

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 20, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 20, 2024, at 12:00 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
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
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 077 24
Approve
Agenda**

Mr. Lawson reported that under Public Hearings, Conditional Use No. 2411 could be removed from today's agenda, the applicant has asked for the hearing to be rescheduled. A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Agenda, as amended.

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 February 6, 2024, were approved by consensus.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from Clear Space Theatre Company and ReTemp Development Center, Inc. thanking Council for their donations.

**Public
Comments**

There were no public comments.

**M 078 24
Approve
Consent
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to approve the following items under the Consent Agenda:

- 1. Proclamation Request – Girl Scout Week**
- 2. Use of Existing Wastewater Infrastructure Agreement – IUA-1208
Long Neck Community Bank, Long Neck Area**
- 3. Use of Existing Wastewater Infrastructure Agreement – IUA-1176**

East Gate, Johnson's Corner Area

Motion Adopted: 5 Yeas

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

**Perimeter
Buffer
Update**

Mr. Lawson provided Council with an update related to Perimeter Buffers. Mr. Lawson reminded Council that this was ranked as the first item to update for the development design initiative. Staff developed an outline and will draft an Ordinance using this outline.

Mr. Lawson explained that the document is broken down into sections and starts with definitions. Within the definition section, there are six specific updates. The terms are provided in high level, summary form and the actual definition have more details.

Section II consists of specifics of what is aimed to see in the perimeter buffer which is called the Perimeter Buffer General Standards. This section defines the standards to which a Perimeter Buffer should be planted or preserved, in the cast of existing woodlands. The idea is that the Perimeter Buffer is going to be a standard 30 ft. and then the 20 ft area of protection up against that when woodlands exist. In this section, it states that all trees and shrubs must be local and native species. In addition, the ANSI A300 standards are listed, 70% deciduous and 30% evergreen; 15 trees per 100 feet. All trees and shrubs must be 6 feet in height at time of planting and obtain a minimum height of 10 feet. The buffer can include both existing woodlands and planted trees. When a Resource Buffer (115-193) is required, the Resource Buffer takes precedence over and is not in addition to the Perimeter Buffer. Permanent signage will mark the Perimeter Buffer.

Mr. Lawson explained that the Perimeter Buffer rules will distinguish when Existing Woodlands are in place when the Perimeter Buffer is to be located or No Woodlands are in place where the Perimeter Buffer is to be located.

The following lists the rules for Existing Woodlands to be used for the Perimeter Buffer:

- Requires a forest assessment by certified professional.**
- The woodlands will be shown on the site plan and landscape plan.**
- Woodlands shall remain in its natural state with limited activity within.**
- The Perimeter Buffer woodlands will be protected by an area that "buffers-the-buffer" by 20' and is called the Perimeter Buffer Protection Area.**
- The buffer and protection area will be fenced-off/marked during construction.**

**Perimeter
Buffer
Update
(continued)**

- **Selective clearing, removal of invasive species and dead trees in the woodlands is permitted.**
- **Walking trails are permitted in the woodlands.**
- **Access points to the woodlands for buffer maintenance is permitted.**
- **Any removal or damage of trees within the woodlands is subject to mitigation requirements.**
- **The woodlands grounds is forbidden to be cleared, graded, or grubbed.**

The following lists the rules for Woodlands – Cleared within Five Years of Application:

- **Cleared area that makes up the Perimeter Buffer is measured and known as “Cleared Area”.**
- **Perimeter Buffer planted back with at least 15 trees every 50 linear feet.**
- **New Woodlands planted that is 2.0 times the size of the Cleared Area; 50 trees per acre.**
- **New Woodlands may border Perimeter Buffer; at no time shall Perimeter Buffer be less than 30’ in width.**
- **Perimeter Buffer and New Woodlands shall meet planting requirements of Section II.**
- **Applicant may choose to replant property other than the one harvested or protect an off-site Woodlands area, as reviewed, and approved by P&Z Commission.**
 - **If off-site, the area must be located within the same twelve-digit HUC defined by USGS.**
 - **Replanted or protected property must be protected under a perpetual conservation.**
 - **Replanted or protected property must be 2.0 times the size of the Cleared Area.**

The following lists the rules when No Woodlands exist to be used for the Perimeter Buffer:

- **The developer must comply with the Perimeter Buffer standards and landscape plan.**
- **The newly planted buffer will be fenced off/marked during construction.**
- **All Perimeter Buffer (existing or planted) will have a two-year guarantee.**

Section III defines the Perimeter Buffer landscape plan including the information and detail to be demonstrated on the plan to meet the requirements and standards. The plan will include the following requirements:

- **The approximate location of the protective fencing.**

**Perimeter
Buffer
Update
(continued)**

- **The locations, spacing, height, and species of new trees and shrubs.**
- **The location of the Perimeter Buffer signage.**
- **Measures to avoid sedimentation intrusions and erosion.**
- **A summary table of the new trees to be planted and existing trees to be retained.**
- **A note confirming the full cost of replacement for the trees and shrubs.**
- **A planting schedule for the installation of the Perimeter Buffer.**
- **The Perimeter Buffer, per phase, must be planted prior to the first residential building permit for the respective phase.**
- **Provides a “miscellaneous clause” allowing the PZ Commission to approve a plan with other features along the roadway frontage not necessarily part of the Perimeter Buffer requirements.**

Section IV defines the timing of the Perimeter Buffer installation and the guaranties required for the protection of the buffer’s trees and shrubs. The Perimeter Buffer, per phase, must be planted prior to the first residential building permit for the respective phase. When Woodlands exist, the Perimeter Buffer and Protection Area shall be protected and marked prior to the Notice to Proceed for site work or construction. The developer is responsible for the removal of all stakes, guy wires and protective fencing. A Performance Bond or other guaranty to cover the Perimeter Buffer in the amount of 125% (or \$50,000, whichever is greater) of the cost of the installation and value of the replacement plantings. All guaranties for the Perimeter Buffer (existing or planted) will be for two years.

In Section V, Perimeter Buffer Maintenance is discussed that defines the responsibility for the health and survival of the Perimeter Buffer. The developer is responsible for the survival of the Perimeter Buffer for two years. The perpetual maintenance of the Perimeter Buffer will be a recorded declaration or restrictive covenant.

Section VI, Perimeter Buffer Tree Mitigation defines what happens when trees or shrubs are removed or damaged without authorization. Tree mitigation will be required when the Perimeter Buffer or Protection Area or existing woodlands is damaged without authorization. An Act of God or natural causes is exempt and subject to the Perimeter Buffer Maintenance Requirements. A mitigation plan must be developed by a licensed professional. Tree replacement will be at a rate of 3 trees for every 1 tree removed or damaged. All trees and shrubs will meet the Perimeter Buffer standards and landscape plan requirements.

Section VII defines the penalties for violations of the new requirements that may be imposed. The penalties apply to a violation by a person, the landowner, the HOA, or developer. A fine of \$10,000 per quarter acre, pro rata, of disturbance to the Perimeter Buffer and/or Protection Area may be imposed. A tree mitigation plan for the disturbance will be required. All building permits, zoning permits, and inspections will be held until the tree

mitigation is complete and approved by the PZ Commission.

