; that stormwater management will be designed to DNREC's specifications; that the site is in the Cape Henlopen School District and the Rehoboth Beach volunteer fire company; that 403 parking spaces are being provided; that street lighting will be non-intrusive; that sidewalks will be located next to the buildings and will extend out to the access road; that there will be a community building, a deck, a swimming pool, a playground and an enclosed dog park; that there will be a central mailbox; that there will be a school bus stop, the location would be coordinated with the School District; that there are three DART bus stops in close proximity; that there will be a landscape plan for the property and will be submitted as part of the site plan process; and that this proposal at this location is in accordance with the provisions of the State Strategies Plan; the Sussex County Zoning Ordinance, the 2019 Comprehensive Plan and is located in an area defined by the Delaware State Housing Authority as an area of opportunity and strongly supports.

Ms. Stevenson asked for clarification about the uses allowed on the 4.7 acres of the property which will not be developed at this time. Mr. Fuqua responded that the 4.7-acre parcel will not be for residential use as the apartment units will take all the residential density allowed for the property; that at some time in the future the 4.7 acres could be developed for any permitted use in the CR-1 Zoning District. Mr. Schell gave some examples of mixed-use development in the area and stated that this is a smart use of this type of land. Ms. Stevenson asked when the access road would be developed. Mr. Fuqua stated that the onus to complete the access road will be on whichever development moves forward first, that it could be the Applicant, Artisan's Bank or a combination of both. Mr. Schell stated that before the first building is completed that the road must be completed to make the connection. Ms. Stevenson asked which direction water would run on the property as it is at a higher elevation than the adjacent property. Mr. Crouch responded that there will be catch basins on the access road which connect to the DelDOT system.

Ms. Wingate asked for clarification regarding the number of parking spaces. Mr. Fuqua stated that there will be 403 parking spaces.

Marc Cote, Assistant Director of Planning for Delaware Department of Transportation stated that he is available to answer any questions from the Commission; that Mr. Cote confirmed that Mr. Fuqua has correctly outlined the level of coordination between the Applicant and DelDOT; that the Route 24 project will begin in the spring (2020); that DelDOT is working with the Applicant on the alignment of the connector road from Old Landing up to Route 24 which is part of DelDOT's six-year Capital Transportation Program (CTP).

The Commission found that one person spoke in favor to and none in opposition to the Application.

Ms. Kathleen Baker stated that she is representing the Sterling Crossing Community; that the Community endorses this Application and they appreciate the new connector road.

Upon there being no one else wishing to speak, Chairman Wheatley closed the public hearing for this Application.

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.

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

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

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan and Agency comments.

The Commission found that Mr. Bob Rosenberger, Project Manager at Karins and Associates was present on behalf of the Application; that the Applicant has been working with DelDOT and are awaiting final approval; that the design meets DelDOT's standards and adequate sight distance is provided; that there are no wetlands on the site; and that there will be no impact on the school system.

Mr. Robertson stated that septic feasibility study will be required before any decision can be made.

The Commission found that no one spoke in favor to and one person in opposition to the application.

Ms. Kristen Throm had questions regarding the type of home to be built; is there a minimum square

footage for the dwellings; and that she has concerns about drainage.

Ms. Cornwell stated that both manufactured homes and stick built homes would be permitted uses in this zoning district and that there is no minimum square footage for a stick-built home and 450 square feet for a manufactured home.

At the conclusion of the public hearings, the Commission discussed this Application. Mr. Robertson noted that the Commission would need to wait for further submissions before it could act on this Application.

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

C/Z 1900 Michael P. Justice, Trustee

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

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, an exhibit booklet, comments from DelDOT, comments from Sussex Conservation District and one letter in opposition to the Application.

That the Commission found that Mr. John Sergovic, Esquire, was present on behalf of the Application and was representing the Applicant Michael P. Justice, Trustee, that present are Michael Justice and Ken Christenbury, P. E. with Axiom Engineering

Mr. Sergovic stated that although this is a Change of Zone application, it really is a design application because it is zoned GR. That one of the means to achieve enhanced design is to go with a Residential Planned Community (RPC) because there isn't a cluster option in GR as there is with AR-1. This Application is of the cluster subdivision and overlay with the RPC.

A Booklet was distributed along with a lot of written material. Tab 4 of the Booklet outlines Chapter 4 of Coastal Areas. Mr. Sergovic stated that permitted uses must address special development concerns including single family townhouses, multi-family units. The criteria are central water and central sewer. The Comprehensive Plan specifically addresses a mixture of housing types, enhancing preservation open spaces, natural area resources and infrastructure; that there are to be some restricted covenants to which Mr. Justice is committed such as having no manufactured homes in the development. Per the restrictions, only stick-built or modular homes will be permitted. There are some areas of the site that may be reduced a little as the design process continues. Currently, the Applicant is in negotiations with a builder about the 1,800 sq. ft. minimum size for a single-family dwelling. Potentially, they could drop that down to 1,600 sq. ft. because of the nature of the housing market which is mostly a retirement age area.

Mr. Christenbury, of Axiom Engineering, explained that Evergreen RPC is a single-family, 45-unit development. In Tab 1 of the Exhibit Booklet, the summary includes a context of the project. Mr. Christenbury cited other developments in the surrounding area such as the expansion of Silver Wood Phase I with 2.264 units per acre, Ocean Air is 2.74, Plantation 2.97 and Kensington 3.0. Across the street there is state land that is being preserved. He believes that Evergreen is in character with what is currently in the surrounding area. He referred to the Zoning Map, noting that before the nearby sites were annexed into the city, the land was zoned GR. In fact, there was a plan for a trailer park that was never constructed. There is a commercial property on the corner that is also owned by Mr. Justice, but most of the area is GR except for the land being preserved by the State of Delaware.

