THE MINUTES OF THE REGULAR MEETING OF DECEMBER 20, 2018

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 20, 2018, 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. Doug Hudson, Mr. Keller Hopkins, Ms. Holly Wingate, 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.

Mr. Wheatley asked if there were any changes to the number of items on the agenda, to which Ms. Cornwell confirmed that there were none.

Mr. Wheatley noted that Ms. Stevenson had not yet arrived and asked whether the Commission wished to hear the Other Business items pending Ms. Stevenson's arrival.

Motion by Mr. Hudson, seconded by Ms. Wingate and carried unanimously to change the order of the agenda to begin with Other Business first. Motion carried 3-0.

OTHER BUSINESS

2017-01 Baylis Estates Subdivision

Final Subdivision Plan

Ms. DeVore advised the Commission that this is a Final Subdivision Plan and lot line adjustment for a cluster subdivision of 99 single-family lots on 75.48 acres and located on the northeast side of Mount Joy Road (SCR 297). As a result of the proposed lot line adjustment, lot sizes have increased on the following lots: #1-31, 33-42, 44-51 and 60-99. The Final Subdivision Plan complies with the Zoning and Subdivision Code, and all conditions of approval. Tax Parcel: 234-29.00-42.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

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

2016-14 Walden I Subdivision (FKA Burton's Pond)

Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for the construction of 265 single family lots with open space and recreational amenities to be located off of Hollymount Road (Rt. 48) and John J. Williams Highway (Rt. 24). The Final Subdivision Plan complies with the Zoning and Subdivision Code, and all conditions of approval. Tax Parcels: 234-11.00-97.00 and 234-17.00-17.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all required agency approvals.

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

Americana Bayside (MR-RPC)

Revised Masterplan

Mr. Whitehouse advised the Commission that this is a revised Masterplan for the Americana Bayside Residential Planned Community. The masterplan has been further amended since Planning & Zoning last considered it at its meeting of December 13, 2018, to include the proposed increase in the total number of units associated with Lot 90. The twelve additional duplex units associated with Lot 90 are included, bringing the total to 14 in total, and the total number of units within Americana Bayside as a whole would be increased to 1,443 which would comply with the Conditions of approval, which permit a maximum of 1,700 units. Tax Parcel: 533-19.00-39.00.

Motion by Mr. Hudson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Mater Plan. Motion carried 3-0. Ms. Wingate abstained.

Americana Bayside (MR-RPC) – Lot 90

Revised Preliminary Site Plan

Mr. Whitehouse advised that Commission that this is a Revised Preliminary Site Plan for Lot 90 within the Americana Bayside MR-RPC. At its meeting of June 28, 2018, the Commission approved a Final Site Plan for Lot 90, which included 5 single-family lots. The layout of Lot 90 has been redesigned and now includes 12 duplex units and 2 "Grand Estate" single-family lot units. The Site Plan complies with the Zoning and Subdivision Code, and all conditions of approval. Staff are awaiting agency approvals for the revised layout. Tax Parcel: 533-19.00-39.00.

Motion by Ms. Hudson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan with final approval by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 3-0. Ms. Wingate abstained.

S-18-82 Walden II (CU 2075) (FKA Burtons Pond II)

Preliminary Site Plan and Landscape Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for 100 townhouses with amenities located on a 53.36-acre parcel of land accessed off Sloan Road (SCR049). The Preliminary Site Plan complies with the Zoning Code and all conditions of approval. Tax Parcel: 234-17.00-29.00. Zoning: MR (Medium Density Residential District). Staff are awaiting Agency Approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan and Landscape Plan with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

S-18-76 DEStorage.com Seaford

Revised Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Revised Site Plan for two (2) proposed storage buildings to an existing mini storage facility and other site improvements located off Sussex Highway (Rt. 13). Tax Parcel: 331-2.00-18.18. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting Agency Approvals.

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

Motion carried 4-0.

Cape Henlopen High School

Revised Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Revised Site Plan for the construction of a proposed classroom wing, vestibule/waiting room addition, parking lot expansion and other site improvements located at 1270 Kings Highway Tax Parcel: 335-8.00-34.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Hudson and carried unanimously to the Revised Preliminary Site Plan with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

S-18-85 Spring Arbor

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a 102-bed convalescent or assisted living facility with parking and other site improvements located on Plantation Road. A Special Use Exception was approved by the Board of Adjustment for an assisted living facility at this location on February 6, 2018. Tax Parcel: 334-12.00-52.01. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Ms. Wingate asked how the number of parking spaces had been calculated. Ms. Cornwell noted that the Use was approved through a Special Use Exception and that the number of parking spaces was based upon the number of staff and not the number of bedrooms within the facility.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan with final approval by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 4-0.

