

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 7, 2023**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 7, 2023, at 10:00 a.m., in Council Chambers, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>John L. Rieley</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>
<b>Vince Robertson</b>	<b>Assistant County Attorney</b>

**Call to Order**

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

**Mr. Vincent called the meeting to order.**

**M 063 23  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas**

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

**Minutes**

**The minutes from January 31, 2023, were approved by consensus.**

**Corre-  
spondence**

**There was no correspondence.**

**Public  
Comments**

**Public comments were heard, and the following people spoke:**

**Ms. Jill Hicks spoke about the need to amend the Cluster Subdivision Code.**

**Mr. Jeff Simmons spoke about the Sussex County Zoning Code and the Cluster Development Ordinance.**

**Board of  
Assessment  
Review App.**

**Mr. Lawson reported that a reappointment of Mrs. Julie Rigby is needed to the Board of Assessment Review. This board sits in the review of assessment calculations that are done annually.**

**M 064 23**  
**Approve**  
**Board of**  
**Assessment**  
**Review**  
**Appointment**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved that the Sussex County Council reappoints Mrs. Julie Rigby to the Sussex County Board of Assessment Review effectively immediately for a term of five years or until February 2030.**

**Motion Adopted: 5 Yeas**

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

**Adminis-  
trator's  
Report**

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

**1. Project Receiving Substantial Completion**

**Per the attached Engineering Department Fact Sheet, Chase Oaks – Phase 2 (Construction Record) received Substantial Completion on February 2<sup>nd</sup>.**

**2. Council Meeting Schedule**

**A reminder that Council will not meet on Tuesday, February 14<sup>th</sup>. The next regularly scheduled Council meeting will be held on Tuesday, February 21<sup>st</sup>, at 10:00 a.m.**

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

**Permission  
to Prepare  
& Post  
Notices/New-  
dale Acres  
Extension  
Into  
SCUSSD**

**John Ashman, Director of Utility Planning and Design Review presented a request to prepare and post notices for Newdale Acres Extension Annexation into the Sussex County Unified Sanitary Sewer District. The Engineering Department received a request from the owners/developers of parcel 230-31.00-31.00 along Route 113 and adjacent to their existing project of Newdale Acres. The parcel was annexed into the Town of Ellendale; Sussex County provides the sanitary sewer for the Town. The parcel is located in the Tier 2 Area for sewer service. The project will be responsible for System Connection Charges of \$6,600 per EDU based on current rates.**

**M 065 23**  
**Approve**  
**Prepare &**  
**Post Notices/**  
**Newdale**  
**Acres**

**A Motion made by Mrs. Green, seconded by Mr. Schaeffer, be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Newdale Acres Expansion of the Sussex County Unified Sanitary Sewer District to include parcel 230-31.00-31.00 as presented.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;**

**Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**EMS Public Safety Building/CO No. 21** Hans Medlarz, County Engineer presented Change Order No. 21 for EMS Public Safety Building – Project C19-04 for Council’s consideration. Mr. Medlarz reviewed the items that were included in the Change Order.

**M 066 23 Approve CO No. 21/EMS Public Safety Building** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based on the recommendation of the Sussex County Engineering Department, that Change Order No. 21, for Contract C19-04, Sussex County Public Safety Building be approved, for an increase of \$40,127.15.

**Motion Adopted: 5 Yeas**

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

**Public Hearing/CDBG Program** A Public Hearing was held for the 2023 Community Development Block Grant application, to be submitted to the Delaware State Housing Authority. The Community Development Block Grant (CDBG) is a federal grant from the Department of HUD to the Delaware State Housing Authority (DSHA). Kent and Sussex Counties compete for the funding by making application to DSHA.

Brandy Nauman, Director of Sussex County Community Development & Housing, reported that the guidelines dictate the use of the funding. The funding is used mostly for owner-occupied housing rehabilitation. Rehabilitations include roofing, doors, windows, electrical, plumbing upgrades and energy upgrades. In order to qualify, a home must be owner-occupied, primary residence of the owner, low to moderate income household (80% of AMI or below), the home must be insured or insurable, County taxes and utilities must be current. Mrs. Nauman explained that a lien is placed on every property that receives assistance regardless of the age of the beneficiary. For anything less than \$15,000, a five-year, zero percent pre-rated lien is placed on the property, for anything \$15,000 to \$40,000 of funding, a ten-year zero interest pro-rated lien is placed on the property.