It was suggested to add language stating that all fines would need to be paid before permits can be issued.

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Headwater Cove – Phase 4 (Construction Record) and Plover Point (FKA Oak Landing) – Phase 2 (Construction record) received Substantial Completion effective February 15th.

2. John Kinsley, Jr.

It is with great sadness that we inform you that pensioner, John Kinsley Jr., passed away on Wednesday, February 14, 2024. Mr. Kinsley began his career with Sussex County in 1990 where he worked until February 2008 for a total of 17 years of service. His last position with the County was Tech Services Division Manager in the Emergency Medical Services Department. We would like to extend our condolences to the Kinsley family.

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

**DE Coastal
Business
Park Leases/
DTCC &
JDJS, LLC**

Bill Pfaff, Director of Economic Development presented two lease agreements in the Delaware Coastal Business Park for Council's consideration. The first lease presented was for Delaware Technical Community College to provide a truck driving school. The second lease presented was JDJS, LLC to be used as a wood shop and newly expanding sign business known as JennyGems.

**M 079 24
Approve
DTCC Lease**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved that the Sussex County Council approve the lease agreement with Delaware Technical Community College, located at 21765 Nanticoke Avenue, which is identified as part of Lot 8, part of Lease Area 2 and part of the Former Runway 16-34 in the Delaware Coastal Business Park, Georgetown, DE as the training location for their Class A CDL Certification program.

Motion Adopted: 5 Yeas

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

M 080 24
Approve
JDJS, LLC
Lease

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved that the Sussex County Council approve the lease agreement with JDJS, LLC t/a JennyGems, located at 21345 Cedar Creek Avenue, which is identified as part of Lot 14, in the Delaware Coastal Business Park for the operation of a woodshop for a gift and sign manufacturing business.

Motion Adopted: 5 Yeas

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

Chesapeake
Utilities
Lease
Agreement

Hans Medlarz, County Engineer, Ret. presented an advance customer agreement for Rudder Lane for the Chesapeake Utilities Natural Gas Service Expansion for Council's consideration.

M 081 24
Approve
Chesapeake
Utilities

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that County Council approve the customer advance agreement with Chesapeake Utilities Corporation to furnish natural gas services to Delaware Coastal Airport along Rudder Lane 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

Inland Bays
DelDOT
Agreement

Hans Medlarz, County Engineer, Ret. presented a DelDOT utility agreement for the Inland Bays Loop Project for Council's consideration.

M 082 24
Approve
DelDOT
Utility
Agreement

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that County Council approve DelDOT utility agreement associated with the Inland Bays loop project 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

Long Neck
Communit-
ies

Hans Medlarz, County Engineer, Ret. presented change order no. 1 for Long Neck Communities for Council's consideration.

M 083 24
Approve CO
No. 1/Long

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 1 for contract S21-10 be approved increasing the contract by \$93,066.11.

Neck

**Communit-
ies**

Motion Adopted: 5 Yeas

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

**SCRWF/
Project C19-
11/CO No.
33**

Hans Medlarz, County Engineer, Ret. presented change order no. 33 for general construction for the South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 for Council's consideration.

**M 084 24
Approve CO
No. 33/
SCRWF/
Project C19-
11**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 33 for contract C19-11, South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 – general construction, be approved, increasing the contract by \$62,212.29.

Motion Adopted: 5 Yeas

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

**Permission
to Prepare
& Post
Notices into
SCUSSD/
Bosh Berries**

John Ashman, Director of Utility Planning & Design Review presented a permission to prepare and post notices for Bosh Berries Annexation into the Sussex County Unified Sanitary Sewer District (Western Sussex Area). The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client Tijmen & Wouter Van Den Bosch the owners/developers of a project known as Bosh Berries for parcel 131-6.00-1.00. The parcel is zoned AR-1, Agricultural Residential and adjacent to the existing town boundary and the Sussex County Unified Sanitary Sewer District. The property will be required to annex into the Town of Bridgeville. The project will be responsible for System Connection Charge of \$7,7000.00 per EDU based on current rates. The Engineering Department is requesting permission to prepare and post notices for a public hearing on the annexation of the area.

**M 085 24
Approve
Bosh Berries
Prepare &
Post Notices**

A Motion was made by Mrs. Green, seconded by Mr. Hudson that be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Bosh Berries Expansion of the Sussex County Unified Sanitary Sewer District to include parcel 131-6.00-1.00 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**

**Adopt
Boundary/
South
Greenwood
Area
Adopt
Boundary/
South
Greenwood
Area
(continued)**

John Ashman, Director of Utility Planning & Design Review presented a Resolution to Adopt the Boundary for South Greenwood Area of the Sussex County Unified Sanitary Sewer District for Council’s consideration. On December 5, 2023, County Council granted permission to prepare and post notices for the creation of the South Greenwood Area (DE Electric Co-op) of the Sussex County Unified Sanitary Sewer District to include parcels 530-14.00-16.00 & 17.00. The Engineering Department added to the County website, posted the notices on January 8, 2024, and advertised the weeks of January 8th and 15th. A public hearing was held in the Council Chambers on January 23, 2024, allowing residents and neighboring parcels until February 2nd to request to be included in the boundary. The department received no such requests and would like to establish the area as previously presented to include the two parcels.

**M 086 24
Adopt
Resolution
No. R 003 24**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Resolution No. R 003 24 entitled “A RESOLUTION ESTABLISHING THE PROPOSED BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) SOUTH GREENWOOD AREA”.

Motion Adopted: 5 Yeas

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

**Old
Business/
CU2397**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS” filed on behalf of Mispillion Solar Farm, LLC.

The County Council held a Public Hearing on the application at the meeting of December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 087 24
Adopt
Ordinance
No. 2985/
CU2397**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Ordinance No. 2985 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The proposed facility is a public utility use under the Sussex County**

**M 087 24
Adopt
Ordinance
No. 2985/
CU2397
(continued)**

- 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 of 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 30 acres of a larger 121.37-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 set back a significant distance from Shawnee Road and is surrounded by forest on two sides, as well as other agricultural lands. The land is designated as being within the “Low-Density Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.**
 - 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 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.**
 - 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.**
 - 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 ground-mounted solar arrays. 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 required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.**
 - d. Any lighting at 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**

**M 087 24
Adopt
Ordinance
No. 2985/
CU2397
(continued)**

- shall provide contact information in case of an emergency.
- f. The location of all transformers or 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 using Best Management Practices.
 - h. The Final Site Plan shall include a Decommissioning Plan that includes a 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 Adopted: 5 Yeas

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

**Old
Business/
CU2398**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS” filed on behalf of Chaberton Energy (Blue Hen Solar).