S-18-74 Argo's Self-Storage Facility

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Plan for the construction of 85,300 square feet of climate-controlled storage units and 24,000 square feet of non-climate-controlled storage units totaling 109,300 square feet located on a 10.76-acre parcel of land on the north side of State Route 1 and south side of Argo's Corner Road (SCR14E). Staff have requested that the three parcels be consolidated into a single parcel as a condition of final approval. Tax Parcels 230-7.00-95.00, 96.00 and 97.00. Zoning: GR (General Residential). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve Preliminary Site Plan with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Morris and Sarah M. Justice

Minor Subdivision off a 50' Easement

Ms. DeVore advised the Commission that this is a Preliminary Minor Subdivision of approximately 10.17 acres into two lots off of a 50-ft. easement measuring 2.17 acres and a residual

parcel measuring 8.0 acres east of E.M. Calhoun Lane and located at 33897 E.M. Calhoun Lane. Tax Parcel: 134-7.00-90.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals.

Motion by Mr. Hudson, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' Easement with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Howard

Minor Subdivision off a 50' Easement

Ms. DeVore advised the Commission that this is a Minor Subdivision Plan to create three lots each measuring 36 acres +/- off a 50' easement over an existing road located off Staytonsville Road. Tax Parcel: 230-19.00-31.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' Easement with final approval to staff upon receipt of agency approvals. Motion carried 4-0.

2018-18 Cannon Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request to revise four of the conditions of approval associated with subdivision 2018-18, which was granted Preliminary Subdivision Plan Approval by the Commission at its meeting of November 29, 2018. Conditions 'A', 'D', 'H' and 'M' are listed below:

- A. There shall be no more than 61 lots within the subdivision. There shall not be any lots north of where lot 61 is depicted on the Preliminary Site Plan.
- D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project. This buffer shall utilize existing vegetation in all areas where it is in wetlands or overlaps the wetland buffer. The Final Site Plan shall contain a landscaped plan for all of the areas.
- H. The development shall be served by its own on-site active amenities including a dock, kayak launch, pool and pool house. The pool and pool house access shall not be constructed within any wetlands or wetland buffer area.
- M. As stated by the Applicant, there shall be a buffer from all wetlands. The buffer shall have a depth of at least 50-feet, and it shall be outside of all lot lines.

The applicant submitted a request on December 10, 2018, requesting the following:

Condition 'A' be revised to permit the 70 lots originally requested, but prohibit any lot being located north of the location of Lot #61;

Condition 'D' be revised to delete the requirement for a forested buffer along an area of the perimeter that are under water, part of existing wetlands, or within the wetlands buffer;

Condition 'H' be revised to remove the language within the condition that prohibits access in the buffer zone.;

Condition 'M' be revised so that the 50' buffer requirement shall only apply to tidal wetlands and tidal waters, with no requirement to provide a 50' buffer to non-tidal wetlands.

The Commission held a discussion regarding this request, noting that Condition D required a forested or landscaped buffer of at least 20-feet in depth along the entire perimeter of the project; that there was a question where the buffer would go; that Code requirement is that it goes along the entire perimeter; that when there is a situation where the boundary is under water or in wetlands; that the Commission does not typically require a buffer in that area; that this is only in the uplands area; Condition H states that the pool and pool house access shall not be constructed within any wetlands or wetland buffer areas; that the access can be conducted within the buffers; that Condition M as stated by the Applicant there shall be a buffer from all wetlands and have a depth of at least 50-feet; that was not stated by the Applicant, and was not in the proposed condition and it was only tidal wetlands; that this matches what is in the Code; that Condition A has several lots north of lots 61 and those lots were deleted by the Preliminary Site Plan approval; that the number of lots were limited to 61; that Mr. Jim Fuqua is asking that those lots in that area be deleted but if they can be relocated elsewhere of the body of the project on the uplands; that Mr. Fuqua stated that in a cluster subdivision you can create 7,500 square feet lots and these lots where over 10,000 square feet; that some of those nine lots would be removed because of the provision and can be relocated internally; that they could come in with a Revised Preliminary Site Plan and with the revised lot sizes; that they would limit the development to 70 lots, which was requested; and that this was not the maximum density and this was less than the permitted density.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to accept the Request to Revise Conditions of Approval as set forth in Mr. Fuqua, December 10, 2018, letter. Motion carried 4-0. Ms. Wingate abstained.

2013-02 Tidewater Landing Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request to amend the condition of approval 'N' approved as part of the Tidewater Landing Subdivision by the Commission at its meeting of May 18, 2017. Condition 'N' requires "All amenities and recreation areas shall be completed within the project prior to the issuance of the 50th residential building permit within the project. The amenities include the swimming pool, tennis courts, clubhouse/community center and tot lot. The clubhouse/community center and swimming pool should be more centrally located to be more accessible for all the residents to reduce any possible impact on the environment". It is proposed to revise the wording of this condition to "All amenities and recreation areas shall be completed prior to the issuance of the 80th residential building permit or May 1, 2019, whichever comes first. The amenities include the swimming pool, tennis courts, clubhouse/community center, and tot lot".

Mr. Robertson questioned whether there were two parts to the applicant's request, which Mr. Whitehouse confirmed that there was.