Tab 3 shows the Actual Site Plan. The project has a single access from Parker House Rd. and tees off into two roads with turnarounds. There are walking trails around the open spaces and a sidewalk on one side. The stormwater waste management area buffer in several areas has been increased 20'; that there would be a strip woods that is 40-50' wide instead of 20'; that there were 2 letters in the file from neighbors that were concerned about drainage. He pointed to an existing ditch that doesn't seem to be maintained. The plans that were brought to the Corps of Engineers for now include the ditch on the Applicant's property to the extent that it can be; that the Applicant would prefer that the neighbors would be open to granting an easement to improve the existing ditch and allow temporary access which could possibly enhance the drainage; that the Applicant can't assume that they would want that to happen on their land: that the Applicant is going to do the best he can.

Mr. Christenbury outlined that the development will have a gazebo, some park benches, and some modest passive type of amenities because it is not a large project. It is 45 units in total. When you have a modest project, the amenities are kept in line with that. Minimal use of wetlands is limited based on what investigation in the area and in and around the ditch on the southern end of the property. 1.45 acres of forest will be preserved along with .62 acres for buffers. 39% site will be owned by the HOA as open space at the end of this project. The actual breakout is listed in Tab 3. Tidewater Utilities will be located, at the developer's expense, a quarter mile north of the property. County already has a sewer manhole at the front of the property. Mr. Christenbury thinks that the modular or stick built houses would pull up the property values.

Regarding the preservation of farmland, he asked that they look back at the photo in Tab 1 of the Exhibit Booklet. There is no farmland left in this area. It has slowly become residential since the 1970's when the map was drawn up. Impact on schools is expected to be positive because the market for this area is for retirees and the number of students living in these 45 homes is expected to be minimal. At the property line there is an existing ditch which is well defined and could use some maintenance. The Applicant will go as far down stream as is as allowed to the outfall for the property. Mr. Christenbury pointed to where the outfall has been historically. Any improvements will be submitted to Army Corps of Engineers as required. The Applicant should have a more detailed report by the time they go to County Council next month. The intent is to clean out this ditch parallel to the Applicant's property with an expansion of the ditch. Mr. Christenbury thinks from an engineering standpoint that the drainage improvements would be significant if there were an interest by other property owners to cooperate by granting an easement

of some kind. The Applicant understands that you can't compel anyone to participate in those kinds of improvements. This plan has been submitted to the Army Corps of Engineers. There were a lot of questions about the wetlands in the PLUS comments. The State maps show about 80% of the property as wetlands. State maps are notoriously inaccurate. They are based on a State-wide flyover, satellite imagery and things of that nature. No one from the State has set foot on this property to determine if there are wetlands there. PLUS comments are non-site-specific, and based on State-wide data. Tab 13 shows actual information about investigating the soils of vegetation and hydrology on the property with what criteria were met.

The State spending strategies put this site in Level 3 (yellow on the map). The reviewer at the State planning office noted that is surrounded by Level 2 but that it is Level 3 most likely because of the wetlands on the site that were derived from a state-wide satellite image that wasn't verified. So, when the ground indicated that the wetlands were limited to less than an acre the reality is probably, in Mr. Christenbury's view, should have been mapped as Level 2 (orange on the map).

The Future Land Use Map references that the site is near major sources of commercial development and major intersections and the town center adjoining the site.

Referring to the Town of Ocean View the nearby lands that front onto Beaver Dam Rd. do include commercial zoning and multifamily zoning; the area closer to the application site is the single-family area of the mixed-use planned community. When Mr. Christenbury pulled the record plan, commercial and multifamily were not planned yet. They were blocked out in acreage and the land use defined; that this is all that has been recorded to date and there is a developer currently selling single-family homes, or at least working on the infrastructure for this for quite a while; that there is a mix of commercial uses in the area but predominantly medium density residential. Due to the County's Zoning, the entire area was zoned GR when the zoned maps were first published in the 1970s. Water, sewer, utilities are laid out in Tab 8 and include a soil map. The public map that shows the wetlands was mapped by the State. A study letter from the wetland's scientist, along with covenants and proposed restrictions are published in the back of the Exhibit Book in Tab 15.

Mr. Sergovic commented that the Commission might wish to explore a minimum housing size of 1,600 sq. ft. which would be compatible with the market anticipated by the Applicant. Mr. Robertson commented that the Commission does not typically impose those types of conditions. This is because it is difficult for the County to police. Mr. Sergovic noted that other suggested conditions include proposed sidewalks on one side of the street and overhead street lighting. The Applicant has a list of suggested conditions of approval and suggested that the Commission can look over to see if they would wish to add anything.

Mr. Christenbury noted that, in a GR-RPC you can reduce setbacks and minimum lot areas, so we are essentially mimicking what the AR-1 cluster tends to look like. We can't do that as a cluster subdivision because property is not zoned AR-1. It does have a density similar to GR zoning for property of this size.

Michael Justice, Applicant, was asked if he concurred with the statements made by Mr. Sergovic and Mr. Christenbury. He replied in the affirmative.

The Commission found that no one spoke in favor to and three parties spoke in opposition to the Application.

Norman Welsch stated that he is not completely opposed to the Application but has concerns about stormwater management, the elevation of the subject property, and clearing the trees.

Steve Maternick stated that he is not opposed to the development of the subject property but has concerns about drainage, flooding potential and the lack of a buffer on the property line. He has photographs of the flooding issues. He was advised that he could submit them for the record.