The County Council held a Public Hearing on the application at the meeting of December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 088 24
Adopt
Ordinance
No. 2986/
CU2398**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2986 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 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 of 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

**M 088 24
Adopt
Ordinance
No. 2986/
CU2398
(continued)**

- approximately 61.65 acres. While there are some wetlands on the site, they are not impacted by this use. There is a Tax Ditch that will not be disturbed.
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 along West Line Road and Hudson Road. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
 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 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.
 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. One person spoke in favor of the Application and there was no opposition to this 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 ground-mounted solar arrays. 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 required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - d. Any lighting at 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 or similar equipment or structures shall be shown on the Final Site Plan.

**M 088 24
Adopt
Ordinance
No. 2986/
CU2398
(continued)**

- 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 using Best Management Practices.**
- h. The Final Site Plan shall include a Decommissioning Plan that includes a 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 Adopted: 5 Years

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

**Old
Business/
CU2433**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS” filed on behalf of Chaberton Solar.

The County Council held a Public Hearing on the Application at its meeting on December 12, 2023. At the conclusion of the Public Hearing action on the application was deferred for further consideration.

**M 089 24
Adopt
Ordinance
No. 2987/
CU2433**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2987 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows by this Council:

- 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 of 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 50.5 acres. There is also a Tax Ditch on the property that will not be disturbed by this use, as well as farm and drainage ditches that will not be disturbed by this use.**
- 3. The proposed facility promotes Goal 7.3 of the Sussex County**

**M 089 24
Adopt
Ordinance
No. 2987/
CU2433
(continued)**

- 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 set back a significant distance from Lighthouse Road and with the exception of one side of it, the use is surrounded by agricultural lands. The other side is adjacent to homes, and that common boundary will be buffered. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.**
 - 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 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.**
 - 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 ground-mounted solar arrays. 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 required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan. In addition, vegetated buffering that is required by the Code shall be supplemented along the northwest and northeast boundaries adjacent to residential use with additional canopy trees as stated during the public hearing.**
 - d. Any lighting at 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 or similar equipment or structures shall be shown on the Final Site Plan.**

**M 089 24
Adopt
Ordinance
No. 2987/
CU2433
(continued)**

- 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 using Best Management Practices.**
- h. The Final Site Plan shall include a Decommissioning Plan that includes a 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 Adopted: 5 Years

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

**Old
Business/
CU2404**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented 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” filed on behalf of Elk Development, LLC.

The County Council held a Public Hearing on the application at its meeting on January 9, 2024. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 090 24
Adopt
Ordinance
No. 2988/
CU2404**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2988 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 as follows:

- 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**

**M 090 24
Adopt
Ordinance
No. 2988/
CU2404
(continued)**

- 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 for 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.

**M 090 24
Adopt
Ordinance
No. 2988/
CU2404
(continued)**

- 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 Adopted: 5 Yeas

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

**Old
Business/
CU2405**

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 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” filed on behalf of Elk Development, LLC.

The County Council held a Public Hearing on the application at its meeting on January 9, 2024. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 091 24
Adopt
Ordinance
NO. 2989/
CU2405**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2989 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 as follows:

- 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**

**M 091 24
Adopt
Ordinance
NO. 2989/
CU2405
(continued)**

- 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. DeIDOT 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

**M 091 24
Adopt
Ordinance
NO. 2989/
CU2405
(continued)**

- 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 Adopted: 5 Yeas

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

Ord. Intros

Mr. Moore reported that this item is on the agenda, but the County is in receipt of a letter from the Office of State Planning Coordination regarding the 4 Ordinances to the Land Use Application filed on behalf of CMF Cool Spring, LLC. Based on that letter, all 4 Ordinances would not be introduced at this time while the State's letter is reviewed.

**CC Member
Comments**

There were no Council Member comments.

**M 092 24
Recess**

At 1:08 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess until 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 093 24
Reconvene**

At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of recess into Public Hearings.

Motion Adopted: 4 Yeas, 1 Absent

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

Rules

Mr. Moore read the rules and procedures for Public Hearings.

**Public
Hearing/
CZ1998**

A Public Hearing was held for a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 NEIGHBORHOOD COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS” (properties lying on the southwest side of Old Mill Road [S.C.R. 349] and the northwest corner of Railway Road [S.C.R. 350], at the intersection of Railway Road [S.C.R. 350] and Old Mill Road [S.C.R. 349]) (911 Addresses: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A) (Tax Map Parcels: 134-12.00-73.00, 73.01, 73.02, & 73.03) filed on behalf of Louis, Janet & William Melton.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons as outlined.

The Council found that Louis Melton, the Applicant, spoke on behalf of his application. Mr. Melton stated that over the last few days, there has been a lot of opposition submitted for this application; that he wanted to provide some background; that he has lived in the area for nearly 9 years; that he supports his community and has a vested interest in doing everything he can to protect the community property values; that he believes that the local real estate is a good investment; that he own other local properties and in each case, have done considerable work to enhance the value of the properties including the property being discussed today; that this zoning request was prompted following a review of the layout of the proposed Sundance Club whose main and only entrance spills out directly across the street from the middle of the property they are requesting to be rezoned; that this fact affects the property value from a normal residential construction stand point; that he suspects any of the opposition would feel the same way if a residential community of 180 homes spilled out directly across the street from their property; Mr. Melton stated that he is proposing a change in zoning from a GR (General Residential) to a B-2 (Neighborhood Community) district; that Mr. Melton paraphrased the purpose of the district as to provide primarily office retail, shopping, and personal services to serve the needs of a relatively small area; that on January 20, 2024, the Planning & Zoning Commission approved this petition of a vote of 4-1 in favor; that from listening to the audio from this meeting, he believes that the property location was confused with Old Mill Bridge Road; that he would concur that Old Mill Bridge Road would not be appropriate for this petition; that across the street from the property is the Sundance Club, which only has one main entrance, which along with the development of Evans Farm will need to widen Old Mill Rd to provide ingress and egress, by doing so we will benefit from those; that Sussex County continues to grow; that by his calculation, there are 300 people per month to be expected here for the next 7-9 years; that median age in the beach area was

**Public
Hearing/
CZ1998
(continued)**

reported as 63 in 2020 and that number is about 20 years old than the balance of the State; that with this aging demographic comes the demand for more personal services; that with the increased traffic on Rt. 26 the accessibility of such services as beauty salons, accounting services, medical, etc. are difficult to access during the summer and is reason to allow for the infrastructure to be developed to help the local residents; that there were about 26 opposition comments received; that much of the opposition is from a community that is nearly half a mile from the site and closer to Route 26; that there is also opposition from a community that is caddie corner to this property; that opposition was also received from the Cripple Creek area; that there has been no opposition received from individuals directly adjoining this property; that there is plenty of development taking place along Route 26; that the rapid development along Route 26 leads to more congestion which makes neighborhood business activity more desirable; that traffic at the location in question will be increased due to the development of the 300 homes mentioned previously on the Justice property and Sundance Club; that the Sundance Club and additional turn lane will alleviate some traffic congestion; that any new traffic from new business activity will be low due to the limited footprint of this property; that B-2 permits business that may be inconsistent with area demographics; that this area has been known to flood which is true; that the impact of the already planned housing developments is not known at this time; that building considerations will need to be taken with respect to flooding which will be their responsibility; that a picture of the layout of what the parcel would look like once developed was shared; that currently, there are two other structures on the property; that on the left is a 3,200 sq. ft. building which has a garage and a 1,200 sq. ft. apartment; that there is not enough footprint to have a fleet of more than one or two small vans; that the largest component that they are looking at is a coastal style business office complex; that there are some lands that are constrained by setback considerations.