Mrs. Nauman reviewed the current income guidelines for program eligibility. Mrs. Nauman reviewed the funding that has been spent and noted that County Council provided an additional \$250,000 to assist with emergency repairs.

Mr. Mike Jones, Rehabilitation Program Coordinator shared what has been completed to date in the current fiscal year. In addition, he discussed contractors as well as the delays and price increases that they are experiencing. Mr. Jones shared pictures of some projects that have been completed.

**Public Hearing/  
CDBG Program  
(continued)**

Mrs. Nauman reviewed what was being completed with the federal dollars that are being received. She noted that individuals with disabilities, those over 65 and low-income households are prioritized.

Mrs. Nauman stated that Sussex County's application will consist of projects in the County in Rural communities and in municipalities. She reported that staff has met with all the municipalities who have asked for the County's assistance to make application to the DSHA, and that the Department has held Public Hearings in all of the municipalities listed and the projects presented represent their requests.

Mrs. Nauman reported that the total program activity cost is \$1.7M; the state has allowed the County to seek \$250,000 in administration which would have to be matched. Therefore, the total program cost would be \$2.3M.

There were no public comments.

The Public Hearing and public record were closed.

**M 067 23  
Adopt  
Resolution  
R 006 23/  
Affirmativ-  
ely  
Furthering  
Fair  
Housing**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Resolution No. R 006 23 entitled "AFFIRMATIVELY FURTHERING FAIR HOUSING".

Motion Adopted: 5 Yeas

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

**M 068 23  
Adopt  
Resolution R  
007 23/  
Authoriza-  
tion to  
Submit  
Applications**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Resolution No. R 007 23 entitled "AUTHORIZATION TO SUBMIT APPLICATIONS".

Motion Adopted: 5 Yeas

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

**Master Plan  
Ordinance  
Discussion**

Jamie Whitehouse, Planning and Zoning Director presented a Proposed Ordinance entitled "AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT – RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE".

Vince Robertson, Assistant County Attorney discussed the updates that have been completed to the Ordinance since the last presentation. He noted

**Master Plan Ordinance Discussion (continued)** that one of the requirements of a MPZ is that 20% of all multi-family dwellings shall be set aside as SCR units governed by Chapter 72. Mr. Robertson advised that the Ordinance would need to go through PLUS.

Mr. Schaeffer questioned line 447 which states “the plan shall include a Master Transportation Plan approved by DelDOT”. He asked if that would give DelDOT the authority to shut this down without their approval. Mr. Robertson replied that the intention was to avoid DelDOT shutting it down. He added that the language can be changed if desired.

**Introduction of Proposed Ordinance/MPZ** Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT – RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE”.

**Solar Farm CU Ordinance Discussion** Jamie Whitehouse, Planning and Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES”.

Mr. Robertson reported that recently, there has been many solar farm applications come through the process. It has been discussed to codify the conditions that have been imposing on the solar farm applications. He added that there is a standard set of conditions.

**Introduction of Proposed Ordinance/Solar Farms CU** Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES”.

**Demonstration/Document System** Jamie Whitehouse, Planning and Zoning Director provided a demonstration of the new document management software.

**Introduction of Proposed Ordinances** Mr. Vincent introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO

**BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.81 ACRES, MORE OR LESS” filed on behalf of Dagsboro Thorogoods Solar 1, LLC**

**Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.97 ACRES, MORE OR LESS” filed on behalf of Lewes Saddle Ridge Solar 1, LLC**

**The Proposed Ordinance will be advertised for Public Hearings.**

**Council  
Member  
Comments**

**Mrs. Green commented that in the last week, the issue and topic of Ethics and Code of Conduct form as it relates to Council members has been discussed. She added that she has made the public statement that she choose not to sign the form. The reason for her not signing the form was because it came from the HR department. It is her position that it needs to come from the County Council; that it would either be an Ordinance or a vote that would come from the Council. Mrs. Green stated that she has no conflicts of interest, and she will answer to the constituents in her district. If it is brought back to Council for a vote, then, she will sign the form.**