Mr. Christenbury responded that there is approximately 20 ft. buffer area that includes a drainage ditch, that improving the draining ditch would be a benefit to the residents in Silver Woods and the new development.

Eric Forell stated that there is a flooding issue and that he has concerns that the development of the Applicant's property will increase flooding.

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

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

At the request of the Applicant, Chairman Wheatley announced that the Commission would hear a combined public hearing for application C/Z 1901 and application C/U 2200. Whilst the hearings would be combined, the Commission would ultimately vote on each application separately.

C/Z 1901 Mary and Victor Rico

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium-Density Residential District for a certain parcel of land lying and being in Indian River Hundred and Lewes and Rehoboth Hundred, Sussex County, containing 0.927 acres, more or less. The property is lying on east side of Sunset Ln. north side of John J. Williams Hwy. (Rt. 24), approximately 0.28 miles northeast of Camp Arrowhead Rd. 911 Address: 20797 Sunset Ln., Lewes. Tax Parcel: 234-7.00-100.00.

Mr. Whitehouse advised the Commission that submitted into the record were a Site Plan, an Exhibit Booklet, comments from DelDOT, comments from Sussex Conservation District and one letter in opposition to the Application. Two letters in opposition were received.

C/U 2200 Mary and Victor Rico

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

Mr. Whitehouse advised the Commission that submitted into the record were a Site Plan, an Exhibit Booklet, comments from DelDOT indicating that a TIS is not required, comments from Sussex Conservation District and one letter in opposition to the Application. Mr. Whitehouse noted that an additional letter had been received in opposition, containing signatures from 6 property owners.

Chairman Wheatley asked about whether the development is already in situ. Ms. Cornwell confirmed that the four existing buildings that are on the property have been there a long time and are considered to be non-conforming. At one point two of the buildings were purchased and converted into multiple dwelling units within those buildings. There are no permits for that conversion. Ms. Cornwell noted that these applications flow from a violation on the property and that the Application seeks to address this. Ms. Cornwell noted that the age of the existing buildings is what makes them non-conforming. There are four buildings and two of them have been converted into additional units so now we have several units instead of the original four units.

Chairman Wheatley questioned when they were converted, and whether they had building permits. Ms. Cornwell stated there were no permits for the creation of new units and nor were they reviewed by Building Code for that.

Chairman Wheatley asked whether, if this does receive approval, will the units built then have to be permitted and inspected. Ms. Cornwell replied they will have to go through Building Code review to make sure they are meeting the necessary requirements.

Mr. Willard spoke as representative for Victor and Mary Rico. They did receive a violation letter stating they could not have these units there and need to apply for a Conditional Use if they wish to retain them; that Mr. Willard has reviewed the file to see if there was any opposition or input and there wasn't any as of yesterday; that there are people that have been identified from Sunset Lane; that the Applicant is not asking for anything other than the status quo; that it might not be legal, and he is not sure of the full history of the property; that the lot with four houses pre-existed and they all on one lot; that they are considered to be, "*legally non-conforming*".

Mr. Willard outlined that the four houses are known as Unit 1, 2, 3 and 4, and they are an evolution of the lot as they were cut up by the owner of that property who maintained the road and that all the people on Sunset Road have the right to use that road; that in 2001 the property owners of Parcel 100 "*condominiumized*" the property. They declared it was a condominium and filed/recorded documents in 2001 identifying this together with their bylaws and how they operate; that they each had their own parking area but with not much common area.

Mr. Willard outlined that Unit 2 first went up for auction in 2016 and Mr. Rico purchased it. Apparently, it was an auction and Emmert Auction indicated that the police were involved and the property was not in great condition. Mr. Rico went into the property and it was already divided into 3 units within the property. The first-floor property had only one entrance in the front and it was a studio apartment. In the back of the unit, there was a separate door that the previous owner added without permits. On the second floor there are two bedrooms and a stairway to get up there and a kitchen as well. The property layout is designed for three units. There are two studios on

the first floor and one on the second floor. After purchase, Mr. Rico started fixing it up; that this is a situation that is not right legally, but where the owner and his wife really didn't know better; that since that time, the Applicants have rented it and had tenants including single people living in both first-floor units and a couple who lives upstairs; that the Applicant's got to know the gentlemen next door who lives in a single-family home; that he fixed that up and rented it. The only reason they are asking for the Change in Zone is to get the Conditional Use to bless the use. That the Applicant is not trying to change anything or do more than what is already there. That these two applications are not inconsistent with the zoning or Comprehensive Plan. This area is a designated growth area. The growth area is designated for higher residency development. The subcategory of the area is a commercial area. Clearly the future Comprehensive Plan calls for more density and that is why the Applicant thinks the use and proposed zoning are appropriate.

Mr. Willard outlined that the property is surrounded by Coastal Areas on the Future Land Use Map and that this area is designated commercial; that there is a Royal Farms, a liquor store, a restaurant, Love Creek and the marina and other commercial businesses in the area; that, as per the memo provided by the Director, there is mixed-use there and that is consistent with the change in zoning the Applicant is asking for. In relation to the Conditional Use, the best quality site plan available is the one that was recorded in as part of the Condominium, that the Applicant's do not want to change the footprint of what is already there. The Rico's have 20% and 35% of the whole condo development and have majority control. Mr. Willard explained that he has spoken to Ms. Murphy who has Unit 3 and Mr. Buckley who has Unit 4; that when the Applicant's first bought the house, Unit 1 had two meters for electric, Unit 2 only had 1 meter for electric; that they put in split systems for their tenants; that utility costs are part of the occupier's rent and they would like to continue this; that although this is not low-income or affordable housing, the type of housing proposed forms a niche in the area which in other areas they might not have; that if this type of housing is good for 900 units, then it should also be good for 3 units.