Mr. Hudson questioned what the two current buildings are being used for; that one of the buildings is the applicants shop area; that he keeps a RV in there and a work area; that attached to that is a dwelling with a two-bedroom apartment; that the other property is a Nanticoke home; that the property has a full-time renter on the second floor; that the lower space is expected to be used for a business; that the old dump is located behind the property; that there is a pond located there; that it is unknown what the buildings will be used for at this time; that the applicant believes that the best use of the property would be to provide additional professional office space for tax people, financial advisors or medical providers; that the road is extremely skinny; that Sundance Club is required to expand the width of the road for the length of their property and raise it by 2 inches.

Public comments were heard.

Mr. Martin Lampner spoke in opposition to the application; that he was speaking on behalf of Whites Neck Community Alliance; that the Alliance consists of 16 communities; that he does not believe that Mr. Melton is setting

**Public
Hearing/
CZ1998
(continued)**

out to harm the community; that his group disagrees with some of Mr. Melton's assessments; that there are issues on Old Mill Road; that it was stated there are many businesses in the area; that he believes there are not many businesses in the area; that the County map was shown that showed there was AR-1 and Medium Density; that the group feels that they need to protect that; that Mr. Melton will not own the property forever; that it means if this zone is created, it will open it up to others that may not be as respectful in their use of the property; that the area is developing rapidly; that he read information he found from an Institute; that it discusses when under common law is properly applied; that property rights are self-limiting; that there many property owners that are seriously concerned about this; that it is not in keeping with the surrounding communities; that this is residential and should remain residential; that it is not a commercial area; that Millville is working to create a more comprehensive business district; that the possibility of a convenience store creates an area of concern; that they are traditionally open for long hours and become a place for people to gather; that the traffic issues on Old Mill Road are serious; that homes sit close to the road; that this will create more issues with traffic; that Old Mill Road is a dangerous road for those that walk or ride a bike; that there are no shoulders on most of this road; that Sundance will have to make improvements; that any business will bring traffic to the area; that Millville town plan calls to build a retail area and to upgrade the existing Route 26; that business should not be taken out of that area; that he requests that the proposal be rejected; that owners that have brought their properties with the zoning around them have a reason to be able to expect to remain that way unless there is clear reason to change it; that if it is to go forward, it is believed that there needs to be limitations on the property; that he does not believe that this location is for retail; that a convenience store will create more traffic in the area to make it successful; that it is being asked to restrict the use at the site; that it was asked to consider many stipulations if this were to move forward.

Mr. Rieley pointed out that conditions are being requested, however, this is a Change of Zone application. For a Conditional Use, conditions are appropriate. Mr. Moore added that there is no power or authority to impose on conditions on a Change of Zone.

Mr. David Bartlett spoke in opposition of the application; that he resides in Banks Acres which is located near the property; that he provided testimony during the January 3, 2024 Planning & Zoning Commission meeting; that he has spoken with Banksville Park and Banks Acre are opposed to this application; that he does not know any of the members of the Melton family; that his comments are spirited; that the Melton family is trying to change the character of the respective neighborhoods with a zoning request; that night time activities are permitted in B-2 zoning; that if approved, the buildings will be completely out of character with the area; that future owners can do as they please if it is approved B-2; that since the January 3rd P&Z meeting, the applicant has submitted exhibits supporting documents as of February 7, 2024; that the owner states soon to be developed or rental space is expensive due to location; that the owner states any traffic increase generated by this B-

**Public
Hearing/
CZ1998
(continued)**

2 rezoning request would be marginal; that Old Mill Road is a two land road with no shoulders; that the owner states that any businesses developed will necessarily need to cater to demographics of surrounding community; that if approved, there is nothing to stop the applicant from placing businesses such as a bar, small engine shop repair, gas station, marijuana dispensary or vape shop; that if approved, there will be a conflict between the Melton Property entrance and the recently approved Sundance Club development; that the applicants have mentioned this in a letter to Mr. Whitehouse; that the applicant mentioned that the 10 acre parcel (Tax ID 134-12.00-72.01) that is west of the subject property is zoned C-1, alluding to the fact that there is already commercially zoned property in the area; that he is correct, however, this property has been zoned C-1 for decades; that it was changed to C-1 and approved by County Council on August 25, 1987; that since that time, this site has been used to store heavy construction equipment and as a landfill; that there are enough daytime and evening businesses on Route 26; that several brand new buildings have just been recently erected and completed on Route 26; that there is vacant land on Route 26 that is already approved and cleared with underground utilities in place for commercial operations; that with the exception of the 10 acre parcel mentioned (Tax ID 134-12.00-72.01), the area in and around this request is nearly 100% residential and farms; that during P&Z meeting, the applicant stated that there are other commercially operated properties in this area; that the applicant mentioned each by name; that he found that Mr. Melton is partially correct, however a number of business he mentioned are zoned residential either AR or GR; that they are not commercially zoned properties; that the Melton property would be completely out of character with this area; that in a letter to Mr. Whitehouse, the applicant made comments regarding a chronic workforce housing shortage; that the application stated that he may include apartments above his businesses; that the housing shortage in this area typically is associated with J1 students, working in the area restaurants; that this occurs just before Memorial Day and ends shortly before Labor Day; that an 216 unit apartment complex known as Tupelo Sands is currently under construction near Beebe emergency/cancer center on Roxana Road; that there are plans to be submitted to the P&Z as well as County Council for the 10 acre property mentioned (Tax ID 134-12.00-72.01) requesting approval for a total of 4 apartment buildings and 56 townhomes creating 128 new units in total; that these units will help address any affordable housing shortage in this area; that during the January 6, 2024 P&Z meeting, attorney Vince Robertson stated that the Justice property application will need to be granted due to the fact that the land is already approved C-1; that the area will still remain residential in nature; that the Justice property backed into set aside land owned by the Bay Forest Community Association to the south and an abandoned county dump to the west owned by the State of Delaware; that it was shown that he believes that there was issues with the required signage; that in a letter that the applicant submitted to Mr. Whitehouse, the applicant states that the Sundance Club development will greatly diminish their lots from fitting into any GR zoning; that he discussed some issues that he had with the P&Z server; that there are many full time residents of Banks Acres & Banksville Park development who are primarily senior citizens; that most

**Public
Hearing/
CZ1998
(continued)**

owners do not have the technical ability or computer savvy to submit a comment electronically; that recently Commissioner Mears made a motion to deny CU2436; that he believes that there is no difference between our residential communities and the Peninsula Lakes community that would have been impacted by CU2436; that he hopes that Council will give this serious consideration when rendering an opinion; that the applicant stated that he does not know what they are going to do with their middle property; that if approved, they can place anything they please that meets B-2 regulations; that there is nothing to stop them from nighttime activities if this request is granted; that the residents purchased their homes with the understanding that the surrounding community would remain residential or agricultural in nature; that if approved, this would create a traffic nightmare; that he asked Council to deny this request.

