

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 9, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 9, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Brian Butler, and Mr. Scott Collins. Mr. Mears was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Elliott Young – Planner I, and Ms. Ann Lepore – Planner I/Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Motion by Ms. Wingate, seconded by Mr. Collins to approve the Minutes of the October 12, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4 – 0.

PUBLIC COMMENT

The Commission found that no one was present who wished to provide public comment.

OTHER BUSINESS

The Peninsula on the Indian River Bay – Service Road Addition

Revised Site Plan

This is a Revised Site Plan for The Peninsula on the Indian River Bay, a Residential Planned Community (RPC), previously approved development consisting of 1,394 total units as approved under Ordinance No. 2818. Specifically, this revision is to allow for the construction of a Service Road to be utilized by delivery trucks and other service vehicles that are unable to negotiate the current entrance to the community. The service road will connect to the south side of Trinity Road (S.C.R. 299A), parallel with and adjacent to the existing entrance to the Peninsula and within the Open Space/Common Area provided as part of Still Waters Phase 11 of the Peninsula development. Still Waters, Phase 11 was provided Final Site Plan approval by the Commission at their meeting of Thursday, June 9th, 2022. The Applicant has received DelDOT's Preliminary approval for the Entrance Plan as well as approval from the Sussex County Engineering Department and State Fire Marshal's Office. The Revised Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval for the RPC. Zoning District: MR-RPC (Medium Density Residential, Residential Planned Community.) Tax Parcel: p/o 234-30.00-10.00. Staff are in receipt of all agency approvals. Should the Commission desire to act favorably on this request, Staff are requesting that any final approvals be subject to the receipt of the DelDOT Entrance Permit for the improvements as well as an updated Master Plan showing the new Service Road.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Revised Site Plan. Motion carried 4-0.

(2021-29) Deer Creek

Final Subdivision Plan & Landscape Plan

This is a Final Subdivision Plan and Landscape Plan for the Deer Creek Subdivision, a standard subdivision consisting of seventy-nine (79) single-family lots, private roads, stormwater management facilities, open space, and a proposed forested buffer to consist of existing woodland and vegetation.

The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, July 28th, 2022, subject to fifteen (15) Conditions. The property is located on the north side of Staytonville Road (S.C.R. 224), at the northwest corner of the intersection of Stayton Ville Road (S.C.R. 224) and DuPont Boulevard (Route 113). The Final Subdivision Plan and Landscape Plan comply with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 230-19.00-27.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals except the Sussex County Engineering Department. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of approval from the Sussex County Engineering Department and any further requirements that may be imposed by that Department.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan and Landscape Plan as preliminary, with final approval to be given by the staff subject to the receipt of approval from the Sussex County Engineering Department, as well as another further requirement imposed by the Sussex County Engineering Department, and all other agency approvals. Motion carried 4-0.

(2021-30) Independence Phase 13

Final Subdivision Plan

This is a Final Subdivision Plan for the Independence Phase 13 Subdivision, a cluster subdivision consisting of thirty-six (36) single-family lots, private roads, stormwater management facilities, sidewalks, open space, and existing and proposed forested buffers. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, May 26th, 2022, subject to seventeen (17) Conditions. Staff note that the plan proposes the revision of an existing Phase within the Independence subdivision. Specifically, the existing planted buffer will need to be shifted in order to allow for a storm drainpipe to run through the existing Phase. The Planning and Zoning Office has received a no-objection letter from the Independence HOA in reference to shifting the buffer to allow for the drainpipe to be installed. The property is located on the north side of Harmons Hill Road (S.C.R. 302), approximately 0.49-mile(s) east of the intersection of Harmons Hill Road, Zoar Road (S.C.R. 48), and Hollyville Road (S.C.R. 290). The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning District: AR-1 (Agricultural Residential District). Tax Parcels: 234-16.00-7.01, 7.07, & 7.08. Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Final Subdivision Plan as a final. Motion carried 4-0.

(2021-22) Woods at Burtons Pond Extended

Final Subdivision Plan

This is a Final Subdivision Plan for the Woods at Burtons Pond Extended Subdivision, a cluster subdivision consisting of nineteen (19) single-family lots, a private road, stormwater management, sidewalks, open space, and forested buffers. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, April 14th, 2022, subject to eighteen (18) Conditions. The property is located on the north side and south sides of Wellspring Avenue immediately south of the existing Woods at Burtons Pond Subdivision (2007-29) which was approved by the Planning & Zoning Commission at their meeting of Thursday, June 9th, 2016. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning District: AR-1 (Agricultural Residential District). Tax Parcel: 234-11.00-72.04. Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision Plan as a final. Motion carried 4-0.

S-23-39 Bridgeville Warehouse

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of eight (8) proposed 9,750-square-foot warehouses and other site improvements. Staff would like to note that the adjoining parcel to the south has the same ownership as the subject parcel. This Plan proposes to have a stormwater management system that encroaches onto Parcel 131-19.00-5.00, which is under the same ownership as Parcel 4.00. The Parcel also proposes access through a 35-foot ingress/egress access easement located on the west side of Sussex Highway (Route 13). A shared use and maintenance agreement has been included in the General Notes section (Note 13) of the Preliminary Site Plan. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: CR-1 (Commercial Residential District). Tax Parcels: 131-19.00-4.00 & 5.00. Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approval. Motion carried 4-0.

S-23-47 Sussex CSG2 Solar, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a solar array system and other site improvements. At their meeting of Thursday, May 25th, 2023, the Planning and Zoning Commission approved Conditional Use No. 2353 through Ordinance No. 2950. Staff would like to note that due to an access encroachment from adjoining parcels on the southwestern side of subject Parcel 26.00, the Applicant cannot accommodate the 25-foot landscaped buffer requirement for approximately 180 linear feet towards the adjoining property line of Parcels 20.00 & 26.00. Otherwise, the Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District) & C-1 (General Commercial District). Tax Parcels: 433-6.00-18.00, 20.00 & 26.00. Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

S-23-48 Coastal One Properties

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 7,400-square-foot commercial structure with multiple units intended for leasing purposes. Staff would like to note that there is an existing 118,276 square foot +/- block building on the parcel in addition to the proposed structure. The parcel is located on the north side of Coastal Highway (Route 1) and accessed through an existing private lane, known as Lighthouse Plaza Boulevard. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-13.00-325.33. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

Langrell Lot Line Adjustment & Consolidation Plan

Lot Line Adjustment & Consolidation Plan

This is a Lot Line Adjustment and Consolidation Plan for the existing Langrell Major Subdivision and an existing Borrow Pit. The Langrell Major Subdivision was first recorded with the County on June 27, 1974, and the existing borrow pit was approved by the County Council at their meeting of Tuesday, June 8th, 2010, through Ordinance No. 2122. This Plan proposes for existing Lots 1 and 2 to be consolidated into Parcel 53.00, as well as for the existing “road frontage” property lines to be relocated to encompass a portion of what used to be designated on the approved Plans as “Louise Street,” a private street. This improvement will give the new Parcel frontage and access off of Mary Road, a private street within the Langrell Subdivision. The Lot Line Adjustment & Consolidation Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 133-6.00-53.00, 189.00, 190.00 & 240.00. Zoning: AR-1 (Agricultural Residential District). No agency approvals are required. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve of the Lot Line Adjustment & Consolidation Plan. Motion carried 4-0.

Lands of ML Joseph Heirs Farm Account, LLC

Minor Subdivision Plan off of a 60-ft Easement

This is a Minor Subdivision Plan for the creation of one (1) Lot plus the residual lands. Proposed Lot 1 will consist of 7.00 acres +/- and the Residual Lands will contain 30.29 acres +/- . The parcel is located on the northwest side of East Piney Grove Road (S.C.R 329). The proposed Lot and the residual lands are to be served by a sixty (60) foot wide ingress/egress easement with a shared maintenance agreement. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 133-11.00-1.00. Staff are in receipt of all agency approvals. Therefore, the Plan is eligible for both preliminary and final approvals.

Motion by Ms. Wingate, seconded by Mr. Butler and carried unanimously to approve the Minor Subdivision Plan off a 60 ft. easement. Motion carried 4-0.

Lands of Robert & Carla Naumann

Minor Subdivision Plan off of a 50-ft. Easement

This is a Minor Subdivision Plan for the subdivision of a 5.05-acre parcel into two (2) proposed lots including residual land. Proposed Lot 1 will consist of 1.36 acres +/- and the residual lands will contain 3.67 acres +/- . Proposed Lot 1 shall retain access from the south side of Deer Forest Road (S.C.R. 565), while the residual lands will have access through a proposed 50-foot ingress/egress access easement also located on the south side of Deer Forest Road. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning District: AR-1 (Agricultural Residential District). Tax Parcel: 135-5.00-100.02. Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals and any comments from the staff review letter dated September 20, 2023.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a 50 ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals, and any comments from the staff review letter dated September 20, 2023. Motion carried 4-0.

Lands of Glen R. Thompson

Minor Subdivision Plan off of a 50-ft. Easement

This is a Minor Subdivision Plan for the subdivision of an 8.86-acre parcel into one (1) Lot plus the residual lands with access off a 30-foot ingress/egress access easement. Proposed "Lot 2" will consist of 1.64 acres +/- and the residual lands will contain 8.80 acres +/- . A shared-use maintenance agreement has been established for the use and maintenance of the shared access road. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. The Parcel is located on the south side of Conleys Chapel Road (S.C.R. 280B), approximately 500-ft. east of Beaver Dam Road (S.C.R. 285). Tax Parcel: 234-11.00-77.00. Zoning: MR (Medium-Density Residential District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a 50 ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

Ms. Wingate stated she was not present at the October 12, 2023, Planning & Zoning Commission meeting, however, she did view the public hearings online, reviewed all submitted documents, and therefore was prepared and eligible to make motions on the following Applications.

C/Z 1996 McKee Builders, 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 CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS. The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365). 911 Address: 34428 & 34434 Central Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

The Commission discussed the Application which had been deferred since October 26, 2023.

Mr. Collins moved that the Commission recommend approval of C/Z 1996 McKee Builders, LLC for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This Application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide medium-density housing in an area that is expected to become urban in character and where central water and sewer are available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available.
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. This location is appropriate for MR Zoning. The properties to the west and across from this one are zoned GR with approved multi-family developments. There is also a 5.6-acre parcel across Lizzard Hill Road from this site that permits a wide variety of commercial uses and multi-family residential development with a density of up to 12 units per acre. This property is also in close proximity to the Town of Ocean View. This rezoning is consistent with other zoning and land uses in the area.

5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area is a “Growth Area”, and MR Zoning is appropriate in this Area according to the Plan.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1996 McKee Builders, LLC for the reasons stated in the motion. Motion carried 4-0.

Ms. Wingate stated she was not in attendance at the Planning & Zoning Commission meeting of October 26, 2023; however, she did listen to the public hearings online and reviewed all submitted documentation and therefore was eligible to vote.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2402 McKee Builders, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS. The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365). 911 Address: 34428 & 34434 Central Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

The Commission discussed the Application which had been deferred since October 26, 2023.

Mr. Collins moved that the Commission recommend approval of C/U 2402 McKee Builders, LLC for 174 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. This site is located along Central Avenue, where other residential and commercial properties were developed, including other GR, MR, and C-1 zoning and development. The site is also in close proximity to the Town of Ocean View.
3. A satisfactory Environmental Assessment and Public Facilities Evaluation Report was submitted by the Applicant and is part of the record for this Application.
4. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
5. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
6. No parties appeared in opposition to this Application and there is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.

7. Non-tidal wetland buffers will be provided and approximately 97% of the woods on the site will be permanently preserved. Also, approximately 29.78 acres or 58.1% of the site will remain as open space.
8. All entrance and road improvements will be constructed as directed by DelDOT.
9. The project will be served by central water and central sewer.
10. This recommendation is subject to the following conditions:
 - A. There shall be no more than 174 Units within the development.
 - B. Approximately 29.78 acres or 58.1% of the site shall remain as open space.
 - C. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - D. All recreational amenities including the pool, deck, clubhouse, and dog park shall be completed in accordance with the Sussex County Zoning Code.
 - E. Central sewer shall be provided to the development. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Approximately 97% of the existing woodlands on the site shall be preserved. These areas shall be marked on the Final Site Plan clearly as "Non-Disturbance Areas" on the site itself.
 - H. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - I. Interior street design shall comply with or exceed Sussex County standards.
 - J. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Department.
 - K. The developer shall consult with the local school district's transportation manager to determine if a school bus stop is necessary. If it is, the location of the bus stop shall be shown on the Final Site Plan.
 - L. Construction, site work, and deliveries shall only occur on the site between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall identify all "Limits of Disturbance" within the site and these "Limits of Disturbance" shall be clearly marked on the site itself. The landscape plan shall also include a planting schedule for all buffer areas.
 - N. The Applicant shall form a Homeowners or Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
 - O. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - P. The recorded Final Site Plan and recorded condominium documents (including the Declaration Plan) shall state that hunting activities exist on nearby properties.
 - Q. There is a Tax Ditch with Tax Ditch Easements that runs through this site. The developer shall verify that it is in compliance with all existing or modified Tax Ditch easements and

other requirements.

- R. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2402 McKee Builders, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PUBLIC HEARINGS

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

In relation to the following four Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *“Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications.”*

C/U 2404 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS. The property is lying on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-69.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Exhibit Booklet, the Applicant’s Conceptual Site Plan, the DelDOT Service Level Evaluation Response letter, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse advised the Commission that one letter of support had been submitted for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group. Mr. Fuqua requested that a portion of this presentation be incorporated into the following three Applications, as they share the same Applicant.

Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a

community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2404 Elk Development LLC, is referred to as the "Thorogoods A" site; that in addition to the information already provided, the parcel is located on the north side of Thorogoods Rd.; that the site contains 20.7 acres; that approximately 16 acres of the total 20.7 acres will be leased for the use of a community solar facility; that the land is owned by SB Cordrey Farms, LLC; that the site borders the existing manufactured home community of Holiday Acres to the east; that the site is adjacent to agricultural lands located to the north; that to the west is the location of the Conrail

Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad track are existing industrial uses, being the location of Dagsboro Materials, River Asphalt, and Thorogoods Concrete; that directly across from the industrial site, is the 30 acre Cordrey family farm parcel; that the Commission recently recommended approval for a solar facility on that property on September 14, 2023, as C/U 2380; that the site has been in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Developing Area, being a Growth Area according to the Future Land Use Map of the Comprehensive Plan; that lands located to the west and the north of the site are zoned heavy industrial; that there was a revised Site Plan submitted with the last exhibit; that access from the site will be provided from Thorogoods Rd.; that the access would be a 16 ft. wide gravel drive to the turn around area to be located adjacent to a 25' x 15' solar equipment pad; that the solar arrays would be a minimum of 100 ft. from Thorogoods Rd.; that the panels would be a minimum of 50 ft. from the property lines on the north and west; that the panels would be located approximately 100 ft. from the property lines on the east, adjacent to Holiday Acres; that the solar panels would be located a minimum of 200 ft. from any dwelling located within the Holiday Acres community; that there would be a 25 ft. landscape buffer along Thorogoods Rd. and along the agricultural lands along the north; that the landscape buffer would be located along the road; that the eastern boundary is already wooded and would remain as an existing wooded buffer, therefore no landscaping is proposed along the railroad tracks or the adjacent industrial uses to the west; that all buffer areas are shown on the Site Plan, which are referred to in the proposed Conditions of Approval, and it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 700 residential households.

Ms. Wingate questioned where the inverter is proposed to be placed on the site.

Mr. Fuqua stated that the inverter would be placed on the pad area located along the access road, which is located on the opposite side of where the homes are located, and the small hum of the inverter would probably not be heard over the noise generated by the adjacent industrial uses and the railroad.

Mr. Collins questioned if there would be a landscape buffer provided between the project and the mobile home community.

Mr. Fuqua stated yes that the landscape buffer would be provided by an existing wooded buffer that is proposed to remain as is.

The Commission found that no one wished to speak in support of or in opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved that the Commission recommend approval of C/U 2404 Elk Development, LLC for a solar array in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 16.32 acres of a larger 20.57-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which

encourages the use of renewable energy options, such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.

4. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses. It is near another solar array Conditional Use that recently received a recommendation of approval. The site will have access via Thorogoods Road. The land is also designated as being within the Developing Area, according to Sussex County's Future Land Use Map. Although the site is located next to an existing residential development, that development is screened by existing vegetation, plus the new buffering and separation that will be required the this use.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed Conditional Use would have a "Diminutive" impact on traffic.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. The existing vegetation, located next to the residential properties shall remain undisturbed, in addition to the fencing, buffering, and separation requirements of Ordinance No. 2920. All required fencing shall require interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers, similar equipment, or structures, shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated by Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2404 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2405 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS. The property is lying on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-187.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the property's legal description, the DelDOT Service Level Evaluation Response, the Staff Analysis, the Applicant's Exhibits, and the Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission that two mail returns and no comment letters were received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2405 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters;

that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2405 Elk Development LLC, is referred to as the "Thorogoods B" site; that the site is located on the south side of Thorogoods Rd.; that it is directly across the road from Thorogoods A Site, related to C/U 2404; that the subject site is comprised of approximately 22.9 acres; that approximately 11 acres of the total 22.9 acres would be leased; that the land is currently owned by SB Cordrey Farm, LLC; that on the east and south of the site there are existing woods; that there are some non-tidal wetlands located within the wooded area and part of the property located on the opposite side of the woodlands; that to the west the site is located adjacent to the Conrail Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad tracks is the location of C/U 2380, which was the community solar application the Commission recommended for approval in September 2023; that the land is currently in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Coastal Area according to the Future Land Use Map of the Comprehensive Plan; that the Coastal Area is considered a Growth Area; that currently there is an old chicken house located on the property; that the chicken house is proposed to be removed; that the site's access will be from Thorogoods Rd.; that the access would be provided by a 16 ft. wide gravel drive, with a turn around located next to a 15' x 25' equipment pad; that the closest solar array from Thorogoods Rd. would be located 133 ft. from the road; that on the east and the south, the security fence would be located approximately 75 ft. from the existing wood line located on the site; that in the southwest corner of the site the closest solar array would be 62 ft. from the property line; that to the west, the closest array is located 75 ft. from the property line adjacent to the railroad; that there would be a 25 ft. wide landscape buffer, which would be set back approximately 100 ft. from Thorogoods Rd.; that no buffer is proposed along the other sides of the site, as there is existing woods proposed to remain, and along the areas adjacent to the railroad tracks and the Delaware Power & Light Electrical Powerline easement located to the west; that the buffers will be as reflected on the Site Plan; that no landscape buffers are proposed to the east and south due to the existing trees; that it is anticipated

that the facility would generate electrical power to serve the annual needs of approximately 410 residential households and he stated he had already submitted the Application's proposed Conditions of Approval for consideration.

The Commission found that no one wished to speak in support of or in opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved that the Commission recommend approval of C/U 2405 Elk Development, LLC for a solar array in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 11.2 acres of a larger 22.97-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses located diagonally across these tracks from this site. It is also near another solar array that recently received a recommendation of approval. The site will have access via Thorogoods Road. The closest solar array to Thorogoods Road will be more than 100 feet from the road. A landscape buffer will also be installed along Thorogoods Road. The land is also designated as being within the Coastal Area, according to Sussex County's Future Land Use Map.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed Conditional Use would have a "Diminutive" impact on traffic.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar

- array, as well as the remaining acreage that is not part of the Conditional Use.
- C. A landscape buffer shall be installed along Thorogoods Road, as shown on the Applicant's Site Plan presented during the public hearing. In addition, all required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers, similar equipment, or structures, shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated by Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2405 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2447 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS. The properties are lying on the east side of River Road (S.C.R. 490), at the intersection of Morgan Branch Road and River Road (S.C.R. 490). 911 Addresses: N/A Tax Map Parcels: 132-1.00-5.00 (p/o) & 132-6.00-78.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibits, the DelDOT Service Level Evaluation Response, the Staff Analysis, and Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission that one mail return and no comment letters had been received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2447 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the

current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2447 Elk Development LLC, is referred to as the "Morgan Branch" application; that the site is located south of Morgan Branch Dr., which is just off River Rd., west of Blades; that the site is comprised of approximately 51 acres; that approximately 40.7 acres are

to be leased by the Applicant for a solar facility; that the land to the east and the south are mostly agricultural lands or are wooded; that to the west is the Hill N Dale subdivision; that the land to be leased is made up of agricultural land and woodlands; that the site is zoned AR-1 (Agricultural Residential); that the site is located within the Low Density area under the Future Land Use Map; that lands adjacent to the site are also located within the Low Density area; that access to the site will be from Morgan Branch Rd.; that the access would be a 16 ft. gravel drive, with a turn around next to two 8' x 20' equipment pads; that to the north and the east, the closest solar array would be 70.4 ft. from the property line; that to the west, adjacent to the Hill N Dale community, the closest solar array would be approximately 228 ft. from the closest dwelling in Hill N Dale; that there would be either a 25 ft. wide landscape buffer provided or an existing wooded buffer around the entire solar facility area; that to the north, there will be a new 25 ft. wide landscape buffer or it will consist of 25 ft. wide landscape of existing woodlands; that on the east, there will be a minimum 25 ft. wide landscape buffer in there area where there is currently existing field; that in this area, there is a small area of woods to be removed; that there will be a 50 ft. buffer of the existing trees to remain; that where there is currently open farm field, a 25 ft. landscape buffer will be placed in the areas where the woods exist, resulting in a total of a 50 ft. wide buffer comprised of both planted landscape and existing woodlands; that to the south, the 25 ft. landscape buffer would remain; that the proposed buffers are shown on the Site Plan; that the facility is anticipated to generate electrical power for the annual needs of approximately 850 residential customers, and proposed Conditions of Approval has previously been submitted for the Commission's consideration.

Mr. Collins questioned if the existing trees are proposed to remain for the entirety of the project.

Mr. Fuqua stated he assumed that would be made as a Condition of Approval for the project and would be reflected as such on the Final Site Plan.

The Commission found that one person spoke in support of, and people wished to speak in opposition to the Application.

Ms. Cathleen Simpler spoke in support of the Application. Ms. Simpler stated her father originally purchased the land 50 years ago; that both of her parents are well into their 80s and in declining health; that she and her brother currently care for them; that the farm historically was used to grow corn; that the farm historically was leased out; that their goal is to utilize the land to the maximum potential, while still keeping the land within the family; that they had considered subdivision of the property, however it was not feasible; that the use for solar will create a sustainable, long term revenue to help provide for their needs and she hopes the project will be an important part of Seaford for the next 40 years.

Ms. Billie Davenport spoke in opposition to the Application on behalf of herself and her husband, Mr. Eric Davenport, who was also in attendance. Ms. Davenport spoke with concerns regarding the negative impact the solar arrays will have on the beauty of the area, which is something the adjacent property owners have sought, the negative impacts on the wildlife, trees, the ecosystem, and the Nanticoke River, the negative impact on the health of adjacent property owners, as stated by the World Health Organization, the distance of the solar panels from residential homes and the negative impact from the noise and light generated by the project.

Mr. John Kisser spoke in opposition to the Application with concerns regarding the submitted Site Plan, the lack of buffering shown on the Site Plan, the negative impacts from electromagnetic radiation created by solar farms, negative impacts to native flora and fauna, filtering, drinking water, preventing erosion, preventing scenic and/or recreational benefits; that he felt solar projects should be regulated to commercial areas, and he was concerned about destruction of forest.

Mr. Gregory Fisher spoke in opposition to the Application with concerns regarding the public notice procedure for the Application, the proposed landscape buffer and the maintenance of the buffer, flooding and stormwater runoff, and the noise created by the inverter, which is to be located 150 ft from his home.

Mr. Frederick Cox, President of the Hill N Dale Homeowners Association spoke in opposition to the Application with concerns regarding the public notice procedure, the proposed buffer zones, the proposed fencing, and the ability to maintain the value of the current resident's property.

Mr. Ted (Edward) Hastings, with Becker Morgan group stated typically with stormwater management, when converting from a farm field to a solar array, the land is no longer to be used for crops; that typically a meadow mix is placed underneath, which changes the curve number; that meadow mixes reduces the curve number, which reduces the runoff from the site; that on the subject site, there are woods, which create an opposite effect; that there will be a balance on the site; that when this happens, they are required to follow the Sussex Conservation District's guidelines; that they are required to meet or reduce the runoff rates from the site pre-development to post-development; that the percentage of impervious surface is objective; that underneath the array will be a meadow; that one could argue the solar array is not impervious at all, only the post underneath it; that for stormwater management purposes, they are required to treat the solar array as impervious surface; that if they are unable to meet the runoff rates leaving the site, or have an increased amount of runoff, they will be required to place a facility on the site for stormwater management; that their requirements are held to all storm events, including a 100 Year Storm event, and there stormwater management is not required to make the current conditions better, however, it is required not to make current conditions worse.

Mr. Young questioned if there would be access to the back end of the site, nearest to where the solar array would be placed, in the case an urgent situation arose, as he did not see provided access to the second parcel.

Mr. Ted (Edward) Hastings stated typically access is provided to the equipment on the site; that this is similar to a landscaper who would come to the site to maintain the grass; that they would use the access to the site, and use a small maintenance vehicle with adequate tires to drive throughout the whole site without issue; that there will not be a defined road per say, but there will be access to the array by the provided access, and there are no inverters located in that area, only solar array panels.

Mr. Eric Davenport spoke in opposition to the Application with concerns regarding what a safe distance from a solar array would be; that a safe distance is 1.2 miles; that he was concerned about the EMF (Electromagnetic Frequency Radiation) from a solar farm of the proposed size; that he was concerned of the negative impact to the view and the length of the lease.

Mr. Fuqua stated the standard lease with the Applicant is 20 years, with two potential 10-year extensions, resulting in a 40-year maximum lease, which is a standard time period for the industry; that he recognizes the confusion caused often by the terminology used; that he is aware of the information provided on the internet by the World Health Organization, which had been mentioned in previous solar applications; the large scale is a subjective term; that the size of the facility is not based on the average, it is based on the mega wattage, and how much energy is being produced, which determines the scale size; when the State of Delaware enacted Community Solar, they restricted the energy production, and he stated he had scientific material which he requested to submit for the record, which addresses the radiation and the electric current concerns.

Mr. Bryce Widdowson spoke in opposition to the Application with concerns regarding who would benefit from the produced energy.

Mr. Fuqua stated that the State of Delaware initiated as part of a bigger picture, getting all fossil fuels to provide more sustainable energy; that the law passed two years ago, allowing community systems, which are restricted on how large they can be, to be permitted as a subscription program that residents, businesses, and other utility consumer entities can subscribe to; that by doing so, the community solar project can benefit by providing a reduced electrical bill as they would be part of the community solar system; that the project would provide of a method of receiving the benefits of solar panels, without actually having solar panels on their roof; that subscribers would not pay, as it is free to subscribe; that only a limited amount of people can subscribe; and additionally, there is a requirement by law that 15% if the subscriptions must be provided to moderate or lower-income residents, which was an incentive when the program was established.

Mr. Seth Shafer with Pivot Energy stated that along with developing the property, they own and operate the facilities; that they have their own subscription in house; that from there they have third parties which help them obtain subscribers; that subscribers are not required to be relatively close to the project; that residents would only be required to be within the DP& L system; that he would be happy to contact the gentleman from the Homeowners Association of Hill N Dale to discuss this; that this application, as well as the following application, were scheduled earlier than anticipated; that they typically would have already held a community outreach meeting to address of some of these questions and concerns prior to the scheduled public hearing; that there local office is outside of Baltimore, Maryland; that they have constructed several projects in Maryland; that this would be their first project in Delaware and he believed there is typically a 10% discount associated with a subscription.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2447 Elk Development, LLC. Motion by Ms. Wingate to defer for further consideration, leaving the record open to receive information from the Applicant, in the form of written comment, regarding the safety and operation of the pending solar array, which is to be submitted by the close of business on Friday, November 17, 2023; that the record subsequently being left open for 15 calendar days for the submission of written public comment regarding the submitted information, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/U 2456 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 67.72 ACRES, MORE OR LESS. The property is lying on the north side of Oneals Road (S.C.R. 485), approximately 0.26 mile southwest of Seaford Road (Rt. 13A). 911 Address: 28270 Oneals Road, Seaford. Tax Map Parcel: 132-6.00-92.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the property's legal description, the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Analysis, the Applicant's Exhibit Booklets, and the Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2405 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of

renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2456 Elk Development LLC, is referred to as the “O’Neal’s Road” Application; that that site is comprised of 67 acres; that the site is located on the northside of O’Neals Rd.; that the site is located south of Blades, being in closer proximity to Laurel; that approximately 35 acres of the site would be leased for the solar facility; that the land is currently owned by Javed Farm, LLC; that the leased portion of the site borders the new existing chicken houses, located on the southeast portion of the site; that along the eastern boundary is the location of the Conrail Railroad tracks; that to the north of the site is some wooded land and agricultural land; that to the west of the site is the location of the Bioenergy Innovation Center, which recycles organic waste from the poultry industry into renewable energy and nutrient rich compost; that the land to be leased as been in agricultural use; that the site is zoned AR-1 (Agricultural Residential); that the area is located within the Low Density area according to the Future Land Use Map; that the lands to the north and west are also zoned AR-1; that the land to the north and the west are designated within the Industrial Area according to the Future Land Use Map of the Comprehensive Plan; that the site’s access will be from the existing site entrance off O’Neals Rd.; that the access will be a 16 ft. wide gravel drive, which would lead back into the middle of the solar array field, being adjacent to two 15’ x 20’ equipment pads; that the closest solar arrays are set back over 500 ft. from O’Neals Rd. and a minimum of 88 ft. from the closest property line; that there would be a 25 ft. landscape buffer along the southern, eastern and northern boundaries of the solar array area; that the buffer will extend around the northwest corner of the site; that the remaining portion of the western boundary is wooded and would remain as an existing wooded buffer; that the proposed buffers are shown on the Site Plan; that the facility is anticipated to generate electric power to serve the annual needs of almost 900 residential households and proposed Conditions of Approval were submitted for the Commission’s consideration.

The Commission found that no one wished to speak in support of the Application, and one person wished to speak in opposition to the Application.

Mr. James Hoskins spoke in opposition to the Application with concerns regarding the proposed buffers, the potential of the buffers never being installed and the potential negative impacts on his property value.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved that the Commission recommend approval of C/U 2456 Elk Development, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 26 acres of a larger 67-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.

4. The proposed solar array is located adjacent to a railroad, and next to new chicken houses, with woods to the east. It is also next to the BioEnergy site, which recycles poultry waste. The closest array is located at least 500 feet from the county road. The land is also designated as being within the Low-Density Area, according to Sussex County's Future Land Use Map, and there are nearby Industrial Areas according to the map as well.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed Conditional Use would have a "Diminutive" impact on traffic.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All existing wooded buffers shall remain and shall be identified as non-disturbance areas on the Final Site Plan. Additional buffering shall be provided as shown on the Becker Morgan Group Site Plan, dated September 14, 2023, as submitted during the public hearing. In addition, all required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers, similar equipment, or structures, shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated by Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2456 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

ADDITIONAL BUSINESS

The Commission discussed the Memorandum of Understanding with the State Planning Office.

Meeting adjourned at 5:37 p.m.

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