Mr. Willard asked Mr. Victor Rico if he heard his presentation tonight and if it was true and accurate. Mr. Rico replied in the affirmative and he was asked if there was anything he would like to add. Mr. Rico added that the properties were run down at the time of purchase. We wanted to make the best of this and make them rentable as these types of property are in high demand. He has fixed up a lot of houses in his career. The property was very bad inside; that the properties had already been split; that the Applicant's saw, on the bottom floor, there was a potential for studio apartments and that they could offer low-income housing in this location.

Mr. Rico was asked by Mr. Willard if any of the units on the bottom floor had kitchens. He replied that they had counters and cabinets; that they each had their own bathroom, and that there were hookups available.

Mr. Willard asked Mr. Rico to explain whether he has been paying his own sewer fees. Mr. Rico confirmed that he had and that the properties were assessed for unit 1 and 2 in terms of pumping.

Mr. Willard asked if central sewer is available. Mr. Rico replied that they certainly would want to hook up if they get permission for this. That this is how this situation came to a head. They were trying to hook up to the sewer and the County identified that they can't without the necessary approvals.

Chairman Wheatley noted that good thing with a Conditional Use application is that the decision maker can place conditions, and this certainly issue could be one.

Mr. Rico noted that he has wonderful tenants that have been there for a few years now; that they are very happy there and they don't want to move.

Ms. Stevenson asked would the change of zoning allow them to continue what they are doing?

Ms. Cornwell replied that based on the density of the housing in situ, that the Change of Zone application is needed as the density currently exceeds what is permitted.

Mr. Willard commented that the issue is that the lot is so small. A lot of the calculation is the road and they cannot do anything there.

Ms. Stevenson noted that a Change in Zoning is more permanent than a Conditional Use.

Ms. Cornwell noted that, with the current Conditional Use, the Applicant can ask for more in the future, but they are already quite close to asking for the most that would fit on this parcel. Ms. Stevenson noted that this is the kind of density that is currently desirable along Rt. 1. That this is what she grew up with, where landowners can make an apartment on the second floor so it can provide accommodation to visitors.

Mr. Willard circulated a photo of the auction picture for the first house, Unit 2; that the owner had a steel frame in there, so the property actually has good bones.

Mr. Hopkins stated that, basically, the units were all there and he fixed them up and has decent tenants; that it appears that it was discovered when he came in to talk about the sewer hook-up and he had to circle back and make things right with P&Z.

Mr. Willard confirmed that he understands that you do not want someone to get away with something and then come in and say, "Oh, I got caught". That he believes that this situation is a little different; that all the facts lead to them trying to do the right thing.

There were no more questions from Commission.

Chairman Wheatley asked if anyone was present to speak in favor or opposition to CU 2200 and CZ 1901 Mary & Victor Rico. The Commission found that there were no speakers in support to either Application, and that there were two speakers in opposition to the Applications.

Mr. Tom O'Neill, property owner at 20758 Sunset Lane spoke in opposition. These four properties Unit 1, Unit 2, 3 and 4 were all summer fishing cabins. They all had the same well and cesspool. They had a kitchen in them, bedroom and bathroom. There was no insulation and no heating system to any of the units; that in the early 90's a gentleman bought all four properties and made them into a condominium association and had access to the road; that when Mr. Moore died, all units were grandfathered in; that it is a dirt road that backs up into Sunset Lane; that Unit 2, when

bought by the Applicant, was a single-family house; that the gentlemen who lived there put on a second floor and was trying to make his home bigger and better; that he put a new kitchen up there and more rooms; that this was his thing; that the gentleman came in and made it 3 units with 3 families. Then when Unit 1 came up for sale at auction, it was a single-family home with a two-car garage; that the Applicant took this house and made it into two units; that the original two-car garage is now a unit with a bathroom, bedroom; that these are the five units he bought; that this is a single-family development and has been since the 60's. Mr. O'Neill asked the Commission if they can put themselves in the shoes of the residents; that this has been a single-family development for over 50 years; that when you come into Sunset Lane now, there is a house that sits on the corner of 24 and Unit 1. At Unit 1 now there are 2-3 cars parked there because now it is a 2-unit; that between Unit 1 and 2 there is a dumpster twice the size of the unit that has been there for 2 years now; that it sits right on Sunset Lane and then there is Unit 3 where 4 families live, and 4 cars spread across the front yard squeezed in; that in Unit 3 is Ms. J. Murphy who is part of this condo association; that she is not here tonight and is 100% against this; that there are these folks here with condo association have more voting rights than Ms. J. Murphy; that she was up against the wall; that her lawyer told her that if she voted against it didn't matter because there was a majority vote needed.

The Commission noted that a "J. Murphy" had signed the document submitted with the Application.

Mr. O'Neill stated that, when he called to complain a year ago, Ms. Kelly Passwaters was the Inspector and he talked with her on the phone and she said it was all going to be cleaned up and no tenants would be removed over the Christmas holidays but immediately after the first of the year; that he asked when the tenants will get moved out of there and if this matter would be straightened out: that he has repeatedly called P&Z and, to this day, nothing has been done down there; that it is still the same thing; that everyone who lives on Sunset Lane has had to hook up to the sewer; that it was mandated by Spring of last year that every home had to be hooked up to sewer; that is except for these 2 units that are still not hooked up.

