

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 9, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 9, 2024, at 1:00 p.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 015 24
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Agenda, as presented.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes from January 2, 2024, were approved by consensus.

**Corre-
spondence**

Mr. Moore read correspondence received from Del-Mar-Va Council of Boy Scouts of America thanking Council for their donation. In addition, Mr. Moore read a letter from the Town of Dewey Beach into the record expressing their appreciation for supporting the placement of a Sussex County paramedics station in the new Dewey Beach Town Hall complex.

**Public
Comments**

Public comments were heard:

Mr. John Collier commented about an expansion of the Planning and Zoning Commission specifically in the area represented by the 19968-zip code. He added that he advocates for the development of a mechanism to reduce the influx of development application in the Level 4 state investment strategies. A full copy of his remarks was provided for the record and distributed to the Council Members.

Recognition

Ms. Susan A. Wise was recognition for her retirement.

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Council Meeting/Holiday Schedule

County offices will be closed on Monday, January 15th for the Martin Luther King Jr. Holiday. Offices will reopen on Tuesday, January 16th, at 8:30 a.m. Council will not meet on January 16th. The next regularly scheduled Council meeting will be on Tuesday, January 23rd at 10:00 a.m.

[Attachments to the Administrator's Report are not attached to the minutes.]

**FY23 Year
End
Financial
Report**

Gina Jennings, Finance Director reviewed the Popular Annual Financial Report for fiscal year ended June 30, 2023.

Mrs. Jennings explained that each year an audit is completed, and the annual financial statements are posted on our website.

Mrs. Jennings reported that it is recommended that a document is put together that is more attractive for taxpayers to review and more user friendly. The report provides an introduction that explains where the full annual report can be found as well as the recent financial awards that have been received.

The report provides information about Sussex County Government as well as the government structure. The reports includes a lot of information and statistics. Mrs. Jennings shared information relating to the top employer-types with health care and social services being the top employer in Sussex County. There is a total of 85,044 total employees in Sussex County that includes 919 jobs provided at Delaware Coastal Airport and Business Park. The number of landings at Delaware Coastal Airport and permits issued is also included in the report.

Tax Facts and Statistics are also included showing who pays the most taxes in Sussex County and notes the assessed value of property. It was noted that these figures are based on 1974 assessed values. In addition, there are demographic statistics that show population, personal income, median age, and the unemployment rate.

The report then discusses and shows where the money comes from and where the money goes. A chart is included showing the trends of revenues to expenditures in the governmental funds during the last five fiscal years, excluding other financing sources/uses. Business-Type Funds are included in the report showing water and sewer data.

Included in the report is information about the County's investments as well as capital assets. Mrs. Jennings explained the bottom line showing the

revenues and expenses. It was noted that government has two sets of books, one that has the assets on the books and one that is just cash basis. The report details long-term debt and capital projects and the reassessment project.

Permission to Prepare & Post Notices/ John Ashman, Director of Utility Planning & Design Review presented a request to prepare and post notices for Beaver Dam Road Annexation into the Sussex County Unified Sanitary Sewer District (Millville Area).

Beaver Dam Road Annexation into SCUSSD Mr. Ashman reported that on January 11, 2011, he appeared before County Council to request permission to prepare and post notices for the Beaver Dam Road Expansion of the Millville Sanitary Sewer District. The area included the portion of Beaver Dam Road from Substation Road to Central Avenue, the section of Substation Road from Beaver Dam Road to Central Avenue and the Penn Del Acres Subdivision. On April 20, 2011, the Engineering Department held a Public Meeting at the Millville Town Hall to discuss the proposed service area, estimated costs, the sewer rate structure, construction impacts, the process for connecting to the sewer and a proposed schedule. On June 7, 2011, there was a Public Hearing in council chambers, based on testimony the Engineering Department completed a polling vote and re-appeared before council on July 19, 2011. The vote was deferred until July 26 that which time it was deferred indefinitely based on lack of response from the property owners. In 2015 the subject area again was evaluated, and it was discovered that DelDOT had just paved Beaver Dam Road and there was a 5-year moratorium on any project impacting the roadway. Recently there has been renewed interest in central sewer for the area so the department distributed a new polling letter based on potential change of ownership since the original meeting and hearings. The polling was for a reduced area consisting of (23) properties, of those we received (11) in favor and (3) opposed to the annexation.

M 016 24 Approve Permission to Prepare & Post Notices A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved by the Sussex County Council that the Sussex County Engineering Department, is authorized to prepare and post notices for the Beaver Dam Road Expansion of the Sussex County Unified Sanitary Sewer District Millville Area as presented.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Old Business/CZ1984 Under Old Business, Jamie Whitehouse, Director of Planning and Zoning presented a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED,

Old
Business/
CZ1984
(continued)

SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS”
(properties lying on the north side of Lighthouse Road [Route 54], and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue) (911 Address: N/A) (Tax Map Parcels: 533-20.00-22.00 & 20.00 [p/o]) filed on behalf of Carl M. Freeman Companies.

The County Council held a Public Hearing on the application at the meeting of November 14, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

M 017 24
Adopt
Ordinance
No. 2971/
CZ1984

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2971 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission as follows:

1. This application seeks a change in zone from AR-1 to MR. 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.
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 property is in the vicinity of a variety of residential uses including an existing 26-unit townhouse development. The site is also adjacent to land that is Zoned M (Marine) and B-1 (Neighborhood Business) which has developed with restaurants and other commercial businesses, and it is in close proximity to the Town of Fenwick Island. 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. 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. Significant roadway improvements as recommended by DelDOT will be completed by the Applicant upon the development of this property. These improvements include the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. These improvements will result in improved and safer

traffic control at this intersection.

8. For all of these reasons, MR zoning is appropriate for this site.

**M 017 24
Adopt
Ordinance
No. 2971/
CZ1984
(continued)**

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Mr. Hudson commented that the immediate and surrounding areas are made up of both residential and commercial. Here, DelDOT called for much needed improvements and one of which is the realignment of Route 54 and Bennett Avenue and to signalize that intersection. This will greatly improve traffic flow, there was testimony that no wetlands would be filled or disturbed or encroached upon and this parcel is not within the 500-year flood plain. The density of this project is 2.5 acres in the MR district; 4 units to the acre is allowed. He added that he believes that this is an appropriate use for the property for these reasons and the reasons given by the Planning & Zoning Commission, he voted yes.

**Old
Business/
CU2368**

Under Old Business, Jamie Whitehouse, Director of Planning & Zoning presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (23 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS” (properties lying on the north side of Lighthouse Road [Route 54], and the west side of Bennett Avenue, approximately 200 feet west of Deer Run Road [S.C.R. 388]) (911 Address: N/A) (Tax Map Parcels: 533-20.00-22.00 & 20.00 [p/o]) filed on behalf of Carl M. Freeman Companies.

The County Council held a Public Hearing on the application at the meeting of November 14, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 018 24
Adopt
Ordinance
No. 2972/
CU2368**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2972 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (23 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 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.**

**M 018 24
Adopt
Ordinance
No. 2972/
CU2368
(continued)**

2. This site is located along Route 54, directly in front of the 70-lot subdivision that is also being developed by this Applicant.
3. The property is in the immediate vicinity of other properties with a variety of residential and commercial uses including other MR-Zoned land as well M (Marine) and B-1 (Neighborhood Business) that have developed residentially and with restaurants and other commercial uses. Nearby residential uses include the Fenwick Landing Townhouse development which has a density of 17.4 units per acre. The project is also in close proximity to the City of Fenwick Island. This relatively small multi-family conditional use at approximately 4.3 units per acre is consistent with other zoning and multi-family developments in the area.
4. DelDOT has determined that a new TIS is not required for this site since it already reviewed and commented on the TOA for the adjacent 70 lots plus the more intensive hotel and restaurant use that was proposed for this site. Also, significant roadway improvements will be required by DelDOT including the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. This will result in a safer intersection for current and future residents of the area.
5. 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.
6. 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.
7. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
8. This recommendation is subject to the following conditions:
 - a. There shall be no more than 23 Units within the development.
 - b. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - c. All recreational amenities including the pool, deck, and bathhouse shall be completed within the development on or before the issuance of the 18th Certificate of Occupancy.
 - d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - f. Stormwater management and erosion and sediment control shall be

**M 018 24
Adopt
Ordinance
No. 2972/
CU2368
(continued)**

- 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.
- g. Interior street design shall comply with or exceed Sussex County standards.**
 - h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - i. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and on Saturdays between October 1 and April 30. 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.**
 - j. 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.**
 - k. The Applicant shall form a Homeowners 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.**
 - l. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - m. 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 Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Mr. Hudson commented that it was determined by DelDOT that a TIS was not needed for this site, and they commented on the TOA for the adjacent property. The Army Corps of Engineers determined that there is a 72-foot average buffer with a minimum 50-foot buffer in certain areas of the tidal wetlands. The construction hours noted by the Planning and Zoning Commission shall be between 7:00 a.m. and 6:00 p.m. Monday through Friday with Saturday hours between October 1st and April 30th but no Sunday hours at any time.

**Introduction
of Proposed
Ordinances**

Mrs. Green introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND

Introduction of Proposed Ordinances (continued)

LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRE, MORE OR LESS” filed on behalf of Jason Hignutt.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 2.045 ACRES, MORE OR LESS” filed on behalf of Mark Baull.

Council Members’ Comments

The Proposed Ordinances will be advertised for a Public Hearing.

There were no Council Member comments.

Rules

Mr. Moore read the rules and procedures for public hearings.

**Public Hearing/
CU2404**

A Public Hearing was held on a Proposed Ordinance entitled “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” (property 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) filed on behalf of Elk Development, LLC.

Jamie Whitehouse, Director of Planning & Zoning presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated and subject to the 9 recommended conditions as outlined.

The Council 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. Ted 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

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Hearing/
CU2404
(continued)

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 the standard solar array lease is a 20-year term with two options to extend the lease for additional 10-year periods; 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

Public
Hearing/
CU2404
(continued)

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 tracks 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 was approved as a Conditional Use for a community solar facility by the Council at its meeting on December 12, 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 turnaround 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

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Hearing/
CU2404
(continued)**

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, and it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 700 residential households; that at its meeting on November 9, 2023, the Planning and Zoning Commission recommended approval of the application subject to conditions A-I and the applicant requests approval based on the findings made and the conditions recommended by the Commission.

Mr. Vincent questioned the location of the transformer, and how the value was determined for when it comes time to get the site back to its original condition.

Mr. Rieley questioned who holds the bonds and a discussion about bonds followed.

There were no public comments.

The Public Hearing and the public record were closed.

**M 019 24
Defer
Action/
CU2404**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled “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” for the reasons and conditions given by the Planning & Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2405**

A Public Hearing was held on a Proposed Ordinance entitled “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” (property 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) filed on behalf of Elk Development, LLC.

**Public
Hearing/
CU2405
(continued)**

Jamie Whitehouse, Director of Planning & Zoning presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons stated and subject to the 9 recommended conditions as outlined.

The Council 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. Ted Hastings, with Becker Morgan Group.

Mr. Fuqua requested the 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 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 Council approved in December 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 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 turnaround 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

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Hearing/
CU2405
(continued)**

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 the Planning and Zoning Commission recommended approval at its meeting on November 9, 2023; that the applicant requests approval based on the findings and subject to the conditions given by the Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 020 24
Defer
Action/
CU2405**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled “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” for the reasons and conditions given by the Planning & Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2447**

A Public Hearing was held on a Proposed Ordinance entitled “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” (properties 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) filed on behalf of Elk Development, LLC.

Jamie Whitehouse, Director of Planning & Zoning presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, a motion was made and carried to defer action on the application 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 was to be submitted by

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CU2447
(continued)**

the close of business on Friday, November 17, 2023.

At the Planning & Zoning Commission meeting of January 3, 2024, due to a Commissioner being absent, a motion was made and carried to defer action on the application until the next regularly scheduled meeting. Therefore, there is not a recommendation from the Planning & Zoning Commission.

The Council 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. Ted Hastings, with Becker Morgan Group.

Mr. Fuqua requested the 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 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 turnaround 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 and a half 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 their 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 140 residential customers; that at the Commission hearing, there were some questions raised by area residents regarding

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(continued)**

the safety of solar array facilities; that the Commission requested that the applicant submit written information about the operation and the safety of such facilities; that on November 15, the applicant provided copies of studies to the Planning and Zoning office; that the studies were prepared by the North Carolina State University and the State of Massachusetts; that both of those studies concluded that there were no health or safety impacts from community scale solar facilities and that the public health and safety benefits of installing these facilities are significant; that the County Council enacted an Ordinance regarding the appropriate setbacks for solar array facilities from property lines and nearby homes and all of those requirements are met in this application; that the Commission did create 15-day period in which public comment could be made on the reports that were submitted; that there were no written comments received; that the Commission has not yet made a recommendation.

Mr. Shafer stated that between the Planning Commission meeting and today, in earlier December he sent out roughly 130 mailers using the 200-foot buffer regulations and they hosted a community event at Grotto's Pizza in Seaford; that only 6 people showed up; that the president of the HOA who was present at the last meeting was present during that meeting; that many questions were answered.

Public comments were heard.

Mr. Jon Kissler spoke in opposition of the application; that his property is adjacent to the property in question; that he shares approximately 1,000 feet of property line with the plan; that there were some written comments submitted; that he submitted two comments; that he read the lengthy document that was supplied by the applicant; that he and his wife have some concerns; that the applicant submitted a study from MA that states that there is no data supporting the lower of property values surrounding solar farms, he suggests that it is due to the fact that these facilities are new; that he believes few are near residential properties; that he has seen only a few solar farms in the area; that typically, they are placed away from residential areas; that if you are in the market for a property, you would choose the one that is not next to a solar farm even if it is more expensive he believes; that his main concern is that the development will cause the cutting of over 15 acres of wooded area; that the applicants study strongly discourages this; that "the Department of Energy regulations strongly discourages designating locations that require significant tree cutting because of the important water management, cooling and climate benefits trees provide"; that the Department of Energy regulations encourages designating locations in industrial and commercial districts or on vacant disturbed land; that the cutting of wooded land disrupts wildlife, cooling effect of the wooded area and the watershed of the Nanticoke River area; that the applicants must provide funding to return the land back to its original condition at the end of the lease, he questioned how they would be able to replace

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(continued)**

decade old trees; that he understands the property owners who wants to get the most out of their property; that he would rather have a solar farm there than a residential development; that there should be an alternate to cutting down a large wooded area; that he supports the growth of renewable energy sources; that they should be in commercial areas and not placed in areas that have previously been developed; that they should not be placed where forests will be destroyed.

**M 021 24
Defer Action
CU 2447**

The Public Hearing and public record were closed.

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “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”.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2456**

A Public Hearing was held on a Proposed Ordinance entitled “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” (property 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) filed on behalf of Elk Development, LLC.

Jamie Whitehouse, Director of Planning & Zoning presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 9 recommended conditions as outlined.

The Council 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. Ted Hastings, with Becker Morgan Group.

**Public
Hearing/
CU2456
(continued)**

Mr. Fuqua requested the 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 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 has 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 approximately 886 residential households and at the meeting of the Planning & Zoning Commission on November 9, 2023, they recommended approval subject to conditions A-I; that the applicant requests approval based on those findings and conditions recommended by the Commission.

There were no public comments.

**M 022 24
Defer
Action/
CU2456**

The Public Hearing and public record were closed.

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “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” for the reasons and conditions given by the Planning &

Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 023 24
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to adjourn at 2:32 p.m.

Motion Adopted: 4 Yeas, 1 Absent

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}