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

2017-15 Kindleton Subdivision

Request to Revise Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request to revise conditions approval for Subdivision 2017-15, which is a 90-lot subdivision on 49.37 Acres located on the east side of

Robinsonville Road (SCR. 277). The Commission granted Preliminary Subdivision Plan approval at its meeting of January 25, 2018, subject to 14 conditions. The applicant has requested that the wording of Condition 'J' be revised. The approved wording states "There shall be vehicle interconnectivity available between this subdivision and the property to the east, in the event it is ever developed. This can be limited to emergency use only. There shall also be an entrance area set aside for vehicle access along Cedar Grove Road for emergency use or the event that the entrance along Robinsonville Road is inaccessible. These areas shall be shown on the Final Site Plan." The applicant has requested that the first part of Condition 'J' be deleted.

The Commission held a discussion regarding this request. At present the applicant is required to provide inter-connectivity between this approved subdivision and the property to the east; that Ms. Stevenson stated there is an undeveloped property next to this project and it is a road that they do not have to have as a major road; that if the adjacent property is developed then it would be just part of what is there; that should the adjoining parcel ever be developed, that inter-connectivity would already exist and there would be a gate for emergency access. Mr. Ring Lardner, speaking on behalf of the applicant, stated that the adjacent parcel to the east has a large amount of wetlands on the parcel and only has three acres of uplands, and this would reduce the potential for subdivision.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to accept the Request to Revise Conditions of Approval as set forth from Davis, Bowen and Friedel letter dated December 10, 2018, due to wetland conditions of the adjoining lot. Motion carried 5-0.

OLD BUSINESS

2018-17 Tower Hill - Groome Memorial Methodist Church

An ESDDOZ subdivision to divide 134.29 acres +/- into 293 single family lots to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County. The properties are lying on the northwest side of New Road and on both sides of Lynn Road approximately 351 ft. and 0.58 mile east of Old Orchard Road. Tax Parcels: 335-8.00-2.00 and 2.02. Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since November 29, 2018.

Prior to making a motion, Ms. Stevenson stated she had put a lot of thought and research into in a motion, based upon the adopted County Ordinances; that she did the best she could, based upon the evidence within the public record; that she lives in the area; that Mr. Robertson stated that in the Environmentally Sensitive Developing Area the permitted density of a development is based on 20,000 square feet per lot which equates to 2.17 units per acre; and that applicant's trade off the increased density in exchange for providing more open space on the site, and better provision for wetlands protection.

Ms. Stevenson moved that the Commission grant Preliminary approval for Subdivision 2018-17 for Tower Hill – Groome Memorial Methodist Church based upon the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
- 2. The proposed subdivision will have 292 lots on approximately 134.29 acres. This results in a density that is within the permitted density in the AR-1 Zone for a project within the Environmentally Sensitive Developing Area.
- 3. There was some testimony with concerns about traffic on area roadways. There was also photographic and video evidence in the record showing actual traffic on New Road. DelDOT has reviewed this project and is requiring the developer to make extensive roadway improvements and monetary contributions towards other area improvements.
- 4. The subdivision has satisfied all of the legal requirements for approval.
- 5. There were stated concerns about Native American burial areas and a Prettyman Family cemetery area. The developer has taken extensive measures to protect those areas and allow access to them. The histories of both the Native Americans and the Prettyman family will be documental on the site through informational plaques as well.
- 6. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has adequately addressed the requirements of Section 99-9C of the Code.
- 7. The project will be served by central water and sewer.
- 8. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
- 9. There will be active recreational amenities within the project, including a clubhouse and pool.
- 10. This preliminary approval is subject to the following:
 - A. There shall be no more than 292 lots within the subdivision.
 - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas in erosion and sedimentation control facilities.
 - D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project. This buffer shall increase to 50-feet along the northwest boundary of the site adjacent to land that is used for agricultural purposes. Subject to the approval of the Sussex Conservation District, there shall be a 6-foot tall berm within the 50-foot buffer along the northwest boundary to provide a visual buffer to the active shooting area adjacent to this development. This berm shall not be required in wetland areas or in areas containing known archeological or historical artifacts. The Final Site Plan shall contain a landscaped plan for all of these areas.
 - E. The development shall comply with all DelDOT entrance and roadway improvement requirements including contributions to the cost of offsite roadway improvements. The Developer shall also coordinate with DelDOT to ensure that there are no impediments to the re-designation of New Road as an evacuation route.
 - F. The subdivision shall be served by central sewer.
 - G. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
 - H. The development shall be served by its own on-site active amenities such as a pool and

- clubhouse. On-site amenities shall be divided so that equivalent (not necessarily the same) amenities shall be constructed on either side of Lynn Road.
- I. The developer shall complete all amenities prior to the issuance of the 140th residential building permit.
- J. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- K. Construction, site work and deliveries on the site shall only occur between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. No activity shall occur on Sundays.
- L. The Final Site Plan shall indicate all forested areas that will be preserved.
- M. The Final Site Plan and the Restrictive Covenants shall contain the legal notice that lands adjacent to this development are used for agricultural purposes.
- N. The Final Site Plan and Restrictive Covenants shall contain a notice that land to the northwest of this site is actively used for hunting and the discharge of firearms.
- O. The Developer, in coordination with the Sussex Conservation District, shall design and construct the site so that runoff is eliminated or significantly reduced onto lots fronting on Shaeffer Lane. The Developer shall notify the lot owners along Shaeffer Lane having a common boundary with this property the date when sitework will commence in the northeastern area of the subdivision and how that construction may impact their property.
- P. As offered by the Applicant, the five (5) areas shown on the Preliminary Site Plan and marked as "Archeology Preservation/Conservation Easement" areas, located in the northeast corner and western side of the property, shall remain as perpetual easement areas. The Delaware State Historical Preservation Office (SHPO) may request permission to perform archeological studies and/or excavations of the easement areas under conditions agreed to by the Applicant and it assigns.
- Q. The Final Site Plan shall contain a landscaping plan for the subdivision's frontage along New Road with appropriate landscaping consistent with the goals of the Lewes Scenic and Historic By Way Corridor Management Plan. The New Road landscaping shall be perpetually maintained by the Developer and/or Homeowners Association. The requirements of this condition shall be as set forth in the e-mail of Dan McGreevy, dated November 29, 2018, incorporated by reference herein, and which will be included in the Minutes confirming this Motion. That agreement shall also be summarized in the Notes on the Final Site Plan.
- R. The western edge of the property contains the site of the "Tower Hill Farm, Prettyman Family Burial Ground" (Certificate Registration Number DE-2016-06, Delaware Cemetery Board). As offered by the Applicant, the area will be subject to a perpetual cemetery easement, as shown on the Preliminary Site Plan and the Developer will make improvements to the Prettyman Family Burial Ground and adjoining area, summarized as follows:
 - 1. The cemetery area will be surveyed and marked, the area will be cleaned of fallen, dead or dying trees, vegetation and litter by gentle means (no stump or root removal), collapsed grave depressions will be filled and leveled, and the cleared area will be planted with appropriate ground cover.
 - 2. The four corners of the cemetery area shall be identified with red brick markers. Monuments will be placed in the front and center of the cemetery area with text approved by Ralph Prettyman, on behalf of the family, together with two gray

- granite benches. Two historical markers will be erected on the outskirts of the cemetery, one to recognize the indigenous people who once lived there, the other to recognize the colonial and post-colonial occupation. The local Native American tribes shall be consulted on the content of the indigenous people's marker. Prior to placement of these items, Ed Otter, Inc. will verify that no human remains would be impacted by their installation.
- 3. Appropriate access to the cemetery will be provided for visitors and residents and an easement will be created to insure perpetual maintenance of the cemetery by the community Homeowners' Association and perpetual access to the cemetery by the Prettyman family descendants and interested members of the public.
- 4. Any Native American cemeteries found on the site shall receive the same or comparable treatment as stated above, subject to any modifications approved by SHPO and the local Native American Nanticoke tribe representative.
- 5. The Archeological Report to be prepared by Ed Otter, Inc. will be made available to Ralph Prettyman on behalf of the Prettyman Family descendants, the Delaware State Historical Preservation Office (SHPO), the Sussex County Office of Planning and Zoning, the Lewes Historical Society and the Nanticoke Indian Museum. Upon completion of the report, artifacts associated with the Prettyman Family or other colonial occupants of the property discovered on the site shall be donated to SHPO and /or the Lewes Historical Society. Any Native American artifacts found on the site shall be donated to the Nanticoke Indian Museum.
- 6. The Applicant will take extra care performing site work to avoid any impact on the Ancient Sycamore tree on the Dawson property on Lynn Road.
- 7. A representation of the history of the property will be displayed in the community clubhouse and consideration given to the street names suggested by Ralph Prettyman.
- S. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

2018-20 Tanager Woods – Joseph A. Street, Nina Street, Jasmyn Street and Andrew Street

A cluster subdivision to divide 103.321 acres +/- into 173 single family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the east side of Wil King Road, approximately 0.43 miles south of Kendale Road and also being on the side west of Robinsonville Road, approximately 0.47 miles south of Kendale Road. Tax Parcels: 234-6.00-58.00 and 85.00. Zoning Districts: AR-1 (Agricultural Residential District) and GR (General Residential District).

The Planning Commission discussed the application which has been deferred since December 13, 2018.

The Commission held a discussion regarding the application. Mr. Robertson stated that Mr. Jim Hickin, A.A.E, Airport Manager, Delaware Coastal Airport, did provide information to the Commission regarding the status and classification of the airstrip adjoining the site; that the information provided by Mr. Hickin stated that the airstrip was not an FAA regulated airport per say; that the airstrip is actively used; that the owner of the airplane does have an airplane registered at the airstrip. The Commission also discussed the types of limitations that would normally be placed on properties located adjacent to an FAA regulated airport and that those limitations would not apply in this case; that use of the application site would impact the airstrip and, in particular, the manner in which a pilot would approach, land and take-off from the airstrip. The Commission also the discussed the air rights afforded to residents living beneath areas used for take-off and landing of aircraft.

Ms. Stevenson moved that the Commission grant Preliminary Approval for Subdivision 2018-20 for Tanager Woods – Joseph A. Street, Nina Street, Jasmyn Street and Andrew Street based upon the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a cluster subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
- 2. The proposed subdivision will have 168 lots on approximately 103.32 acres. This results in a density that is within the permitted density in the AR-1 Zone for a cluster subdivision.
- 3. The proposed AR-1 subdivision is consistent with residential development trend uses in the area, which includes several other similar AR-1 subdivisions.
- 4. The proposed subdivision meets the propose and standards of the Subdivision Code, and the Applicant has adequately addressed the requirements of Section 99-9C of the Code.
- 5. The project will be served by central water and sewer.
- 6. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
- 7. There will be active recreational amenities within the project, including a clubhouse and pool.
- 8. This subdivision has a superior design to a standard subdivision because it preserves approximately 61 acres, or 59% of the site, as open space; all lots are adjacent to some type of open space: there is a large open area along the frontage of the project which benefits the appearance of the development from Robinsonville Road: and large amounts of wetlands and forested areas are preserved and protected.
- 9. This preliminary approval is subject to the following:
 - A. There shall be no more than 168 lots within the subdivision.
 - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.

- D. As proffered by the Applicant, a forested or landscaped buffer of at least 30-feet in depth shall be installed along the entire perimeter of the project. This buffer shall increase to 50-feet in areas where the development borders any lands in agricultural use. The Final Site Plan shall contain a landscaped plan for all of these areas.
- E. As proffered by the Applicant, there will be a minimum 20-foot buffer between any lot line and any wetland area.
- F. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- G. The subdivision shall be served by central sewer.
- H. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- I. The Applicant shall coordinate with the local school district regarding the location of covered school bus stop within the subdivision.
- J. The development shall be served by its own on-site active amenities including a pool, clubhouse, and a multi-use court. As stated by the Applicant, the clubhouse shall be at least 2,500 square feet in size.
- K. The Developer shall complete all amenities prior to the issuance of the 80th residential building permit.
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- M. As stated by the Applicant, sidewalks shall be installed on both sides of all internal streets in the development, and internal streets shall be lined with trees.
- N. Construction, site work and deliveries shall only occur on site between the hours of 7:00 a.m. through 7:00 pm., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
- O. The Final Site Plan shall indicate all forested areas that will be preserved.
- P. The development shall not have any access to Wil King Road. The narrow strip of land connecting the site shall remain undisturbed, unless transferred to the adjacent landowners on either side of it. If such a transfer should occur, that shall be considered a minor amendment to the site plan that can be approved administratively and, such a transfer shall not impact the overall density of the project.
- Q. The Final Site Plan and the Recorded Restrictive Covenants shall include the following notice.

"THIS SUBDIVISION IS LOCATED IN THE VICINITY OF LAND USED AS AN AIRPORT. THERE MAY BE FREQUENT FLIGHTS OVER THE SUBDIVISION THAT WILL GENERATE NOISES ASSOCIATED WITH AIRCRAFT IN FLIGHT OR AIRCRAFT ENGINES OPERATING. THE USE AND ENJOYMENT OF PROPERTY WITHIN THIS SUBDIVISION IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF ANY ANNOYANCE OR INCONVENIENCE WHICH MAY RESULT FROM SUCH NORMAL AIRPORT USES AND ACTIVITIES."

- R. Lots 65 through 72 along the southeastern boundary of this subdivision shall be relocated so that they are not directly in the flight path of the active runway immediately adjacent to the southwest corner of the site.
- S. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

2018-21 Carriage Springs – BSP-II Properties, LLC

A cluster subdivision to divide 10.00 acres +/- into 10 single family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the north side of Huff Road, approximately 0.9 miles west of Gravel Hill Road. (Rt. 30). Tax Parcel: 235-24.00-38.03. Zoning District: AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since December 13, 2018.

Me. Stevenson moved that the Commission grant Preliminary Approval for Subdivision 2018-21 for Carriage Springs – BSP-II Properties, LLC based upon the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a subdivision within the AR-1 Zoning District.
- 2. The proposed cluster subdivision will have 10 lots on approximately 10 acres. This results in a density that is well below the permitted density in the AR-1 Zone.
- 3. The subdivision complies with the requirements of the Sussex County Subdivision Code.
- 4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
- 5. The project will be served by individual wells and individual on-site septic systems.
- 6. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
- 7. There are no State or Federal wetlands located on the site.
- 8. Given the configuration of this property, a waiver from the maximum length of a cul-desac is appropriate for this subdivision.
- 9. The subdivision will comply with all DelDOT entrance and roadway improvement requirements.
- 10. This preliminary approval is subject to the following:
 - A. There shall be no more than 10 lots within the subdivision.
 - B. There shall not be any lots within 150-feet from Huff Road.
 - C. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.

- D. 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.
- E. A forested or landscaped buffer of at least 20 feet in depth shall be installed along the entire perimeter of the project. This buffer shall increase to 30-feet along the northern and western boundaries of the site as shown on the Preliminary Site Plan. The Final Site Plan shall contain a landscaped buffer plan for all of these areas.
- F. The development shall comply with all DelDOT entrance and roadways improvement requirements.
- 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 7:00 a.m. through 5:00 p.m., Monday through Friday, and 7:00 a.m. through 2:00 p.m. on Saturdays.
- I. The Final Site Plan shall indicate all forested areas that will be preserved.
- J. There shall be a sidewalk on at least one side of the street in this subdivision.
- K. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- L. The Final Site Plan shall be subject to review and approval of the Planning and Zoning Commission.

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

2018-22 Citation Meadows - Citation Meadows, LLC

A cluster subdivision to divide 54.40 acres +/- into 49 single family lots to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The property is lying on the north side of Phillips Hill Road, approximately 0.42 mile west of Lakeview Road. Tax Parcel: 133-19.00-30.00. Zoning District: AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since December 13, 2018.

Ms. Wingate moved that the Commission grant Preliminary Approval for Subdivision 2018-22 for Citation Meadows – Citation Meadows, LLC based upon the record made during the public hearing and for the following reasons:

- 1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. Because the lots will be served by on-site septic systems, the Applicant is seeking clustered lots with a minimum area of 20,000 square feet.
- 2. The proposed subdivision will have 49 lots on approximately 54.40 acres. This results in a density of 0.9 lots per acre, which is well below the permitted density in the AR-1 Zone.
- 3. The proposed AR-1 subdivision is consistent with nearby uses in the area, which include several residential developments.

- 4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has adequately addressed the requirements of Section 99-9C of the Code.
- 5. The project will be served by central water.
- 6. The lots within the project will be served by individual septic systems. The Applicant has obtained a feasibility determination from DNREC.
- 7. A waiver from the requirements of Section 99-17G for the Peach Blossom Drive cul-desac is appropriate.
- 8. The development complies with the Sussex County Comprehensive Plan as a low density, single family dwelling subdivision.
- 9. This clustered subdivision is superior to a standard subdivision in several ways. One of the main design features is a large area set aside for a community agricultural area. There is also an area set aside at the rear of the property to provide ongoing stormwater management to an adjacent property. The clustering also allows a significant amount of open space to be maintained along the frontage, which helps preserve the rural character of Phillips Hill Road. These areas are part of the 22 acres of open space that are preserved through the cluster design of this property.
- 10. This preliminary approval is subject to the following:
 - A. There shall be no more than 49 lots within the subdivision. The lots shall be at least 20,000 square feet in size.
 - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project. This buffer shall increase to 30-feet in areas where the development borders any lands in agricultural use. The Final Site Plan shall contain a landscaped plan for all these areas.
 - E. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - F. There shall be a 50-foot easement granted along the entire northern boundary of the site. This easement shall be for the benefit of the Oakmont Estates Homeowners' Association for the collection and conveyance of stormwater and the use and maintenance of the drainage system within that area. The rights conveyed in this easement shall include the ability for equipment to access the area to maintain the drainage system. This easement area shall be clearly depicted on the Final Site Plan, and an Easement Agreement shall be filed in the Sussex County Office of the Recorder of Deeds.
 - G. The Restrictive Covenants shall provide for the perpetual use and maintenance of the community agricultural area by the property owners within the development.
 - H. All amenities shall be completed by the issuance of the 25th residential building permit.
 - I. The subdivision's lots shall be served by individual on-site septic systems regulated by DNREC.
 - J. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.

- K. Construction activities, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. No work on Sundays.
- L. The Final Site Plan, the Restrictive Covenants and all deeds to the lots shall contain the legal notice that land adjacent to this development are used for agricultural purposes.
- M. The Applicant shall coordinate with the local school district's transportation manager to establish a school bus stop area.
- 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. Wingate, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval for reasons and conditions stated in the motion. Motion carried 5-0.

PUBLIC HEARINGS

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

2018-25 Kalel Properties, LLC

A standard subdivision to divide 1.91 acres +/- into 2 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 on the north of Delmar Road (Rt. 54) approximately 744 ft. west of Providence Church Road. Tax Parcel: 532-18.00-28.00 (part of). Zoning District.: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a subdivision plan, comments from the Sussex Conservation District, Sussex County Utility Planning Division, soil test results, and DelDOT.

The Commission found that Mr. Brad Absher with Kalel Properties, LLC and Tru North Land Survey was present on behalf of the application; that Mr. Absher stated that the two additional parcels are consistent with the area; that there are no known wetlands on the site; that there is no tax ditches or floodplain issues; that it would be very minimal impact on the schools; that they have approval from DelDOT.

Ms. Cornwell pointed out that this is part of a 12-acre parcel and they are looking to subdivide into two, one acre lots; that if they would like to further subdivide, they would need to apply for a major subdivision through the major subdivision process; that this is because the applicant has maxed out the number of minor subdivisions available for this parcel.

Ms. Cornwell stated that the applicant is requesting a waiver from the 20-foot forested landscape buffer;

Mr. Wheatley asked a question as to why lot 7 has an odd shape and Mr. Absher confirmed that this was a result of the soils on the site.

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

The Commission found that Ms. Lois Ryan and Mr. Robert Dorrell spoke in opposition to the application; that Ms. Ryan stated she has concerns with the topography and drainage; that the other lots drain onto her farm; that she has concerns with stormwater management; that the adjoining lands are marshy and that a retention pond may be required; that Mr. Dorrell stated he has concerns with drainage; that there it has been continuously flooding this year and he believes the ditch is blocked; that his lot is continuously flooding; and that he has talked with DNREC about the flooding and they are undertaking a survey.

The Commission held a discussion regarding the concerns with drainage issues.

Following the conclusion of the public hearings, the Commission further considered this application.

Ms. Wingate moved that the Commission grant Preliminary Approval for Subdivision 2018-25 for Kalel Properties, LLC, based upon the record made during the public hearing and for the following reasons:

- 1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
- 2. The land is zoned AR-1 which permits low density single family residential development.
- 3. The subdivision is just adding two additional strip lots along Route 54 where several other similar strips lots already exist.
- 4. The proposed subdivision will be consistent with the existing strip lots in the area and will not adversely affect nearby uses or property values.
- 5. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
- 6. The proposed subdivision will not adversely affect traffic on area roadways.
- 7. Because of the small size of the subdivision and because it will not require a formal homeowners' association, a waiver from the 20-foot buffer requirements is appropriate.
- 8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 2 additional lots within the subdivision.
 - B. All entrances shall comply with all of DelDOT's requirements.
 - C. The Developer shall comply with all stormwater management requirements of the Sussex Conservation District and DNREC regarding the development of these lots. Also, prior to any construction of any lot, the owner shall complete and file an "Application for Standard Plan Approval for Residential Construction" with the Sussex Conservation District.
 - D. The Final Site Plan shall be subject to the review and approval of Sussex County Planning and Zoning Commission.

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

2018-29 Charles and Lauralynn Westwood

A standard subdivision to divide 5.00 acres +/- into 3 single family lots with residual to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the north side of Fitzgeralds Road, approximately 221 ft. west of Calhoun Road. Tax Parcel: 130-6.00-55.01. Zoning District: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a subdivision plan, and exhibit booklet, comments from the Sussex Conservation District, results from Service Level Evaluation, Sussex County Utility Planning Division, and an approved Soil Feasibility Study.

The Commission found that Mr. David Hutt, Attorney with Morris, James, Wilson, Halbrook, and Bryan, LLP, Charles and Lauralynn Westwood, owners were present on behalf of the application; that Mr. Hutt stated he did submit an exhibit booklet; that the proposed subdivision is for three lots with a residual; that largely part of the area is zoned AR-1 with some C-1 Zoning across the street; that the residual lot consists of a house with a pasture for horses; that the applicants intend to use the three lots for their children; that Lot 3 is located in wetlands and the wetlands would not be impacted; that each lot would have its own well and septic system; that lots two and three would use a shared access; that they did request a waiver of the 20-foot forest landscape buffer; that there have been other lots subdivided off this parcel creating a major subdivision; that they are waiting on the letter of no objection from DelDOT and have other agencies approvals; and that the Applicant has spoken with their neighbors and have obtained seven letters in support.

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

Following the conclusion of the public hearings, the Commission further considered this application.

Mr. Hopkins moved that the Commission grant Preliminary Approval for Subdivision 2018-29 for Charles and Lauralynn Westwood, based upon the record made during the public hearing and for the following reasons:

- 1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
- 2. The land is zoned AR-1 which permits low density single family residential development.
- 3. This subdivision is just creating three strip lots along Fitzgerald Road where a mixture of agricultural, commercial and residential uses exist between Route 113 and North Union Church Road.
- 4. The proposed subdivision will not adversely affect nearby uses or property values.
- 5. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
- 6. The proposed subdivision will not adversely affect traffic on area roadways.

- 7. The proposed subdivision complies with the requirements of the Subdivision Code and the Applicant has favorably addressed the requirements of Section 99-9C of the Subdivision Code.
- 8. Because of the small size of this subdivision and because it will not require a formal homeowners' association, a waiver from the 20-foot buffer requirements is appropriate.
- 9. This preliminary approval is subject to the following conditions;
 - A. There shall be no more than 3 lots in addition to the residential lot within the subdivision.
 - B. All entrances shall comply with all of DelDOT's requirements.
 - C. The deed to Lot 3 shall contain the Wetlands Notice required by Sussex County Code.
 - D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

Additional Business

The Commission recognized Mr. Hudson for his service on the Planning Commission; that Mr. Joe Conaway stated Mr. Hudson was a good Commissioner for two years; that he wished Mr. Hudson luck; that the two years of his experience would travel well with him; that his two years on the Commission shows in his decisions that he was fair an enforced the Ordinances as they were written; that he made some unpopular decisions; that it is the Commission's loss and the Council's gain; that Mr. Robertson stated he has enjoyed working with Mr. Hudson and it has been a pleasure; that Mr. Wheatley stated it has been a pleasure working with Mr. Hudson; that Ms. Stevenson stated that she appreciated working with Mr. Hudson; that she appreciated his take on so many different areas in Sussex County; that Ms. Wingate stated it has been a great pleasure working with Mr. Hudson; that she looks forward to him being on the Council and he is a great friend; that Mr. Hudson stated it has been a real sincere pleasure to serve everyone and the staff has been great; that Mr. Wheatley's leadership has been awesome; and that Mr. Hudson thanked everyone for their time, guidance and leadership.

Meeting adjourned at 7:51 p.m.

From: Dan McGreevy dmcgreevy@d2organization.com &

Subject: FW: New Road - Byways Date: November 29, 2018 at 11:36 AM

To: Gail Van Gilder gvanglider@comcast.net, Jim Fuqua jimf@fwsslaw.com, Jason Palkewicz jpalkewicz@solutionsipem.com



Gail,

On behalf of D2 Organization and New Road Ventures DE, LLC I would like to thank you for your tireless efforts in creating a masterful New Road corridor plan. The Historic Lewes Byway Committee is in very good hands.

After several months of diligence from all parties involved I believe that collectively we have substantially defined a scope of work that is as detailed as we can achieve at this stage of the development process. Once we obtain a Preliminary Approval from Sussex County Planning and Zoning we will begin the detailed engineering design work in preparation for submitting construction plans to the relevant local and state agencies. At that time we are committed to engaging with you and Jim Klein to finalize the New Road Landscaping Plans.

The product of our work to date is defined by the following three attached documents and the balance of this email:

- 1. Jim Klein email of November 7, 2018 at 5:30PM with subject "Re: Tower Hill"
- The attachment to that "Re: Tower Hill" entitled "towerhill_landscape_eastsidecommentsJK110718.pdf"
- 3. The Frank Kea landscape plan entitled "Tower Hill Landscape-Frank Kea"

The verbiage in Item 1) represents the general guidelines that we have agreed to apply to the landscaping plans for the New Road frontage of Tower Hill. Items 2) and 3) represent two proposed versions of those landscape plans. We here at D2 and New Road Ventures DE, LLC are committed to applying the concepts in Item 1) to the proposed plans in Items 2) and 3) to ultimately produce a Final New Road Landscaping Plan that is mutually agreeable to both parties. We will submit those plans to Sussex County and DelDOT (if required) for plan approval, and then install and maintain the landscaping in accordance with applicable regulations and standards of installation and maintenance. We will further commit to obligate the HOA for Tower Hill to perpetually maintain the installed landscaping.

- Landscaping will be provided and installed by New Road Ventures DE, LLC and/or its assigns during the next planting season following the installation of infrastructure immediately adject to or part of the area of landscaping.
- New Road Ventures DE, LLC and/or its assigns will notify Historic Lewes Byways Committee prior to submitting Final Landscape Plans to Sussex County
- The multi modal path shall be designed to meander substantially as shown on the attached landscape plans
- At the time of planting:
- 1/3 trees should be a minimum of three (3) inches caliper and twelve (12) feet in height;
- 2/3 trees shall be a minimum of one (1) to one and one-half (1-1/2) caliper and six feet in height.
- all evergreens shall have a minimum of two (2) inches caliper and six (6) feet in height;
- 1/3 shrubs shall be a minimum of five 5) five gallon containers
- 2/3 shrubs shall be a minimum of one (1) gallon containers with premium plant quality

(#1P)

A specific reference to this agreement shall be included in the Conditions of Approval presented to Planning and Zoning on behalf of New Road Ventures DE, LLC. 1. The overall design of the landscape plan is intended to screen the Tower Hill development along its entire frontage on New Rd. to enhance and maintain New Rd as a state designated scenic byway. Native plants suitable for a coastal environment will be used.

The width of buffers are generally 85' on the west side of Lynn Rd and 120' on the east side of Lynn Rd. (distance from New Rd to the back of the lots), subject to changes to the development plan resulting from engineering related constraints.

Outfalls along the stormwater drainage pond fronting on New Rd will be screened from view by placement of trees and landscaping across the pond from them on the side of the pond closest to New Rd.

The HOA shall be responsible for maintaining the landscaping substantially in accordance with the Landscape Plan Design included as a condition of Final Site Plan Review.

Final site plans and landscape plans will be made available to Byway Committee before the P& Z hearing.

The final landscape plan we agree upon after engineering will be proffered by New Road Ventures or its assigns as a condition of final site approval. I will be asking the County to note this on the Tower Hill file.

Thank you again for your commitment and effort.

Sincerely, Dan McGreevy New Road Ventures DE, LLC