Mr. O'Neill stated that the Applicant's went in here, did this; that single-family homes were turned into a 2-unit and a 3-unit and then got caught; that it is a residential neighborhood; that there are twelve homes in this neighborhood and that they are now looking to change four of them into medium zoning; that this is one third of the neighborhood; that all of this is being done for the benefit one individual and not the neighborhood as a whole; that there are five rental units right in the middle of the neighborhood; that not one permit was ever applied for and not one inspection was ever done.

Larry Fisher, a resident at 27085 Sunset Lane, stated that he has major concerns; that Mr. Rico admitted earlier in conversations that he also does other homes; that he is a contractor; that he never pulled [Building] Permits; that he is laughing at the system; that this situation should be treated as being criminal in nature; that he asked about whether the density calculation includes the area of the street itself; that he has no access to it. Mr. Fisher asked how much property is really involved; that Mr. Rico talked about the sewer system that he can't hook up to: that Mr. Rico didn't tell the Commission about the cesspool that has been running over and flooding neighbors' properties for about a year and half.

Chairman Wheatley commented that Mr. Rico had implied in his testimony that there was a problem, and that he appeared to be responding to that.

Mr. Fisher commented that the problem really boils down to the fact that the Applicant has five units contributing to a cesspool; that this was never the case before because it was all single family dwellings; that the gentleman saw two access points to the house assumed it was a two-family dwelling; that this Application affects not only the two units the Applicant owners has but also affects the other units also in this condominium; that there could be another potential problems down the road.

Chairman Wheatley asked Ms. Cornwell to confirm the size of the parcel, which Ms. Cornwell confirmed as being 0.927 Ac. in size. Ms. Cornwell confirmed that, under the current zoning, that one dwelling is permitted in terms of density; that there are 4 dwellings there currently; that the 4 single family units may be legally non-confirming; that the Commission does have the ability to impose conditions should the Application be recommended for approval.

The Commission asked Mr. Willard to outline the voting rights of residents within the community. As per the Condominium Association. Mr. Robertson asked Mr. Willard if he knew why the auction particulars listed the property as a single-family dwelling with none of the improvements referred to by the Applicant. Mr. Robertson asked for clarification as to what the Applicant purchased. Mr. Willard said that the Applicant purchased “what is there”, which for Unit 2 was a house that had 2 bedrooms on the first floor and two bedrooms with attempted renovated apartments on the second floor; that the Auction did not list the kitchens; that Mr. Willard had asked his client what he purchased and it included the separate kitchens.

Chairman Wheatley asked Mr. Rico as to his current profession; that Mr. Rico said that he is a handyman; that he fixed up the property; that he believes that he was permitted to re-model a house; that he lived in Unit 2 after purchasing it from auction; that he worked on it; that he then got married; that they then purchased other properties in the Seaford area; that he used sub-contractors for those works; that the properties were all ‘condominiumized’ prior to his purchase of the first house in 2016.

Chairman Wheatley asked Mr. Rico what it was that he thought he was purchasing. Mr. Rico stated that he saw potential in the second unit; that he went into the property and saw that everything was separated; that the units had separate walls and entrances; that the spaces within the building are small with a low number of occupants;

Mr. Robertson noted that the auction listing, a copy of which is part of the record, does not mention this, and refers to the property as being a single-family dwelling. Mr. Rico commented that there were no stoves in the property at the time of purchase; that there were counters and cabinets, and electric stove hook-ups; but no gas hook-ups and no actual stoves.

Chairman Wheatley asked Ms. Cornwell to confirm what actions would likely result if the applications were to be denied. Ms. Cornwell stated that action would likely require the removal of the kitchens and a requirement for verification that the properties were being used as single-

family dwellings; that hook-up to the sewer could then proceed; that Building Permits would need to be obtained and the County's requirements would be met for the buildings.

Mr. Robertson noted that, as a Condominium, the other properties owners could also potentially be responsible and or burdened by any potential conditions that might be imposed by the Condition. Mr. Robertson also noted that he also has a potential 'clean hands' concern with the Applications, especially if the Applicant has not pulled Building Permits.

Ms. Wingate asked whether there was a shared maintenance agreement in place. Mr. Robertson stated that the Condominium documents would have some provisions within them for this.

Upon there being no one else wishing to speak, Chairman Wheatley closed the public hearings for the Applications. Chairman Wheatley noted that there is an opportunity for further public speaking as part of the upcoming public hearing before County Council.

At the conclusion of the public hearings, the Commission discussed the Applications. The Commission discussed their concerns with the impacts of the development and that, if the Commission were minded to recommend denial, that they would likely wish to allow a period of time to allow the occupiers an opportunity to find alternative places to live.

In relation to Application CZ 1901 Mary & Victor Rico, motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

In relation to Application to Application CU 2200 Mary & Victor Rico, motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

Memorandum of Understanding Between Sussex County and DelDOT

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

Ms. Cornwell outlined that three written responses had been received in relation to the MOU and were part of the record for this Application. Mr. Mark Cote from DelDOT was also present to answer any questions from the Commission.

Mr. Robertson and Mr. Cote provided a brief overview of the background to the MOU and what was included within it. That Title 9 of the Delaware Code requires a MOU to be created, and that the previous version of the MOU dates back to 1988; that an update was/is required.

(A copy of the Mr. Robertson and Mr. Cote's presentation is appended to these minutes).

The Commission found that Mr. Jeff Stone on behalf of the group SARG was present to speak to the proposed MOU; that this is an extraordinary opportunity to transform the development process. Mr. Stone gave a presentation regarding the 40 comments from SARG, copies of which were

submitted into the record. A copy of the presentation is appended to these minutes.