**Mr. Vincent commented that the request for this document came from County Council, not Administration or HR. It was after a meeting was held a few years ago with the same presenter that presented last week. It was requested that they develop some kind of form which Council was in support of. Until now, all of Council have signed that document which is the same form that Mrs. Green signed last year. Mr. Vincent explained that this request came from the County Council to Administration and HR to develop the form which was all agreed to at that time.**

**Mr. Hudson commented about forested buffers; he believes that it is time to look further into this and get some teeth into it.**

**Mr. Rieley agreed with Mr. Hudson’s comments. He added that he was outraged by what was shared this morning by Mrs. Hicks. If what was shared is not a violation of the Ordinance, then the Ordinance is not what he envisioned to be when it was past. He added that he would like to see the loopholes closed and get it done quickly.**

**Mr. Vincent commented that recently, a gentleman in the County was in a container of sand up to his shoulders. All of the emergency operations department, EOC, fire, EMS, County services and technical rescue team were on site. It was a six-hour operation to remove that gentleman who is now recovering.**

**M 069 23**      **At 11:01 a.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green to recess the Regular Session, and go into Executive Session for the purpose of discussing matters relating to land acquisition.**  
**Go Into**  
**Executive**  
**Session**

**Motion Adopted:      5 Yeas**

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

**Executive**      **At 11:06 a.m., an Executive Session of the Sussex County Council was held**  
**Session**      **in the Basement Caucus Room to discuss matters relating to land**  
**acquisition. The Executive Session concluded at 11:42 a.m.**

**M 070 23**      **At 11:44 a.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green,**  
**Reconvene**      **to come out of Executive Session and reconvene the Regular Session.**

**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**

**E/S Action**      **There was no action on Executive Session matters.**

**M 071 23**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess until**  
**Recess**      **1:30 p.m. Public Hearings.**

**Motion Adopted:      5 Yeas**

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

**M 072 23**      **At 1:30 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley**  
**Reconvene**      **to reconvene.**

**Motion Adopted:      5 Yeas**

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

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

**Public**      **A Public Hearing was held on a Proposed Ordinance entitled “AN**  
**Hearing/**      **ORDINANCE TO AMEND THE FUTURE LANDS USE MAP OF THE**  
**Ord. No. 22-**      **COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 135-11.00-**  
**08/CZ1959/**      **65.00” (property is located on the north side of Lewes Georgetown Highway**

**CU2320**

**[Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00)**

**The Planning and Zoning Commission held a Public Hearing on the application on December 8, 2022. At the meeting of January 12, 2023, the Planning & Zoning Commission recommended denial of the application for the 7 reasons stated as outlined.**

**(See the minutes of the Planning & Zoning Commission dated December 8, 2022 and January 12, 2023.)**

**Mr. Jamie Whitehouse, Planning and Zoning Director, presented the application.**

**A Public Hearing was held on 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 RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS” (property located on the north side of Lewes Georgetown Highway [Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00) filed on behalf of Charles E. Turner, Jr.**

**The Planning & Zoning Commission held a Public Hearing on the application on December 8, 2022. At the meeting of January 12, 2023, the Planning & Zoning Commission recommended denial of the application for the 5 reasons stated as outlined.**

**(See the minutes of the Planning & Zoning Commission dated December 8, 2022 and January 12, 2023.)**

**Mr. Jamie Whitehouse, Planning and Zoning Director, presented the application.**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS” (property located on the north side of Lewes Georgetown Highway [Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00) filed on behalf of Charles E. Turner, Jr.**

**The Planning & Zoning Commission held a Public Hearing on the application on December 8, 2022. At the meeting of January 12, 2023, the**