Ms. Teresa Galanaugh Scarpato spoke in opposition of the application; that she is opposed to the zoning; that it sets a precedent for what is to come in the future; that this is a tight area; that the traffic is an issue; that the infrastructure with the internet is a constant battle; that she works from home and continuously gets kicked off the internet; that in August of 2021, her stepson was visiting and his puppy got stung by a bee they believe; that they had to take the dog to Salisbury, MD due to the vet hours; that the traffic getting out of her house was terrible; that she read a letter from the Melrun Acres Homeowners Association; that they oppose the proposed zoning; that the proposed development would put a burden on the infrastructure of the area.

The Public Hearing and public record were closed.

**M 094 24
Defer
Action/
CZ1998**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 NEIGHBORHOOD COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS" for the reasons given by Planning & Zoning.

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/
CZ1992**

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 C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS" (property lying on the west side of Gravel Hill Road [Rt. 30],

**Public
Hearing/
CZ1992
(continued)**

approximately 300 feet south of Milton Ellendale Highway [Rt.16], and the south side of Milton Ellendale Highway [Rt. 16], approximately 300 ft. west of Gravel Hill Road [Rt. 30]) (911 Address: 14742 Gravel Hill Road, Milton) (Tax Map Parcel: 235-13.00-29.01) filed on behalf of Reed Properties, LLC.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 11 reasons as outlined.

The Council found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Reed Properties LLC, and the owner, Whitewater Enterprise, LLC; that also present was Mr. Brandon White, who is a part of the ownership group of the two LLCs. Mr. Hutt stated that the Application was for three acres, located near the intersection of Rt. 16, also known as the Milton Ellendale Hwy; and Rt. 30, also known as Gravel Hill Rd, which is south of Rt. 16 and becomes Isaacs Rd; this application seeks to rezone the property from AR-1 (Agricultural Residential) District to C-2 (Medium Commercial) District; that the property wraps around the Iron Works Facility at that intersection, located within commercial zoning, but has an industrial type feel given the nature of their work; that diagonally across Rt. 16 is Kemp's Liquors and as you travel East on Rt. 16 towards the Town of Milton you come to a site that is under construction presently, which is the Jerry Ann McLamb Medical Pavilion that's being constructed by Beebe Healthcare; that the Town of Milton's corporate limits are about one mile from this site, so it's just West of the Town of Milton; that to the South of this property and to the West are other parts that are owned by the Reed family, in which the name comes from; that to the West of the properties that are family owned there is a substantial agricultural and poultry operation located off of Rt. 16; that when moving across to the Northwest quadrant, the area is in agricultural preservation, that is part of the spray areas that Artesian refers to as SURF, or Sussex Regional Reclamation Facility, which is a series of agricultural fields and woodlands that are used for their wastewater treatment process; that moving to the other side of now Isaacs Rd., or Rt. 30, is Kemp's Liquors and Iron Works, which is on the South side, also has a location, office and other activities on the North side of that property; that one can see there are residential subdivisions if you move to the South a little bit, which is beyond the property limits, but the family owns properties that extend from Rt. 16 down to the railroad near the Pemberton community, situated along Gravel Hill Rd.; that there are no improvements on this property based on the tax map, other than two billboards located along the Eastern boundary of the property adjacent to the Iron Works site; that other than the billboards, the property is unimproved and as you can see used as part of agricultural activities at this time; that there are a wide variety of uses ranging from industrial, commercial and poultry south of the railroad tracks; that people are familiar with Baker Petroleum site and Wyoming Mill Works, which

Public
Hearing/
CZ1992
(continued)

are industrial type use; that as one moves toward Milton, there is the medical use that was mentioned and several other businesses; that as one approaches the municipal limits the zoning map corresponds with that; that as one would anticipate, the Iron Works site is zoned C-1 (General Commercial), as is their other site on the Northside of Rt. 16; that the Kemp's Liquor site is B-1 (Neighborhood Business); that there is a fairly substantial area of C-1 that is situated along Rt. 16 on both sides of the highway; that the orangish color that is south of that C-1 zone is the County's High Density Residential district; that the other lands that are south of the family owned lands are zoned AR-1, as is the subject property; that the grayish area south of the railroad tracks is HI-1 (Heavy Industrial), where Baker Petroleum and Wyoming Mill Works are located; that the Future Land Use Map for this property is unshaded which means that is within the low density area; that the low density area is one of the County's rural areas within the Comprehensive Plan; that immediately adjacent to the property of the C-1 properties is the beige color, which are all in the developing area; that if one moves toward the Town of Milton you get to the town center, the darker color, which is anticipated to be either within municipal limits or within their annexation area; that to the south of the property the industrial uses have an industrial designation on the Future Land Use Map; that in describing this low density area, the Comprehensive Plan for Sussex County states that business development should be largely confined to businesses addressing the needs of these uses; that the two uses that its referring to are in the preceding sentence, are agricultural activities and homes; that the purpose of this application is for a satellite location for my clients business, which is a well drilling business, Aquatech Water Specialties; that as the site is larger than what would be needed for just the satellite building or offices, the goal is to create some flex warehousing where contractors in the area could serve residences, businesses and homes as anticipated within the low density area; that according to Table 4.5-2, of the Comprehensive Plan, titled Zoning Districts Applicable to Future Land Use Categories, the C-2 (Medium Commercial) Zoning District is an applicable zoning district within the low density area on the Future Land Use Map; that because C-2 is one of the applicable zoning districts for this area pursuant to the Comprehensive Plan, it is important to look at what the Zoning Code states is the purpose of that C-2 (Medium Commercial) district; that the Zoning Code states, the district supports uses that include retail sales and performance of consumer services; that it permits a variety of retail, professional and services businesses; that the district shall be primarily located near arterial and collector streets; that it accommodates community commercial uses that do not have outside storage or sales; that this application is consistent with the purpose of the C-2 zoning district as just read it from the Code; that its goal is to support service businesses and be located near arterial and collector streets; that there is substantial frontage along Rt. 16 of the Milton Ellendale Highway and it has frontage on Rt. 30 or Gravel Hill Rd.; that DelDOT has designated both of these roads as major collectors and Gravel Hill Rd., which is also Rt. 30, is also alternate to Rt. 5 and has been designated by DelDOT as a truck route; that Gravel Hill Rd. is one of the more important NS truck routes that connects

Public
Hearing/
CZ1992
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areas in Northern Sussex County, starting with Milford to areas in central and Southern Sussex County, going past Milton and then down to Georgetown, Millsboro and beyond; that Rt. 16 is one of the primary East/West corridors in Sussex County; that this property's location, just off of this intersection is a key component and reasons why C-2 is an appropriate zoning district for that; that the property meets the height, area and bulk requirements that are in the Zoning Code for a C-2 parcel; that this requires a minimum of 15,000 sq. ft. of area, a minimum width of 75 ft., and a minimum depth of 100 ft; that this property meets all of the requirements and it can meet all the other setbacks, height, area and bulk requirements that would be part of any construction, given the three acre size and the frontage along the roads; that there are no wetlands located on the property; that the property is not within a floodplain as it is shown within Flood Zone X on the FEMA map, which reflects the site to be located outside of the 500 year floodplain; that there are no Chapter 89 or source water protection issues which means the property is not located within an Excellent Recharge Area or a Wellhead Protection Area; that central water and central sewer are available to the property through Artesian and Tidewater which is viewable from the CPCN map; that one of the primary concerns is traffic; that a Service Level Evaluation Request was sent to DelDOT; that DelDOT responded that the application should be considered without a Traffic Impact Study (TIS); that the determination of traffic for that site will be made upon specific use, the ultimate specific use and the site plan for that use; that this property has been the subject of two other land use applications, one is referenced in the staff review report as a conditional use application in 2008; that the property was smaller then, only two acres, where the area at the southern end of the property was not within or not part of the property; that at that time Aquatech was going to move its entire operation from the Lewes area to this location; that for various reasons that did not occur, even though the County Council did grant approval of the conditional use; that however, the conditional use did lapse for non-use; that currently, the main location would stay in Lewes and the subject site would be a satellite location, allowing other contractors to use the flex space opportunity at this intersection; that it was thought that a change of zone application would be a more appropriate application, rather than trying for another conditional use; that otherwise every time a new business wanted to join we would have to go back through the land use entitlement process; that in addition to the 2008 application, the property was also the subject of an assemblage of three properties that started at Rt. 16 and went down to the railroad, which was a change of zone application seeking to change the designation of all 67 acres, the entire family property, within that portion from AR-1 (Agricultural Residential) to the HI-1 (Heavy Industrial), being the same district as the Baker Petroleum immediately to the South; that the application was C/Z1923; that the Planning Commission recommended approval of that change of zone to the Heavy Industrial district; that unfortunately, County Council did not see that the same way and we the application was not successful; that this application is much smaller land area and is a much less intense application than the prior Heavy Industrial zoning district application; that this change of zone is appropriate given the

**Public
Hearing/
CZ1992
(continued)**

location of these three acres of the property is bordered by two major collectors, two of Sussex County's primary east-west and north-south roads being Rt. 16 and Rt. 30; that the remainder of the property boundaries are the Iron Works site, which is zoned C-1 (General Commercial), and used more industrial than a commercial type fashion; that the remaining boundaries are other lands owned by family members ;that if the application is successful before County Council and the neighbor to the south and west did not like a use, they would need to take it up with a family members at that time; that based on the Comprehensive Plan, the Zoning Code of the location of this property, and the nature of the character of the surrounding area my client requests to grant this request for the change of zone application be approved as recommended by the Planning & Zoning Commission.

Mrs. Green asked where the entrances would be located. Mr. Schaeffer questioned how long the two roads have been designated as truck routes.

Public comments were heard.

Mr. Anthony Scarpa spoke in opposition of the application; that he resides in the Pemberton neighborhood; that he is here today representing his communities concerns about the rezoning change; that in 2021, the Reed family submitted an application to the County to change the zoning from AR-1 to HI-1; that County Council denied the HI-1 change citing such a significant change underlying any predictability of the Comprehensive Plan and its Future Land Use Map; that directly across the street from the Reed property is the approved but not yet started Milton Village, a mixed-use; that there will be 208 acre residential and commercial complex with 696 homes, medical building and retail space; that this project is estimated to generate 18,000 daily vehicle trips; that in the past 12 months, his neighborhood has been hit twice by motor vehicles attempting to make the bin by their road; that nearby, Draper Farms is proposed that will contain 1,350 housing units and 60,000 acres of commercial space; that this project is estimated to generate 30,000 daily vehicle trips; that the increase traffic on Gravel Hill Road and Sand Hill Road will create safety and quality of life issues for their neighborhood; that by approving this rezoning, it will allow the Reed family to come back to request that the remaining 64 acres be rezoned the same way; that he expects to see this zoning on Route 113, Route 1 or Route 13, not next to an existing residential neighborhood and Gravel Hill Road; that rezoning this would change the character of their neighborhood forever; that they request that the Council to reject this application.

Rev. Edward Thayer spoke in opposition of the application; that he spoke about the watershed; that behind his property are hundreds of acres of federally protected wetlands and the Pemberton branch; that he is interested in protecting those wetlands; that he urges the Council to reject his proposal.

The Public Hearing and public record were closed.

**M 095 24
Defer
Action/
CZ1992**

A Motion was made by Mrs. Green, seconded by Mr. Hudson 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 C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission.

Motion Adopted: 5 Years

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

**Public
Hearing/
CZ1993**

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 C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS” (property lying on the west side of Coastal Highway [Rt. 1], and the southeast side of Broadkill Road [Rt. 16], at the intersection of Coastal Highway [Rt. 1] and Broadkill Road [Rt. 16]) (911 Address: N/A) (Tax Map Parcel: 235-8.00-39.00 [p/o]) filed on behalf of Ocean One Holdings, LLC.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 10 reasons as outlined.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Ocean One Holdings, LLC; that also present were two principal owners, Mr. Joel Sens, Mr. Chris Kalil, and additionally, Mr. DJ Hughes, P.E. and Senior Traffic Engineer, with DBF, Inc. Mr. Hutt stated that the parcel contains 115.6 acres; that this application relates to 64.8 acres, which amounts to the frontage along Rt. 16 and Rt. 1, Rt.1 running left to right, and Rt. 16 going up and down; that the 50.7 acres making up the remainder of the property will remain as its current zoning of AR-1 (Agricultural Residential); that the property is located along the eastern side of Rt. 16, outside the Town of Milton; that the property lies at the intersection of Rt. 1 (Coastal Highway), and Rt. 16 (Broadkill Rd), and directly across from the Rookery Golf Course; that currently, DelDOT has a construction project underway at this location to