The Commission found that Ms. Yul Lee of Lewes was present to speak to the proposed MOU; that she is concerned that DelDOT can make recommendation but that the County is under no obligation to follow DelDOT's recommendations; that she agrees with Mr. Jeff Stone that the County should have its own Transportation Advisor(s) independent of DelDOT;

The Commission found that Mr. Keith Steck of the Delaware Coalition for Open Government was present to speak about the proposed MOU; that he recognizes the work that has gone into the document so far; that he does have comments; that the document should be clear as to which county entity is in charge, as this is not clear; that the document has a heavy emphasis on road transportation and does not mention other modes of transport such as DART; that the document should make reference to land use settings such as residential, commercial and industrial, and the size of these developments that the MOU applies to; that it does not appear to apply to industrial parks; that there are no exclusions within the document; that there is no definition of what types of vehicles are considered; that there needs to be further discussion on the types of vehicles and their definitions; that the document should include a timeframe for its lifetime so that it can be reviewed, such as every five years; that the document does not have a strong enough emphasis on safety of pedestrians and bicycle traffic, especially in light of the cyclist and pedestrian deaths in the County over the past several years; that the volume of traffic should also consider emergency response times; that these factors should be included in the MOU.

The Commission found that Mr. Tom Ford was present to speak to the proposed MOU; that on pg. 9, item 5; he thinks the words "*and bonded*" should be added; that in item 16, he thinks that it should be strengthened to require County Council to be provided with updates on progress on major project; that a threshold should be defined for this; that Public Hearings before the County should be required for major projects;

The Commission found that Ms. Betty Tustin, a professional traffic engineer, was present to speak to the proposed MOU; that she appreciates that this is a work in progress; that she has written comments that she has submitted; that she requested that the MOU be subject to a further public hearing prior to being considered by County Council; that she agrees with Mr. Cote that Level of Service 'F' is not necessarily failing; that Sussex County is unique with an influx of seasonal traffic; that this is hard to accommodate; that the MOU should reflect this; that the approach to TIS preparation is changing as society changes and that the MOU should reflect this; that Sussex County's trip generation patterns and rates are changing as people retire and people start to work more flexible hours in the workplace; that workers are allowed to work from home now; that these factors change the traffic flow; that GPS systems are becoming more advanced and that this allows motorists to be re-routed.

The Commission found that Mr. Robert Horsey was present to speak to the proposed MOU; that he asked if the Commission could provide or public a comparison with the 1988 MOU; that on pg. 5 he urges the Commission not to tie the TIS to phasing of developments and instead tie it to Building Permits; that this will add a level of complexity; that he strongly urges the Commission to consider the insertion of the words "Substantial Completion" or similar into the document; that he does not consider the document to be a fix-all for the County; that reliance should not be placed

solely on Developers to fix the County's problems; that believes a State-wide initiative should be considered, such as a gasoline tax for all motorists; that he requests that the record be left open to allow others to comment;

The Commission found that Mr. David Hutt, Attorney was present and gave a presentation (a copy is appended to these minutes); that he recognizes a common theme in public comments is the need for more clarity in the document; that the ownership of "the TIS" needs to be more clearly defined to ensure that the preparer of the TIS is made clear 'i.e. 'the Developer's TIS'; that the Commission may wish to consider revising or deleting paragraph 3; that there are some areas of the County that do not experience seasonal traffic; that 'requirements by DelDOT' needs to be more clearly defined; that the document should be more clear that Sussex County is the final decision maker on land-use matters;

The Commission found that Mr. Bob Viscount of Lewes was present to speak to the proposed MOU. That he lives in the Villages of Five Points; that he supports the comments of Mr. Stone; that the lack of a Transportation expert within the County is a defect in the process; that the County should enhance the application process by exploring this; that the whole issue of phasing should not be deferred to DelDOT and that this is the County's responsibility; that any ambiguous processes should be clarified.

The Commission found that Mr. Kevin Rosenberg of Lewes wished to speak to the MOU; that on Pg.6 the text of the old MOU had been retained; that this causes some confusion; that he would support its removal; that he isn't sure whether this is tied to other agencies; that on Pg. 9 No. 4 he thinks that there is some unnecessary repetition in the text that the County may wish to consider removed; that he is concerned that it may just be stating the obvious; that is concerned that the document uses strong language as to when Building Permits may be withheld and that this text could be more flexible to account for unusual circumstances; that a discretion to withhold Certificates of Occupancy and/or Building Permits would seem to be a more reasonable wording.

Chairman Wheatley noted that, due to the late hour of the meeting, that the Commission may wish to leave the hearing open to allow potential additional speakers an opportunity to speak at a future meeting of the Commission. The Commission would, however, only allow new speakers to speak when the Public Hearing is continued.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to table the discussion and leave the public hearing open until the next regular meeting of the Commission (January 9th, 2020). Motion carried 5-0.

Mr. Robertson clarified that the record is open until that meeting if anyone wishes to submit additional comments.

Chairman Wheatley noted that, due to the lateness of the meeting, and that there were still members of the public in attendance, that the Commission would hear the Additional Business Item before the Other Business items on the agenda.

ADDITIONAL BUSINESS

Mr. Robertson noted that this is a consideration of a request for a re-hearing for application CU 2198 – Jeffrey Myer. Mr. Robertson noted that the request was filed in a timely manner.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to allow for the reconsideration of CU 2198. Motion carried 5-0.

The Chairman asked Mr. Myer to contact the Planning & Zoning office to determine the date of the public hearing.