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(continued)**

**Planning & Zoning Commission recommended denial of the application for the 3 reasons stated as outlined.**

**(See the minutes of the Planning & Zoning Commission dated December 8, 2022 and January 12, 2023.)**

**Mr. Jamie Whitehouse, Planning and Zoning Director, presented the application.**

**The Council found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Mr. Charles Turner; that Mr. Turner was also present; that in light of the Commission's recommendation for denial for all three applications, she intends to present each application in a consolidated but detailed manner; that in addition to reviewing the Commission's decision, that was inconsistent with the record made and included reasons and support of their decision that were inaccurate and misstated what the Sussex County Comprehensive Plan states; that a transcript was prepared of Commissioner Hoey-Stevenson's motion to recommend denial that was seconded by Commissioner Wingate; that the motion was recommended for denial by a vote of 4-0 by Commissioners Hoey-Stevenson, Wingate, Hopkins and Wheatley; that Commissioner Mears was absent; that a copy of the transcript, a copy of the decision and a noted and highlighted section of Section 4-16 of the Comprehensive Plan and Future Land Chapter that concerns the existing development area was submitted in the record; that the applicant has three requests; that the existing property is 9.72 acres and is the present location of Silver Oaks Trailer Park; that this area is adjacent to the open space within the Hawthorne Community; that to the rear of the property is a tax ditch prong; that on the other side of the property, is a property that is subject to a Conditional Use where the Burns Pet Store was previously located; that across the road are some residential homes and some property that was rezoned to B-1 (Neighborhood Business District) which is owned by Two Farms, Inc.; that the existing Silver Oaks Trailer Park was established on April 6, 1966 as confirmed by a notice that was included in the packet specifically as Exhibit B; that she clarified and explained the purpose of the notice; that the purpose of the notice was to inform the then Planning and Zoning Commission of the existing Silver Oak mobile park that had 38 mobile home lots approved; that 21 of the lots had been occupied as of 1970; that the Board of Adjustment had historically approved an expansion of the park by eight additional lots; that today there are eleven (11) mobile home lots on the site; that all existing mobile home owners leasing land have been notified of Mr. Turner's plan to develop the site; that the property is currently zoned AR-1 (Agricultural Residential District); that the properties adjacent to the subject property are also zoned AR-1; that along Route 9 there is a mixture of zoning districts mainly C-1, AR-1 and some B-1; that the Future Land Use Designation presently is Low-Density Area and is surrounded by properties designated as Commercial Area and Industrial Area; that the project is located in Investment Level IV; that the Cabinet Committee on State planning issues through the Office of State Planning Coordination developed the first**

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(continued)**

**Delaware Strategies for State polices and Spending Maps in 1999 to be updated every five years; that the most recent update was completed in 2020; that the State Strategies were designed to help the committee guide State investment decisions and serve as a frame work for coordinating plans and actions of local government; that Chapter 4 of the Comprehensive Plan explains that State Strategies for State polices and spending map classifies four different investment level areas; that the four investment levels clarify the State’s policies and priorities for the expenditure of State funds on infrastructure; that the Comprehensive Plan states that policy and the spending map are not parcel based and are not a land use plan; that with respect to the Future Land Use Map request the property is currently designated as a Low-Density Area; that the Low Density Area is considered to be a rural area; that as of 2018, all lands designated as Low Density Areas are also zoned AR-1; that AR-1, B-2, C-2, M, I-1 and new zoning districts are considered to be consistent in that designation and classification; that Section 4.4.3 of the plan details the permitted uses and visions in that area; that those uses include agricultural and residential uses as well as development that is largely confined to businesses addressing the needs of agricultural and residential uses; that Ordinance 22-08 seeks to amend the Future Land Use Map from Low Density to and Existing Development Area—a growth area; that Chapter 4 of the Comprehensive Plan explains that this area consists of primarily existing residential developments similar to this one presently under General Residential or Medium Residential zoning districts and some commercial uses; that these areas are scattered throughout the County and often times next to Low Density Areas; that the land use history of the property is relevant in that this property was permitted as a Mobile Home Park and approved for 38 lots; that this property has been an existing residential development since 1966; that it is the belief that the property should have been designated as an Existing Development Area because of its past and current use; that this area permits a full range of housing types including single-family homes, townhomes and multi-family units; that non-residential developments consists of uses found in the neighborhood business districts and commercial districts which is relevant considering the property is zoned C-1 and commercial right near the site; that the proposed use is consistent with the Existing Development Area; that as an existing mobile home development and a proposed multi-family development; that there are Existing Development Area in the vicinity of the subject property close to Route 9 and Route 5; that infrastructure is already in the area and central water and sewer are encouraged for the Existing Development Area; that sewer and water will be provided by Artesian; that a will serve letter from Artesian was submitted; that the applicable zoning districts in the Existing Development Area include MR and GR as well as some commercial areas and would be consistent with the Land Use change; that the application was presented to PLUS on December 21, 2022; that the Applicant responded and specifically the Applicant’s engineer to each comment on January 23, 2023; that in that comment, the State noted specifically that rezonings and development applications have increased along Route 9; that they stated that the cumulative effects of continuing to review and approve rezonings**