**Public
Hearing/
CZ1993
(continued)**

install a grade-separated interchange for Rt. 1 ,to go over top of Rt. 16 (Broadkill Rd); that when looking at the Google Earth image, one can see the property is located at the corner of Rt. 1 and Rt.16; that the Rookery Golf Course is directly across Rt. 1 on the Eastern side; that immediately to the south of the property is the Milton NAPA Auto Parts store; that to the west of the property is an assemblage of lands that is within an Agricultural Preservation District and the Smith Landing Campground situated along the river; that along Rt. 16 west toward the Town of Milton and the intersection of Reynolds Rd., is the Lockwood Design and Construction office, a self-storage facility adjacent to that and Frantic Frets Music and Antique store; that adjacent to that is Fuel Automotive; that north of Rt. 16 in close proximity to the site is the Eagles Nest facilities, whose uses include a church, a preschool and the elementary and middle school campuses for Delmarva Christian School; that to the north of that is the Deep Branch Family Campground; that between the church and the campground there is a proposed assisted living facility that the Planning Commission had approved a Preliminary Site Plan, with Final Site Plan approval currently being worked on; that to the northeast side of Rt. 1, across from the Rookery Golf Course is a GR (General Residential) subdivision, Grants Way; that to the east of the Rookery Golf Course is the subdivision, Woodfield Preserve; that presently there are no improvements to this property and it is currently used for agricultural purposes; that the property is within an area where there is a diverse amount of uses ranging from various businesses to schools, golf courses, churches, campgrounds and agricultural area; that this property has fewer residential areas with individual residences along Rt. 16 and some of the roads that come off of Rt.16 and Rt. 1 but there are only two residential communities within close proximity; that many of the items discussed correspond with the appropriate zoning designation; that when one looks at the Zoning Map, is consistent with sound land use planning, by having commercial ventures, activities and zoning along intersections, like Rt. 1; that following Rt. 1, there is a C-1 (General Commercial), commercially zoned property at the intersection of Rt. 5, and another C-1 parcel located at the intersection of Deep Branch Rd and Rt. 1; that travelling south you will see another C-1 zoning at the Eagles Nest facilities, a commercial zone on both sides of Rt. 1 and Hudson Rd; that commercial zones continue on the north to south and east to westside of Rt. 1 extending to Eagle Crest Rd and Cave Neck Rd; that the County has approved two more change of zone requests at Cave Neck Rd. and Rt. 1 for C-3 (Heavy Commercial) being for Chapel Farm, also known as C/Z 1982 and C-2 (Medium Commercial) for Alice Robinson, known as C/Z 1916; that the 2045 Future Land Use Map designates the property as being located within a developing area, which the County has designated as an area of growth; that the 4th point of how that plan was developed states that Sussex County Future Land Use Plan is to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that it makes sense for the County to designate this area as one of its growth areas; that the property is at the location of a major intersection within Sussex County; that DelDOT has listed Rt. 1 as principal arterial; that Sussex County Zoning Code classifies

**Public
Hearing/
CZ1993
(continued)**

Rt. 1 as a major arterial roadway being one of three primary North-South corridors in the State of Delaware; that Rt. 16 is another primary road within Sussex County being an East-West corridor designated by DelDOT as a major collector; that the property is located at the intersection of major roadways recognized by both DelDOT; that currently, DelDOT is spending more than \$30 million to create a grade separated intersection at this location; that central water is available to this property through Artesian Water Company and sewer is available through Artesian Wastewater Management; that the Comprehensive Plan states that a growth area within appropriate intersections, commercial uses should be allowed within developing areas with good road access and few nearby homes should allow for business and industrial parks; that the Comprehensive Plan states that developing area infrastructure should have central water and sewer facilities; that all of these features of the Comprehensive Plan meet the description of the property and purpose of this application; that the Application's consistency with the description of developing areas and the comprehensive plan, the application is consistency with the purpose of the C-3 Zoning District as it sits along a major arterial road and the application is intended to serve local and regional residents as well as the traveling public; that the Office of State Planning Coordination publishes the state strategies for state policies and spendings regarding how the state views land use on the state strategies map, this property has been designated as being within Investment Level 3, which states the site is located in an area favorable for longer term planning and anticipation of future development; that for the property to be a C-3 zoning, it is required to be a minimum of one acre, a minimum of 75 feet wide, and a minimum of 100 feet deep, all of which this property meets; that the primary portion of the property does not contain wetlands; that the area at the southern tip of the property does show a wetland area; that if this application is successful, those wetlands would be formally delineated and the requirements of Sussex County's Resource Buffer Protection requirements would be applied and followed; that the majority of the property is not in a floodplain, however there is a potential for a portion to be within a designated area, but given its location, it would not impact any use or development; that there are no Chapter 89 Source Water Protection areas on the property, as there is no Wellhead Protection areas, nor does the property contain any Excellent Groundwater Recharge areas; that central water and sewer are available through Artesian Water Resources; that a Service Level Evaluation request was sent to DelDOT and the report indicated that DelDOT, through its conversations with the developer, knew of potential uses, and with the size and acreage involved that a traffic impact study would be a requirement due to the impact on the traffic here; that as of December 26, 2023 a Traffic Impact Study Review Letter from DelDOT clarified the maintenance of the proposed service road and on/off ramps would be the state's responsibility moving forward; that Ocean's One Holdings, LLC acquired the property in 2019 at which time it was 120 acres; that since that time, DelDOT acquired 4.5 acres in the northeast corner of the property as part of the grade separated intersection improvements; that since the acquisition DelDOT and the Applicant have had several discussions about the potential uses of

**Public
Hearing/
CZ1993
(continued)**

the property in order to create a plan to incorporate improvements to the current grade separation as to prevent anyone from going back and reworking the entirety of it; that there was a MOU that DelDOT entered into with the property owner in March of 2021; that it laid out the process of how this project could apply for and work for the land use entitlement process; that within that MOU with DelDOT, the property owner and DelDOT agreed to a maximum number of average daily trips that will be generated; that the number is 17,699; that at the Commission hearing, there was concerns expressed about the DelDOT number of daily trips; that this was incorporated into the MOU; that a lot of time and thought has gone into this project; that they requested the Council look at the Traffic Impact Study and realize that this is a proposed concept; that the developer currently has no contracts or letters of intent and this is a conceptual vision for potential uses; that the Applicant's vision for the property is a retail and entertainment complex for not only local residents but tourists who travel the Rt.1 corridor; that the current Traffic Impact Study Review Letter relates to the entirety of the parcel, being the full 115 acres, and the subject request is only on just a portion of that property; that one of the key components of the Traffic Impact Study Review Letter is the offsite requirements that the developer will have; that this is a Change of Zone application, not a site plan.

The Council found that D.J. Hughes, P.E. with DBF came forward; that the applicant has worked with DelDOT for several years on this project; that the MOU has been signed by DelDOT and the developer; that the trips include some into the site and some pass by trips that are already on the roadway; that the TIS evaluated the land use that was assumed that led up to the number of trips; that signals are recommended for the ramps coming from Route 1; that another change is that there will be an additional lane under the bridge; that DelDOT has confirmed there is room to do that; that there will be a left turn lane the full length under the bridge from each direction on Route 16; that it will led to a service road that will be signalized at Route 16 which will then come down to a roundabout that will serve the on ramp to Route 1 southbound; that the entrance and frontage improvements are more than what is typically seen; that the service road will run from Route 16 down to the southerly property limits north of the Broadkill River; that the service will be dedicated to public use; that it will be two-way to serve the site and the pad sites; that the off and on ramps will connect to the service road south or the DelDOT ramp where it connects to Route 1; that there is traffic signal agreements; that there is a potential signal at Route 16; a traffic signal installation and agreements at two intersections created by the grade-separated interchange and approximately \$105,000 contribution to the traffic signal revolving fund for potential future traffic light at Zion Church Rd along Rt. 16 ; that the last requirement is the closure of the third median South of Rt. 16 and Rt. 1to prevent cross over traffic from one side to the other.