OTHER BUSINESS

2019-22 Elmer T. Adkins, Sr., Trustee

Final Subdivision Plan

Ms. Devore advised the Commission that this is a standard Subdivision Plan to divide 9 acres +/- into two single-family lots to be located on a certain parcel of land lying and being in Nanticoke Hundred Sussex County. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of November 21, 2019. The Final Subdivision Plan is in compliance with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. The property is located on the northeast corner of Joseph's Rd. and Concord Rd. Tax Parcel: 231-21.00-4.00. Zoning District. AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

2007-29 The Woods at Burton Pond

Preliminary Amenities Plan

Ms. Devore advised the Commission that this is a Preliminary Amenities Plan for the construction of a pool house, swimming pool, basketball court, multi-purpose sport field and other site improvements; that the Preliminary Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval for the subdivision. Tax Parcel: 234-11.00-72.00. Zoning District. AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

The Preserve at Jefferson Creek MR-RPC

Preliminary Amenities Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Amenities Plan for the

construction of a swimming pool, bathhouse, and other site improvements; that the Preliminary Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval for the subdivision. Tax Parcel: 134-17.00-39.00. Zoning District. MR-RPC (Medium Residential District – Planned Residential Community). Staff are in receipt of all agency approvals.

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

Dutch Country Market

Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for the construction of a proposed warehouse; that the Sussex County Board of Adjustment approved a front yard variance – Case No. 12314 on June 13, 2019. The Revised Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 332-1.00-102.05. Zoning District. C-1 (General Commercial Zoning District). Staff are in receipt of all agency approvals.

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

Rehoboth Shores Manufactured Home Park – Area 2

Final Site Plan

Ms. DeVore advised the Commission that this is a Final Site Plan for the Rehoboth Shores Manufactured Home Park – Area 2 for the establishment of 57 mobile home lots; that the Planning and Zoning Commission granted CU 1862 on June 21, 2011 and CU 1926 on April 17, 2012 for the Lighthouse Beach Campground at Rehoboth Shores Manufactured Home Park – Phase 1 and Phase 2; that the Planning and Zoning Commission granted Final Site Plan approval on February 9, 2017 for Phase 1; that the Planning and Zoning Commission granted Preliminary Site Plan approval on May 21, 2015; that the Final Site Plan complies with the Sussex County Zoning and Code. Tax Parcel: 234-24.00-35.00. Zoning District. AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

26582 John J. Williams Hwy, LLC

Revised Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Revised Preliminary Site Plan for a proposed 3,360 square-foot retail building; that the Planning and Zoning Commission approved a Revised Site Plan on January 25, 2017; that the site was previously known as Atlantic Self Storage; that the Revised Preliminary Site Plan complies with the Sussex County Zoning and Code. Tax Parcel: 234-29.00-263.07. Zoning District. C-1 (General Commercial Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan. Motion carried 5-0.

Meeting adjourned at 11:29 p.m.

**REMARKS TO THE SUSSEX COUNTY PLANNING AND
ZONING COMMISSION REGARDING THE DRAFT
MEMORANDUM OF UNDERSTANDING BETWEEN
SUSSEX COUNTY AND THE DELAWARE
DEPARTMENT OF (DelDOT)**

December 12, 2019



SARG

Inform-Educate-Engage

Key Observations

- . The new draft clearly acknowledges that the County is “solely responsible for all land use decisions in Sussex County, regardless of the position of other agencies. It must use this authority.**
- . The revised MOU provides the opportunity to bring more balance and transparency to the County development review and approval process regarding transportation.**
- . The MOU must be written so everyone can grasp not only the terms but also what type of development is included, the sequencing of the process and who is responsible at every stage.**
- . The MOU must clearly state the specific regulation(s) that apply in each circumstance or provide the reference in an appendix or include them in the definitions section.**
- . DelDOT still has too much authority to determine what type of development the County will have and how infrastructure requirements will be determined, see the first bullet above.**

David Hutt, Esq.

Comments regarding Sussex County – DelDOT MOU

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* "Highway Capacity" obligates Sussex County to "establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation ("DelDOT") of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, ~~the~~ DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

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FEE IN LIEU - DelDOT regulations define an Area Wide Study Fee that, under certain conditions, DelDOT may accept when it would otherwise require a TIS. The fees accepted are used by DelDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DelDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS - An evaluation by DelDOT, in terms of the proposed trip generation, to determine whether a Traffic Impact Study is necessary with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day.

MINOR - The change in land use is expected to increase the trip generation of the subject land by at least 50 but fewer than 200 vehicle trips in any hour and at least 500 vehicle trips per day.

MAJOR - The change in land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major. ~~This shall not be required where the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system.~~ Unless more time is required given the size or complexity of the land use application, DelDOT shall endeavor to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis request.
- ~~3.1. Given the seasonal nature of high volume traffic volume in Sussex County, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DelDOT to take into account these high volumes in any analysis that it performs. To be effective, low volume off season volumes should not be utilized where they will artificially lower average traffic volumes.~~
- ~~4.3.~~ Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.
- ~~5.4.~~ When it is determined that the traffic impact would be diminutive or negligible, no further traffic analysis will be necessary. DelDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DelDOT determines negligible impact will occur, they will provide projected traffic volumes in support. ~~Sussex County may approve land use applications with negligible impact at its discretion.~~
- ~~6.5.~~ When DelDOT determines the traffic impact to be minor, the traffic analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed inadequate, DelDOT shall comment to this effect, and identify roadway improvements that shall be required by the Developer. An Area Wide Study Fee (AWSF) letter will be generated to document the developer's obligations

to construct identified roadway improvements or fund road improvements as required by DelDOT. In addition, DelDOT may require further study if necessary.