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(continued)**

and land use development proposals outside of planned growth areas will have long term negative impacts on the State and County both physically and environmentally because infrastructure and services to support these developments are not planned for the areas; that this comment suggests that the state is making a more general comment about development in Investment Level 4 areas rather than a project specific comment; that the property is near commercial and residential developments and has access to existing infrastructure as stated; that the Applicant's second request is CZ1959 to rezone the property from AR-1 to MR to ultimately develop 42 multi-family units; that the MR district provides for medium density residential development in areas which are or are expected to become generally urban in character where sanitary sewer and public water may or may not be available at the time of construction; that AR-1 permits low-density multi-family through the pursuit of a Conditional Use application but the Applicant wishes to rezone to MR which permits the medium density residential to allow for the development of 42 multi-family units at a density of 4.36 units per acre; that the proposed rezoning is compatible with the surrounding land uses which includes a mix of residential, business, and commercial uses nearby; that there are other multi-family residential units nearby including Weston Willows Apartment Complex (287 units apartment complex on 27 acres), Azelea Woods single-family subdivision, Hawthorne subdivision, Windsor Reserve which was just recently approved for another 100 single family lots and Deerwood Subdivision; that Table II shows the bulk requirements for multi-family units must meet the same height, area and bulk requirements; that this is relevant considering the C-1 zoning district near the property; that there were three change of zone applications approved within a mile of this site; that CZ1838 from AR-1 to B-1 for the Two Farms property; that CZ1902 CR-1 to HI-1, that applicant noted on the record where Magee Plumbing, AP Croll Sons and Peninsula Paving; that the third use was CZ1944 that amended a AR-1 district to a C-2 district for the executive lawn property management to expand its landscaping business; that the Planning and Zoning Memorandum also concludes that the intended development could be considered consistent with surrounding land uses; that Table 4.5-2 Title Zoning Districts applicable to Future Land Use Categories confirms that the MR district is an applicable district in the Existing Development Area; that the final request is CU 2320 for a Conditional Use of land in a MR zoning district for the development of 42 multi-family units; that the purpose of Section 115-171 on Conditional Uses states that it provides for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations; that these uses are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare but because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County require the exercise of planning judgment on location and site plan; that the proposed multi-family development will be accessed off of Route 9; that the proposed density for the development is 4.36 dwelling units per acre subject to a

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rezoning and Future Land Use Map change; that there are eight (8) buildings proposed and each building contains between 3 to 6 units each; that there is also a community building and pool amenity is proposed; that 6.43 acres or 66.7% of the site to remain as open space subject to final site engineering; that adjacent developments that were developed as single-family homes would be required per code under the AR-1 district to meet 30% open space requirement in Cluster Subdivision; that there will be 92 parking spaces which exceed the 84 required spaces; that the non-tidal wetlands will remain undisturbed; that stormwater management will be in accordance with local and state regulations; that water and sewer will be served by Artesian; that the increase in traffic on area roadways will be analyzed, reviewed and approved by DelDOT; that preliminarily the response to the Service Level Evaluation Request state that the impact is considered to be negligible; that the developer will work with DelDOT to develop an entrance plan; that it is intended to eliminate one existing entrance and provide a continuation of the shared use path from the Hawthorne development; that the developer intends to work with DART to provide the requested shelter pad and bus pull off area; that section 115-31 of the Code concerning multi-family units confirms that these units may be permitted as conditional uses subject to the provisions in the Code; that the proposed use is in compliance with all Code requirements; that if the Future Land Use Amendment is adopted then the proposed use will be compliant and consistent with the Comprehensive Plan update; that on December 8, 2022, the Commissioners heard these applications for the first time; that at the December 8, 2022 meeting, there were three Commissioners present, Chairman Wheatley, Commissioners Hopkins and Mears; that Commissioners Hoey-Stevenson and Wingate were absent; that during that meeting, none of the Commissioners present asked any questions at the conclusion of the presentation to the applicant that would even remotely suggested a recommendation for denial was forthcoming; that there were no opposition and it was a complete and total surprise that there was a recommendation and a vote of 4-0 for denial; that the record suggests that the Commission considered that this property may have been missed as a property that should have been appropriately classified as an existing development area; that specifically during the discussion of the three applications, Commissioner Hopkins asked staff a question trying to figure out why this property as an existing development was not designated as GR to match what was there; that Chairman Wheatley said that he had the same question and specifically said “since the 60s, there has been an approval and for 38 units, you would have thought that someone may have noticed that but apparently we did not”; that in response, Commissioner Hopkins states “and we see this happen more in your neck of the woods, if you look at the zoning map, there are all of these oddball GR spots that don’t seem to tie in with anything but then because they have been manufactured home parks or whatever, they have been there forever and they established them from day one as GR zoning, it’s just, you know, interesting why this one never was”; that Commissioner Hopkins even went on to say that this property seems like an “outlier”; that Ms. Peet agrees that it is an outlier because the property should have been classified as an

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(continued)**

existing development area for all of the reasons stated and should not have been designated as a low density area or zoned AR-1; that on January 12, 2023, Commissioner Hoey-Stevenson motioned to deny the Future Land Use Map Amendment which resulted in the other applications being recommended for denial as well; that Ms. Peet discussed Commissioner Hoey-Stevenson's motion; that in the motion, Commissioner Hoey-Stevenson stated "the existing development area is designated in the Comprehensive Plan for existing residential development under the current general residential and medium residential zoning districts as well as some commercial uses"; that is undisputed and agreed upon; that the Commissioner goes on to say "the plan further states that this particular classification is simply being used to identify these existing scattered zoning areas that have no direct relationship to their surrounding zoning and/or Future Land Use Map"; that the Comprehensive Plan states the existing development areas are scattered and are surrounded by low-density areas; that significantly, this description of existing development areas is consistent with the Silver Oaks trailer park use for reasons stated; that the Commissioner continued stating "the plan emphasizes that this area should only be used for existing GR or MR-zoned properties"; that this misquotes the plan; that the plan as written states that the existing development area consist primarily of existing residential development under current GR and MR zoning district as well as some commercial uses; that the existing development area is not only used for GR and MR zoned properties as directly quoted in the plan, the existing development area primarily includes existing residential developments under current GR and MR zoning districts as well as commercial uses; that the reasons in support of the motion continued to rely on this misquoted section of the plan; that in fact, the Commissioner goes on to say that the Comprehensive Plan also reiterates the Existing Development Area is limited to existing GR and MR land by providing that, there is no intention to expand this land use classification; that it may be true that there is no intention to expand this land use classification, but, there is nothing against expanding this classification especially when it appears that this property should have been classified as an existing development area based on its use historically since 1966; that the Commissioner added "There is no dispute that the property is currently developed as a small, manufactured home park that has been in existence for decades, however, it is situated upon land that is zoned AR-1 and it was never rezoned to GR"; that the property could not be rezoned to GR without a Future Land Use Map amendment like the one being presented and a rezoning request; that the Commissioner emphasized that the existing mobile home park is a legally non-conforming use as a reason in support of her motion; that even if that it is true, that does not mean that the property could not be designated as a existing development area as requested; that there is a property in a local municipality that does not have a certified Comprehensive Plan for a related use; that the property is the Rehoboth Art League in the municipality of Henlopen Acres; that the community has its first Comprehensive Plan in 2004; that it performed its first Comprehensive Plan review in 2012; that the primary reason that plan was not certified concerned the art league's non-conforming use; that the

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issue is that the art league wanted to be rezoned to a cultural district from an existing residential district; that the town wanted the art league to remain as a residential use; that in 2014, Ms. Constance Holland, the then Director of State Planning confirmed that she could not send the current plan to the Governor with the art league remaining as a residentially zoned district; that Ms. Holland recommended that the art league property be rezoned because of its current use; that this is an example of the State Planning Office looking at property and not certifying a Comprehensive Plan because of a municipality's decision to maintain a property zoning district that was inconsistent with the current zoning district in light of the properties past legally non-conforming use; that the State's position on the art league had everything to do with the current and future intended use of the art league; that because Henlopen Acres decided to keep the property as a legally non-conforming use zoned residentially and not zoned to a use consistent with its current and intended future use, its plan in part was not certified; that similarly, Mr. Turner's property operates as a legally non-conforming use in a AR-1 zoning district and a low density Future Land Use classification; that the Art League property was intended to not be rezoned, it is being argued here that it seems that the property has been overlooked when designating the property as a AR-1 district and low density area; that there is nothing in the record to the contrary to suggest that there was any actual intent to leave the property zoned AR-1 and to classify the property as low density; that it is her position that Mr. Turner's property should have been designated to a classification and zoned in a manner consistent with its past and current use that is operated on the site since 1966; that she reminded the Council that on the record, Commissioner Hopkins and Chairman Wheatley suggested that this may have been missed; that there is no substantial evidence on the record contrary to support the Commission's reasons for denying the Future Land Use Map Amendment, associated rezoning and conditional use request; that it is the applicant's position that the paper and spoken record overwhelming suggests that the property should have been classified as an existing development area; that the requested Future Land Use Amendment would correct what appears to be based on the record an oversight; that in looking at the Future Land Use Map Amendment request, the applicant encourages this Council to review all of the materials presented today and take its time in reviewing those materials and considered the intended use (a 42 unit multi-family unit); that it is only four more units than the approved thirty-eight units for a legally non-conforming use that has been there for nearly 60 years; that it is proposed adjacent to and in the immediate vicinity of other single family and multi family units as well as other commercial uses with almost 67% of the site designated as open space and with access to public water and sewer on Route 9 that would be consistent with the Comprehensive Plan's direction for possible development of the Route 9 corridor as a business corridor with a mix of residential and commercial uses; that in addition to contributing to the plans goal of reducing access points from the number of entrances from two to one; that this intended development will compliment Route 9 growth and offer another option for housing for present and future residents who may desire to not purchase a

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single-family home or may not be able to afford the same; that the applicant requests that the Council approve the Future Land Use Amendment, the requested rezoning from AR-1 to MR and the proposed 42 unit multi-family unit development; that a discussion was held regarding an underground plume of a chemical called PCE (tetrachloroethylene); that it is Ms. Pete's understanding that the pollution originated at the campground years ago; that there are monitoring sites currently placed on Hawthorne; that it is on DNREC's radar.

Public comments were heard.

Ms. Susan Barra spoke in opposition of the application. Ms. Barra stated that there has been a lot of development on Route 9; that she questioned if neighbors are notified when development occurs; that Mr. Whitehouse explained that postcard notifications are sent out to all property owners within 200 feet of the parcel boundary; that notices are done in local newspapers and physical postings on done on the site itself; that it is also displayed on the County's website; that she has lived there a little over six years; that it can take 15 to 20 minutes to get in and out of her community; that the traffic from Route 30 to Route 9 backs up past Hawthorne.

Mr. Chris Stuchlik spoke in opposition of the application. Mr. Stucklik stated that he owns land near the proposed site; that he is speaking on behalf of other nearby land areas; that he has concerns with the site plan that seems to eliminate the wooded area on the western edge of 135-11.00-65.00; that he also has concerns with noise and outdoor/street lighting; that there is a concern for a significant negative impact on the prospective value of the parcels.

The Public Hearing and public record were closed.

**M 073 23  
Defer  
Action/  
FLUM Ord.  
22-08**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 135-11.00-65.00"

**Motion Adopted: 5 Yeas**

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

**M 074 23  
Defer  
Action/  
CZ1959**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action on 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 RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS"

**Motion Adopted: 5 Yeas**

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

**M 075 23  
Defer  
Action/  
CU2320**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS”**

**Motion Adopted: 5 Yeas**

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

**M 076 23  
Adjourn**

**A Motion was made by Mr., Hudson seconded by Mr. Rieley to adjourn at 2:22 p.m.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
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.}*