The Council found that Mr. Hutt came forward to speak on the application; that an image was shown of the potential layout that would include the

**Public
Hearing/
CZ1993
(continued)**

required service road; that this is not a site plan review being presented, but rather DelDOT's off site improvement requirements; that when one adds all of the areas for the service road, the roundabout and the on/off ramps to Rt. 1, the total acreage is about 8 acres of the site which is adequate for the service road; that design details have yet to be determined and this is only a potential concept; that the application is different from others because it allows road improvements to precede the improvements that would come from the site plans for change of zone since the grade separation is already under way; that the traffic improvement will be constructed prior to any other development on this property; that this smart and responsible growth; that the intended use of this property is in the nature of a business or commercial park and when looking to the surrounding area it is consistent with the references in the Comprehensive Plan; that this application is a match to County's Comprehensive Plan regarding developing areas; that there are few nearby homes, you have infrastructure improvements with traffic and it is located within a busy intersection; that there are letters of support for the application; that the letters are from Representative Stell Parker Selby, a representative from Milton, the Milton Chamber of Commerce, Kent Sussex Leadership Alliance, Southern Delaware Tourism and two from the Sussex Economic Development Action Committee; that the sixth reasons for the Planning Commission's recommendation states Sussex County has anticipated the development of this particular site based upon the investment that DelDOT is making in the intersection there, according to the current Sussex County Comprehensive Plan, this site is designated as being in the development area which is a growth area, it is one of the few areas in this part of Route 1 that anticipates a more intensive use while protecting the eastern side of Route 1 from more intensive development, this planning suggests that development beyond the current AR-1 zoning can occur in this specific location and C-3 zoning is appropriate here and for all of the stated reasons, the Applicant requests that the change of zone application be approved.

Mr. Schaeffer questioned if this application were approved and developed, how many students would it place in the local school system; that there would be no school aged children placed in the school system.

Mr. Schaeffer pointed out that the developer has been working with DelDOT for many years prior to making an application. He added that there is water and sewer available along Route 1 which is one of the major arterial roads in the State of Delaware. Mr. Schaeffer stated that the roadway improvements are being built today from Route 16 to Nassau bridge. Mr. Schaeffer added that Mr. Barrasso stated that during the PZ Commission meeting those improvements being built today under capacity with the development which he believes that was not an accurate statement.

Mr. Hutt submitted the signed MOU between DelDOT and the owner of the property.

A discussion was held about the developer not disclosing the end user for

**Public
Hearing/
CZ1993
(continued)**

the property.

It was clarified that traffic can go on and off of Route 1 without driving by any subdivisions.

Mr. Schaeffer stated that he read Representative Stell Parker Selby's support letter for this application, and he respects her opinion.

Mr. Rieley stated that it is not clear to him what he is voting for; that the information may not be available right now; that it would be helpful for some conceptual vision of what is being proposed; that the previous Council decided about drawing a line and stated that they did not want commercial any further north than a certain area; that now, we are beyond Cave Neck Road; that it would be helpful with more clarity.

Mr. Vincent stated that it was that the Council at that time did not want commercial on the east side of Route 1; that they thought it should be low density residential and commercial on the west side of Route 1.

Public comments were heard.

Mr. Scott Thomas, Executive Director for Southern Delaware Tourism, spoke in support of the Application regarding the opportunities with respect to tourism and promoting visitation and new entertainment for not only those who are traveling here but also those who already live here.

Ms. Karen Falk, Executive Director of the Milton Chamber of Commerce, spoke in support of the Application regarding the potential to significantly enhance our local economy, generate employment opportunities, increase consumer spending, and foster a dynamic business environment; that this will create a larger tax base.

Ms. Karen Sposato, a resident of Milton, DE for 30 years, spoke in support of the Application regarding the project elevating the Milton region with much-needed shopping, entertainment, and lodging.

Mr. Ronald Brewer spoke about the application; that he is not in favor or opposed; that he lives nearby the property; that he watches the traffic along Route 16; that in ten years he believes that the traffic has doubled; that coming through the Town of Milton, it can't handle it; that there are not good intersections to handle extra developments that are already happening; that he requested to keep the ramp as originally proposed; that he wants to work with the developer as a neighbor; that anything that would help with noise and light would be helpful; that he is familiar with the property and the water runoff needs to be considered.

Mr. Jack Bucchioni spoke in opposition of the application; that he is a property owner; that he believes that he is one of the closest property owners; that he spoke about what he sees out of his front window; that it

**Public
Hearing/
CZ1993
(continued)**

was left out what is below the property in the corridor; that he has lived at his property for 13 years; that he has owned property in Sussex County since the early 1990s; that the flood plains came over Route 1 when Hurricane Sandy came through; that there are unsolved issues relating to noise and light; that Cave Neck is getting squeezed from the North and the South due to the development; that the discussion of what will happen to the rest of the intersections needs to be discussed; that there are thousands of residential properties are right below what everyone has been discussing today; that these residents will be impacted; that he heard different numbers of what would be added to this property; that the support letters do not have standing to him; that none of the people that wrote the support letters live as close as he does to this property; that he requested that more information be gathered and there not to be a vote today to change the zoning; that he wants more facts.

Ms. Janet Lank spoke about the application; that she needs more facts; that the circle being put in is fine, but she questioned how much insight has been put into the size of it; that the circle on New Road she travels, and she feels cramped; that she worries about fire departments going around the circle; that there was an archaeological dig a few years ago at the circle; that she never saw anyone in the back part of the property; that she questioned if it was down; that a church used to be located in the back part of the property; that she has concerns that there could be graves located in that area; that she asked how much of the property will be left green and how much will be black top; that there are three drainage ponds proposed, there is not one close to Route 16; that she currently has water running into her front yard.

Mr. John Miller spoke in opposition of the application; that he sent an email last night; that this is sprawl into the farmland; that the concept of a waterpark/entertainment area at this intersection is horrifying.

Mr. Ennio Mastroianni spoke in opposition of the application; that he resides in Paynters Mill; that his community has established a committee to look at and monitor development along Cave Neck Road and Route 1; that he wonders if the maximum number of cars provided is only for the one corner; that he questioned about all of the other development that will take place in the area; that he asked what happens if the Rookery Golf Course does not make it; that he asked if there would be development taking place at the other two corners on the highway; that there is more and more development that is taking place and they feel that it will be affecting their community; that he requested the decision be deferred until DelDOT speaks with the community about the planned development in play and how those numbers will affect the capacity.

Mr. John Fitzhugh spoke in opposition of the application; that he would like clarification of the total traffic numbers; that one of the proposals had a large parking lot; that he did not see that in the latest drawing presented; that he would like to know if it was going to include the extra piece of land; that none of the documentation mentions anything about a grocery store;

that he questioned why it needs to go to C-3.

**M 096 24
Defer
Action/
CZ1993**

Ms. Monique Fitzhugh spoke in opposition of the application; that she questioned the demarcation line and if it has been amended; that she worries if it is rezoned as C-3, what would stop them from coming in and building something else in the green space.

The Public Hearing and public record were closed.

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson 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 C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS" for the reasons given by the Planning & Zoning Commission.

**M 097 24
Adjourn**

Motion Adopted: 5 Yeas

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

A Motion was made by Mr. Hudson, seconded by Mrs. Green to adjourn at 5:01 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.}