7.6. When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards. In addition, Sussex County, at its own initiative, may require a developer to conduct a TIS. ~~DelDOT will~~ shall provide a technical evaluation of the TIS in the form of written comments in a Traffic Impact Study Review Letter (TISRL). ~~The DelDOT's scoping requirements for the TIS and its TISRL will also~~ should consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and ~~establish~~ recommend ~~staging~~ phasing for development as ~~needed~~ may be appropriate given the location of the project. ~~DelDOT will provide a technical evaluation of the TIS.~~ Alternatively DelDOT may allow a Traffic Operational Analysis (TOA) (at the developer's expense) instead of a TIS.

7. As an alternative to the TIS or TOA process set forth above, when DelDOT has determined that the area in question has already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DelDOT may require a "Fee in Lieu" to be paid by the developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon by DelDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.

Commented [HDC1]: The TIS is performed at the developer's expense, what cost (portion thereof) is DelDOT "recouping"?

8. Given the seasonal nature of high-volume traffic volume in certain areas of Sussex County, specified herein, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DelDOT's scoping requirements for the TIS, the TIS and the TISRL to take into account these high volumes in any analysis that it performs. This may include ~~o be effective, adjusting the weight given to low-volume off season volumes should not be utilized whereif they will~~ would ~~artificially lower average traffic volumes. The areas of specific~~

concern where seasonal volumes should be carefully considered are the following:

8.9. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that: (a) a Level of Service of D is not always attainable; (b) that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service; or (c) other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.

9.10. No public hearing on the land use application shall occur until: (a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a "Fee in Lieu" (described in Paragraph 8 above) is appropriate instead of a TIS; or (d) the application will have a diminutive, negligible or minor impact (with no requirement for a TIS) as described above.

10.11. ~~When~~ If DelDOT determines, on the basis of its analysis of a TIS or TOA or studies previously performed as part of the "Fee in Lieu" process, that a land use decision could cause the threshold level of service to be exceeded, the County ~~will~~may not approve the land use application unless the developer takes appropriate measures to maintain operations at the threshold level or unless Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. ~~Sussex County, in the latter case, shall set forth in writing their reasons for approving the land use application.~~

11.12. Sussex County does not have the capability to~~of~~ determine~~ing~~ what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT's opinion, there are appropriate conditions of approval that ~~should~~it recommends be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TISRL or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed

conditions shall be clearly summarized by DelDOT in its analysis of the TIS or TOA or other written comment provided by DelDOT Preliminary Traffic Analysis. After ~~considering all relevant information regarding the land use application~~, Sussex County ~~shall consider the proposed conditions but~~ shall not be obligated to include them as part of any approval.

~~12.13.~~ 13. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service "D" may be ~~required~~recommended by DelDOT. ~~To accomplish this, Any phasing recommended by DelDOT should state what phasing is appropriate for the subject land use application and be a clear and concisely written statement that phasing requirement to Sussex County so that Sussex County can clearly incorporate it into its various approvals as appropriate.~~ Sussex County, in its discretion, may ~~then~~ impose that phasing ~~requirement~~recommendation as part of its approval of a land use application. Phasing of the project ~~can~~may include (but is not limited to) a consideration the following:

- a. A delay of all or part of the development until specific highway improvements are made by DelDOT or others;
- b. Whether the required highway improvements are being funded or constructed at the developer's own expense;
- c. Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

~~Any The~~ phasing requirements established by Sussex County shall be included ~~as a Plan Sheet on at the time of the~~ Final Site Plan approval. However, whenever possible, DelDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS ~~process prior to the Preliminary Site Plan or other public hearing process~~ so that Sussex County, the developer and the public can discuss that recommendation during the public hearing process ~~have an expectation that phasing may be considered as part of the project development~~. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

~~13.14.~~ 14. Where measures to maintain operations are agreed upon by a developer, both DelDOT and Sussex County shall assure that these measures are carried out.

~~44.15.~~ When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and also ongoing projects in the area of Sussex County where the project is to occur.

~~45.16.~~ In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.

~~46.17.~~ Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways and interconnectivity.

~~47.18.~~ The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.

~~48.19.~~ Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, funding of roadway improvements, etc. shall be immediately forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT/developer agreement shall likewise be immediately forwarded to Sussex County. Provided, however, that DelDOT recognizes

that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezonings where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezonings to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding Section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex

County shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans "subject to conditions". In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. When Sussex County requires DelDOT review of site plans, that review shall be for any necessary roadway improvements and entrance design requirements. ~~In all~~ For site plan reviews by DelDOT required by Sussex County, DelDOT ~~wish~~ shall review the site plans in accordance with its rules and regulations for access and roadway improvements. For site plan reviews where Sussex County requires DelDOT review, Sussex County ~~wish~~ shall withhold ~~any-final~~ site plan approval until DelDOT has ~~either stamped/signed the plans, provided a Letter of No Objection, provided a Letter of No Objection to Recordation or provided a written statement approving the access and roadway improvements. approved all-necessary roadway improvements and entrance design requirements.~~— Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance construction permit associated with the project.
4. DelDOT will withhold an entrance permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on highways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction and issued the notice to the owner that the entrance construction permit has been ~~satisfied~~satisfactorily completed according to its terms.
- 5-6. The coordination described in this section shall take into consideration any phasing of the land use project.

TRANSPORTATION IMPROVEMENT DISTRICTS

1. In the event that a land use application falls within a Transportation Improvement District ("TID"), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary