

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 22, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 22, 2022, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
John L. Rieley	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 069 22
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of the February 8, 2022 meeting were approved by consensus.

**Corres-
pondence**

Mr. Moore read correspondence received from Clothing Our Kids and Sussex Technical High School for appreciation of Council's support.

Mr. Schaeffer shared that today, 2/22/22, Mr. Norman Jay Jones, Clerk of the Peace is conducting 22 weddings.

**Public
Comment**

Mr. William Kinnick spoke about sewer and water issues in Sussex County. He also offered his assistance with tiny housing and manufacturing housing.

Mr. Leonard Sears spoke about manufacturing housing problems in Sussex County.

Ms. Eul Lee spoke about budget considerations for the upcoming fiscal year and the possibility of ARPA funds being allocated to the homelessness population. She also shared that an event is being held on March 4th at 2:00 p.m. for the 60th anniversary of the 1962 storm.

Ms. Cathy Hughes spoke about the homelessness situation.

Disposition of County Owned Property

Mr. Lawson discussed the disposition of County owned property in the area of John J. Williams Highway and Burton Pond. The disposition is required for the Delaware Department of Transportation's (DelDOT) road improvement project involving the Burton Pond dam. DelDOT is seeking one portion of the property to be acquired in fee simple title (0.1018 acres) and another portion for a temporary construction easement (0.1888 acres). The respective Tax Parcel ID is: 234-11.00-56.11. DelDOT has asked the Council's consideration that the costs of acquisitions be donated.

**M 070 22
Approve the Disposition of Land/
Enter Into Purchase Agreement**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it moved the Sussex County Council approves the disposition of a certain piece of land located on John J. Williams Highway, Route 24 identified as Tax Parcel 234-11.00-56.11 and be it furthered moved that Sussex County enter into a purchase agreement with the State of Delaware Department of Transportation for the acquisition of a portion of the same property totaling 0.1018 acres for the purpose of constructing the Route 24 road improvements.

Mr. Schaeffer asked if there was any discussion on the possibility of receiving an entrance permit to the Burton Pond property. Mr. Lawson replied that it was inquired from DelDOT if they would be able to assist with a construction access. Mr. Lawson added that their entrance will be a temporary construction access that will be taken back up. They are aware that there is interest in doing something with this property that will need an entrance permit in the future.

Motion Adopted: 5 Yeas.

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

Administrator's Report

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

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for January 2022 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 190 troopers assigned to Sussex County for the month of January.

2. Bonnie Walstead

It is with sadness that we note the passing of County Employee Bonnie Walstead on Friday, February 4th. Ms. Walstead started her career with Sussex County in 2012 as a part-time Library

Assistant at the Milton Library. Her last position held was a Library Assistant I. We would like to extend our condolences to the Walstead family.

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

Grant Requests

Mrs. Roth presented grant requests for Council's consideration.

**M 071 22
ReTemp
Development
Center**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$750.00 to ReTemp Development Center from Councilman Vincent's Councilmanic Grant Account for their Food/Outreach 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 072 22
Woodbridge
High School
Marine
Corps
5K/Walk &
Fun Walk**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$2,250.00 (\$1,000 from Councilman Vincent's Councilmanic Grant Account, \$1,000 from Councilwoman Green's Councilmanic Grant Account and \$250 from Councilman Schaeffer's Councilmanic Grant Account) to Woodbridge High School Marine Corps JROTC Booster Club for a 5K/Walk & Fun Walk

Motion Adopted: 5 Yeas.

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

**M 073 22
Lewes Fire
Department,
Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$1,500.00 (\$1,000 Schaeffer's Councilmanic Grant Account and \$500 from Rieley's Councilmanic Grant Account) to Lewes Fire Department, Inc. for a Golf Tournament Fundraiser.

Motion Adopted: 5 Yeas.

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

**Delivery of
Seed and
Chemical,
Project No.
M19-31**

Mr. Hans Medlarz, County Engineer presented a request for a contract extension for the Bulk Delivery of Seed and Chemical Project, Project No. M19-31 for Council's consideration. Mr. Medlarz shared that currently the contract runs on a fiscal year, however, it is more logical for the contract to run on a calendar year due to the farming operations. Therefore, a six-

month extension is being requested with a re-bid next year on an annual basis.

**M 074 22
Delivery of
Seed and
Chemical
Contract
Extension
Approval**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that based upon the recommendation of the Sussex County Engineering Department, that Contract M19-31, Delivery of Seed and Chemical, be extended through December 31, 2022, to allow the new contract bid to be advertised during the off season and establish calendar year contracts in the future.

Motion Adopted: 4 Yeas, 1 Nay

**Vote by Roll Call: Mrs. Green, No; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Property
Site Main-
tenance
Contract –
Change
Order No. 1**

Mr. Hans Medlarz, County Engineer explained that the two recent winter storms caused significant damage at all properties except for one. Prior to the contractor coming out to do the well sampling, the trails need to be cleared. Therefore, a quote was received to clear out the debris, chip it up and put it in the woods.

**M 075 22
Property
Site Main-
tenance
Contract –
Change
Order No. 1
Approval**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson that based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 to the Western Sussex Property Site Maintenance Contract, and Change Order No. 1 to the Landfill Maintenance Contract, for additional hourly services, be approved in not-to-exceed values of \$5,000.00 and \$15,000.00, respectively.

Motion Adopted: 5 Yeas.

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

**Eastern
Sussex
Motion
Clarification**

Mr. Hans Medlarz, County Engineer explained it was requested for this motion to have further clarification to include the Eastern Sussex Maintenance contract.

**M 076 22
Eastern
Sussex
Motion
Clarification
Approval**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department and Finance Department that the Eastern Sussex Property Maintenance Contract be increased to \$57,660.00 for inclusion of the Downs property, and modified to a performance-based, year over year, continual contract with consumer price index adjustments starting in 2022.

Motion Adopted: 5 Yeas.

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

Mr. Vincent, Yea

**Western
Sussex
Contract 5,
Project
S19-29 –
Award
Segments
A, B & D**

Mr. Hans Medlarz, County Engineer presented for Council’s consideration the awarding of Segments A, B & D for Western Sussex Contract 5, Project No. S19-29. Mr. Medlarz explained that Contract No. 5 was broken down into four segments. He further explained the four segments: the removal of the sludges and chemicals, the demolition of the concrete, repairs to be completed at Heritage Shores and some inflow repairs along the Bridgeville Branch that has been authorized by DNREC. It is being recommend to award three of the four segments and recommendation is to reject the third segment (segment C) due to the low bid having an irregularity. Mr. Medlarz explained that half of the award amount is covered with existing SRF funding. However, additional funds will be needed for the completion of the project.

**M 077 22
Project
S19-29 –
Award
Segments
A, B & D**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that based upon the recommendation of the Sussex County Engineering Department, that Segment A for Contract S19-29, Western Sussex Unified Sewer District, Contract 5, be awarded to A-Del Construction Co., in the amount of \$427,700.00, Segment B be awarded to Richard E. Pierson Construction Co., Inc. in the amount of \$920,800.00 and Segment D be awarded to Standard Pipe Services, LLC in the amount of \$525,100.00, all contingent upon DNREC concurrence.

Motion Adopted: 5 Yeas.

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

**M 078 22
Reject
Segment C –
Project
S19-29**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that based upon the recommendation of the Sussex County Engineering Department, that all bids for Segment C of Contract S19-29, Western Sussex Unified Sewer District, Contract 5, be rejected and that the contract be re-advertised immediately.

Motion Adopted: 5 Yeas.

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

**M 079 22
Funding
Request –
Project
S19-29**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer that based upon the recommendation of the Sussex County Engineering and Finance Departments, that the Sussex County Council authorize the submission of a second supplemental funding request to DNREC in the amount of \$1,336,315.00, for the Western Sussex District area expansion project under the same affordability standard as the original funding package.

Motion Adopted: 5 Yeas.

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

**CU 2164
Request for
Extension**

Mr. Jamie Whitehouse, Director of Planning and Zoning presented a request for an extension for CU 2164 filed on behalf of Leanna and Hung Nguyen for Council’s consideration. The applicant indicated that construction was delayed due to reasons outside of their reasonable control. The applicant is seeking an extension on these grounds and has provided materials to demonstrate that the project will meet the “sustainably underway” threshold required if County Council were to grant an extension. The Conditional Use approval is valid for a period of three years and will expire on April 26, 2022, unless “construction or use” is “substantially underway”. The property is located on the northeast corner of Old Landing Road (SCR 274) and Marina Drive.

**M 080 22
CU 2164
Extension
Approval**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that based upon the recommendation of the Planning and Zoning Department that Leanna & Hung Nguyen (CU 2164) shall be granted a six (6) month time extension until October 16, 2022, which is six months from April 16, 2022, the original expiration date for the Conditional Use.

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/
Proposed
Millville by
the Sea
Villages A-D
into
SCUSSD/
Millville
Area**

A Public Hearing was held to consider extending the boundary of the Sussex County Unified Sanitary Sewer District, Millville by the Sea Villages A-D, Millville Area.

Mr. John Ashman, Director of Utility Planning & Design reported that the proposed expansion of the Sussex County Unified Sanitary Sewer District includes Parcel Nos. 134-15.00-91.01, 134-15.00-16.00, 134-15.00-19.00 & 134.15.00-18.00. The Engineering Department has received several requests from GMB, LLC on behalf of their client ASF MBTS, LLC, the owners/developers of a project known as Millville by the Sea. The four parcels will make up Villages A thru D and are proposed at 601 EDUs. Mr. Ashman explained that the project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates. The Engineering Department advertised the proposed annexation, posted on the county website and posted notices on February 3rd. To date, there has been no correspondence either in support or opposition to the proposed annexation.

There were no public comments.

The Public Hearing and Public Comment were closed.

**M 081 22
Approve
Resolution
Millville by
the Sea
Villages A-D
into
SCUSSD/
Millville
Area**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve the Resolution to extend the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD) Millville Area, to include the Millville by the Sea, Villages A-D, project located in the Baltimore Hundred, Sussex County, Delaware and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

Motion Adopted: 5 Yeas.

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

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)**

A Continuous Public Hearing was held for “AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO”. Mr. Moore reminded the Council and Public that those that spoke at the last public hearing will not be permitted to speak again today due to this being continuous of a previous public hearing.

Mr. Jamie Whitehouse, Planning and Zoning Director reported that following the January 11, 2022, public hearing, the record was left open to receive additional comments. Since the start of this morning’s meeting, 209 written responses have been received; majority appear to be in support. Mr. Whitehouse noted that there may be a few duplicates included in that number.

Ms. Jody Hartzell, who resides in West Bay stated that she has experienced great flooding. She added that she lives near an approved project, Terrapin Island of which currently serves as a buffer of trees that protect West Bay. In late October, a high tide event occurred that flooded the Terrapin Island land to the point that Camp Arrowhead Road was closed to not allow citizens to West Bay. Ms. Hartzell noted that this development was grandfathered in to allow a cluster development, therefore, it is assumed that the land will be clear cut. Mr. Hartzell then spoke of other developments near where she resides that used to have woods; however, hundreds of acres have been clear cut. Mr. Hartzell encouraged the Council to strengthen this buffer zone to keep mature forests, keep bay cleans and areas from flooding.

Mr. Tom Goglia spoke about a public opinion survey that was conducted by SARG, the Sussex Alliance for Responsible Growth with the support of the Center for Inland Bays and the Sussex County League of Women Voters. Mr. Goglia shared that 606 responses were received as of Sunday at noon

Continuous Public Hearing/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)

and since then, the total has risen to over 700 responses. Mr. Goglia noted that the SARG survey was not exclusively a SARG survey to its immediate constituents. The goal of the survey was to reach as many residents across the County as possible.

Mr. Goglia then discussed the goals of the survey further. The goals included:

- **To gauge public sentiment on this ordinance since the beginning of this public hearing last January.**
- **To further engage the public and provide a convenient vehicle for expressions of opinion for those who might be reluctant to attend a public hearing – especially in this time of COVID.**
- **To provide a convenient source of materials for the public to review to help formulate their opinions.**
- **To provide public with a summary of all other respondents’ opinions.**
- **To provide County officials with how their constituents feel about this important topic.**

Mr. Goglia shared the questions and results of the survey that was conducted. The survey consisted of five questions.

The first question asked was how concerned people were regarding the impact of development on Wetlands and Waterways. The survey showed that 99% were very or somewhat concerned.

The next question asked “The protection and retention of existing forested buffers and the re-planting of trees in non-forested buffers is the best buffer and provides maximum protection to our waterways, wetlands, and habitats.” Mr. Goglia shared that an overwhelming majority (98%) of the people that took the survey strongly agree or agree with that statement.

Next, the survey discussed Section G of the Proposed Ordinance. The question was as follows “Section G of this Proposed Ordinance should be deleted as it would allow Developers to reduce the buffers within the proposed subdivision, in some cases below today’s standards, or reduce buffers in exchange for creating buffer alternatives outside the entire subdivision.” The results showed that 97% of the people strongly agree or agree that this provision should be eliminated.

The fourth question asked, “At a minimum, the County should approve the expanded buffer widths as recommended by buffer work group and not allow for any net buffer reductions.” The results were that 99% of the people strongly agree or agree that recommendations of the work group should be approved or recommended.

The last question asked, “The County should add strong enforcement provisions and penalties for noncompliance to the ordinance to ensure that

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

its provisions are taken seriously and lead to meaningful improvement in the quality of waterways, wetlands, and habitats.” Of the people that completed the survey, 99% were in favor of strong enforcement provisions.

Mr. Goglia shared a map showing the response of those that took the survey by zip code. The responses came not just from Lewes but from the entire Eastern portion of the County; the area’s most significantly concerned about the health of the tidal wetlands and buffer zones.

Mr. Goglia discussed what is being asked of the Proposed Ordinance from those that responded. The first ask is to eliminate Section G. Next, approve expanded buffers recommended by the work group. Also, establish an enforcement vehicle that provides for appropriate penalties for violations and elevates the confidence that your constituents will have that this ordinance will accomplish its intended purpose. Lastly, take time and review the comments submitted by constituents. These comments are serious, well-reasoned and passionate. Also, pass this ordinance with the aforementioned modifications.

Ms. Rosemary Haridman, Mayor of the Town of Bethany Beach came forward to speak on behalf of the Association of Coastal Towns (ACT). Ms. Haridman stated that the proposed amendments contain a number of positive elements. However, there are three areas of concern identified by the Center for Inland Bays (CIB) that should be addressed to ensure conformity with the County’s Comprehensive Plan. First, is the possibility that a forested area can be clear cut prior to the submission of an application for development. Unfortunately, this doesn’t provide any incentive for developers to preserve forested land. To correct this deficiency, ACT is recommending adding a requirement that any forested area within the buffer zones that is cut down would have to be replanted to a forest before construction is complete.

The second area of concern is that buffers can be reduced from 50 to 25 feet under certain circumstances. ACT believes this proposal should be rejected. It provides loopholes and opportunities to negate the protective purposes of the proposed ordinance. If any change is to be made to buffer widths, ACT believes that they should be increased, not decreased.

The third concern is enforcement. Provisions for strict enforcement by the County with meaningful penalties for violations must be included and clearly spelled out in the ordinance. Otherwise, any provisions for wider buffers and reforestation will be ineffective.

Ms. Haridman stated that ACT believes that the suggested revisions are more consistent with the vision, goals, objectives, and strategies that were adopted by the Sussex County Council in its 2018 Comprehensive Plan. It is clear that the County’s Comprehensive Plan recognizes the vital importance of the coastal area and inland bays in absorbing floodwaters, providing habitat for native flora and fauna, as well as impact on the environment and

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

in maintaining a healthy economy. And further, that forested areas and wide buffers are essential to protecting and preserving our wetlands and waterways.

Therefore, ACT is recommending that the draft ordinance be revised to:

- **Require maintenance or replacement of forested areas in buffer zones;**
- **Eliminate the possibility of reducing buffer zones to 25 feet and require establishment of buffer zones of at least 50 feet; and**
- **Provide for strict enforcement by the County and meaningful penalties of buffer zone requirements.**

Ms. Leslie Calman asked for consideration to amend the Buffer Ordinance that is not yet strong enough. She urged the Council to continue to listen to the science that has been presented by the Center of Inland Bays. Ms. Calman also spoke about the stewardship of the environment.

Ms. Fran Lozerow, President of Mallard Lakes Community Association and Chairperson of the Southern Sussex County Community Action Group (SSCCAG) then came forward to speak.

Ms. Lozerow shared that is her group's strong belief that buffers are essential to the health and well-being of the residents, wildlife, and environment of the County. She added that regulations of buffers are extremely important.

Ms. Lozerow commented that buffers slow flood waters from coming inland, slow run-off waters and allow pollutants to dissipate before reaching waterways, provide protection from soil erosion and provide habitat for wildlife.

The form of regulation before the Council without amendments isn't perfect but has the support of their organization. The size of the buffers proposed, for example, is smaller than any surrounding jurisdictions, including other counties in Delaware. Nevertheless, the regulation without amendments is better than nothing.

Ms. Lozerow discussed the loopholes in the proposed amendments make a mockery of the regulation and shared an example of why it should not be passed.

The thousand of homeowners that Ms. Lozerow represents today want the buffer regulation passed without amendments. However, they strongly support the addition of strict enforcement mechanisms that will let violators know that the County is serious about the environment, the preservation of our wetlands and protection of our wildlife.

Ms. Sharon Ash spoke about the importance of the environment that is

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

essential. She then shared an article that was written in 2018 by the Inland Bay Journal that discusses the high stakes in the future of our marshes and what they mean.

Mr. Chip Smith representing the Bethany Beach Landowners Association then came forward to speak. Mr. Smith spoke about why buffers must be preserved and protected. He added that buffers are location specific; destroying/degrading a buffer at one location or placing or expanding a buffer at another location is not supported by science.

Mr. Smith spoke about the importance of dead trees which are critical for ecosystem health. Limbs, trunks and branches devoid of life are just as important to the forest ecosystem as healthy/living trees. They play a vital role in the lifecycles of hundreds of species of wildlife, providing a place to hide, nest, rest, eat and grow. Many species of fungi grow only on dead wood, breaking it down and returning important nutrients to the soil.

Mr. Smith shared pictures showing that buffers help protect our waters and water quality.

Mr. Smith discussed reasons why Section G should be removed from the Proposed Ordinance. The serious cumulative losses of buffer functions in the county, seriously degrading our environmental health, causing adverse impacts that will be hard or impossible to reverse.

Mr. Smith shared that there are forest management plans and resources that can be provided. Furthermore, he would like the ordinance to include a statement that cutting mature trees is not allowed.

Ms. Jill Hicks shared that during the storm of 1962, her property in Lewes did not flood. This was due to the large marshes to the east and south of the property that absorbs the surge of the storms and slows down the water moving towards the property. The large marshes are doing their job and protecting the property. Ms. Hicks believes that no averaging should be used in Zone A or B when it comes to tidal wetlands. In the near future, it should be considered to make those buffers as wide as 300 feet or more.

Ms. Hicks then spoke about the non-tidal wetlands and the importance of mature trees are not being disturbed.

Ms. Hicks believes that Section G should be removed entirely.

Ms. Kathy Hughes spoke about the cycle of life. She added that 300 feet is not asking too much. She encouraged the Council to make a change in the right direction and stop the clear cutting that is occurring.

Mr. Johannes Sayre came forward to speak. Mr. Sayre stated that sea level rise is real and measurable. The less that is done to address the effects of sea level rise, locally, via both storm surge mitigation, and prudent development

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

choices, the more people will come clamoring at the gates of local government, in crisis, because their homes and their life savings are being claimed by flowing. This is urgent.

In regard to sea level rise, Mr. Sayre believes that we can learn from Holland. After a half century of building barriers to stop tidal flooding, the Dutch have realized that sea level rise will bypass those barriers. So, they have started implementing a strategy called Room for the River, which recognizes that you can't make floodwater go away, you can only make it go to a place you decided you don't care about, instead of to one you do. A key component of this strategy is supporting natural mature forested buffers as a first line of defense against tidal flooding; their value as such a defense has been confirmed by Dutch research.

Mr. Sayre stated that property rights are not absolute; properties exist in shared space and use shared resources. Development in Sussex County is limited by the carrying capacity of its resources. That includes natural resources such as water supply, and sewage and runoff capacity, and community resources, such as space for housing and public infrastructure and environmental services, including agricultural, undeveloped, and recreational space.

Mr. Sayre commented that growth cannot be infinite because resources are finite. Progress means developing our community based not an understanding of that.

Ms. Cheryl Rehrig commented that many people buy plants for privacy and to restore the wildlife. Furthermore, the cost falls on the homeowners and the homeowner's association to maintain. She would like to see some of the developer's plant trees and shrubs to help bring back wildlife.

Ms. Nan Zamorski spoke about dirty water and the impacts to include no fishing or no swimming. She believes that we need strong regulations and good ordinances to stop destruction of our land and help our quality of life. She would like to see Section G deleted and the codes, ordinances and enforcement up to neighboring counties and states.

Ms. Jeanette Heckter stated that she is in favor of passage of the Ordinance but with omission of the amendments and with addition of provision for enforcement, appropriate penalties and increase of buffer widths. Ms. Heckter requested the Council to pass the ordinance but without amendments but with additions of enforcement and penalties provisions and with buffer widths that will be functional now and in the future. She also requested that Council to reexamine and redesign the process of technical Ordinances such as this one.

Mr. Steve Callanen commented that he concurs with the statements that have been made today. He shared an article that he wrote entitled "Environmental Problems and Land Use Around Delaware's Inland Bays", which was

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

published in the Underwater Naturalist Bulletin of the American Littoral Society in 2002.

Mr. Greg Stevens commented that Section G needs to be removed and there needs to be meaningful enforcement and penalties if the rules are not followed.

Ms. Judy Rose spoke about interest in the surrounding environment and wildlife and the importance of preserving the heritage. She added that maintenance of existing forest is critical; you cannot replace an existing mature tree. Ms. Rose believes that a provision should be included that you are not able to put in an application if you have clear cut in a certain number of years. She added that Section G needs to be removed.

Mr. Chuck Chundra stated that he believes that this needs to be done right and it is too important to lose this.

Ms. Frances Hart shared that the members of the Inland Bay Foundation support the importance of the scientific conclusions to provide enhanced buffer ordinances for the County. Also, the group supports the new buffer widths, maintaining forests and replanting trees in deforested buffer areas. Also, the enforcement and penalties for non-compliance is supported.

Ms. Carol Stevens recommended the working group be reassembled to look at Section G. Ms. Stevens added that she believes that it is unreasonable to push buffer enforcement to the HOA boards; they are already overworked and don't understand the complexity of the buffer. Ms. Stevens believes that it should be done at the County or the State if the County is unable to do it. Ms. Stevens believes that Section G needs to be removed. Ms. Stevens discussed clear cutting of lots and how close houses are being built from the tidal wetlands. She asked how that can be prevented and asked if assurance can be given that it would not continue.

Mr. RC Willin came forward to speak. Mr. Willin shared that he was one of the members asked to serve on the working group that consisted of committed individuals. He believes that the results were good; he suggested 100 feet when asked what the buffer should look like for a tidal water and tidal wetland. Mr. Willin resides on the river, therefore, that is one of the reasons that he believes that was the right distance.

Mr. Willin shared that it was arrived at that the tidal waters and wetlands was 100' by looking at the specific conditions as it relates to the areas to be protection and topography of Sussex County. There are two sections to the 100' buffer, Section A & B; he is not aware of an ordinance that has given this type of restrictive guidance.

Mr. Willin discussed the expectations and goals of the proposed ordinance. One of the items includes the health of the resource as it exists and how we can enhance the resource for better enjoyment and long-term viability of the

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

wetlands and tidal water itself. Other items included water quality, habitat/wildlife, sea level rise, inundation, flooding and sustainability of buffer and function.

Mr. Willin explained that during the process, what the public was interested in seeing was considered. These items included access and viewscapes which is are main reasons why people move to this area.

Mr. Willin discussed long term viability and functionality of buffers.

Mr. Willin shared buffer considerations as follows: perennial non-tidal rivers and streams 50', non-tidal wetlands 30', intermittent 30' and ephemeral streams 0'. He noted that these buffer widths were tailored to meet the situation that we see in Sussex County.

It is important for the buffer to have accessibility so that it can be managed.

Mr. Willin shared a picture of a buffer on his property, and he commented that he is favor of buffers.

Mr. Willin shared pictures of a property on the Nanticoke River showing a tremendous number of dead trees that have fallen across the streams.

Mr. Willin explained the importance of wetlands; not only for water quality but also for nesting, drinking, and feeding for wildlife but it also has a purpose to drain the areas that we reside in.

Mr. Willin shared pictures of Horse Pen Creek showing trees that came down due to lack of oxygen to the roots. He added that ten years ago, this area had a clearly defined stream bed of what would be referenced as a perennial stream.

Mr. Willin believes that buffers need to be managed for the life of the buffer for the functionality and viability for the future.

Mr. Willin proposed that something other than just forested buffers are considered because they present challenges.

Mr. Willin shared aerial pictures of Horse Pen Creek from 1992-2018 that showed the decline of the trees over the years.

Mr. Willin believes that wooded and grass buffers area needed, and sea level rise can be mitigated.

Mr. Willin shared some pictures of Smith Island showing sea level rise issues that are being addressed to save that island. He shared that they are planting grasses that are adjacent to the resource which is the tidal part. He further explained that the grasses that are being planted being to hold sediment that is being placed there when wave action takes place. During this process, it helps build the elevation of the island. He suggested that this be investigated in

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

Sussex County further.

Mr. Willin hopes that some of the concerns that were brought forward today are addressed and believes that this is a tremendous step forward.

Mr. Willin discussed Section G of the Proposed Ordinance; in that section, he believes that there is some flexibility. He added that not every foot of tidal wetlands along the perimeter of a development requires the same degree of protection. This is due to the existing growth that is there, however, other areas require a lot more. Furthermore, this section looks at the possibility of preserving established, mature native tree growth within the subdivision.

Mr. Willin discussed the importance of having access to the resource to be able to manage it so that it is not lost. He added that homeowners' associations are very poor administrators of their resource. As requested, and required in this document, the homeowners' association would draft documents to manage and preserve that resource.

Mr. Willin encouraged the Council to pass the Proposed Ordinance as it currently is.

Ms. Judith Sterbling representing Friends of the Nanticoke River then spoke. She shared that her organization is extremely pleased to see the steps being taken to protect the waterways. Her organization rejects to the buffer trading option and the forest clearing option in Section G. She urged that strong enforcement be included in the ordinance. She also recommended that clear and specific language in the conditions of approval for the final site plan.

Mr. George Schultz commented that he supports a better and stronger proposed ordinance to increase buffer widths, preserve forests, wetlands and enforce penalties for non-compliance. Mr. Schultz discussed the amount of development that is occurring the County and how that impact the infrastructure.

Mr. Scott Shaughnessy spoke about the provisions dealing with compliance that he believes are not included in the proposed ordinance to include no penalties or consequences. He added that it would be difficult for HOA's to enforce rules. He encouraged the Council to make this proposed ordinance count and give it some "teeth" to include provisions of non-compliance.

Ms. Sherry Evans-Stanton stated that she agrees that buffers should be at least 100 feet wide. She added that forested buffers are the best type of buffers to prevent flooding and erosion. She discussed why mature trees are critical and important; they have deep roots that absorb a significant amount of water. The removal of provision that allows non-forested meadows from the resource buffer as well as the removal of Section G. The proposed ordinance does not have enforcement with meaningful penalties.

Ms. Susan Rosenblum-Petze discussed Section G and interpretation of the

**Continuous
Public
Hearing/
Ordinance
to Amend
Chapter 99
and 115
(Wetland,
Water
Resources
and Buffers)
(continued)**

proposed ordinance. She asked for more weight on the side of the environment and amend the proposed ordinance to make stronger, easier to interrupt and to enforce.

Mr. Richard Craig stated that he believes that Section G undercuts the effort of the proposed ordinance. He added that enforcement needs to be strengthened and the Planning and Zoning Commission need to have clear guidance of how to implement the ordinance.

Ms. Valerie Wood spoke about saving mature the trees in a buffer and the benefits of mature trees. She added that a separate ordinance is need for that topic. She also spoke about tax ditches and how often accessed is needed.

The Public Hearing and the Public Record were then closed.

**M 082 22
Defer Action
Ordinance
to Amend
Chapter 99
and 115**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on “AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO”.

Motion Adopted: 5 Yeas.

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

**M 083 22
Recess**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess to recess for 20 minutes.

Motion Adopted: 5 Yeas.

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

**M 084 22
Reconvene**

A Motion was made by Mr. Hudson, seconded by Mrs. Green to reconvene at 2:13 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**

Rules

Mr. Moore read the rules of procedure for public hearings on zoning matters.

Public

A Public Hearing was held on the Proposed Ordinance entitled “AN

**Hearing/
CU 2297**

ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS” (Conditional Use No. 2297) filed on behalf of Schell Brothers, Inc. (Tax I.D. 334-12.00-127.02) (911 Address: N/A)

The Planning and Zoning Commission held a Public Hearing on this application on January 13, 2022, the Commission recommended approval of the application with the amendment of Condition K.

(See the minutes of the Planning and Zoning Commission dated January 13, 2022.)

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

The Council found that Jon Horner, Esq. was present. The Application is a request to change the working hours in the community known as Arbor Lynn to be consistent with the other Schell Brother communities. Currently, Arbor Lynn has an 8:00 a.m. start time; every other Schell Brother community has a 7:00 a.m. start time.

Mr. Schaeffer asked if this would include Saturday. Mr. Horner replied that it would include Saturday, however, no Sunday construction is permitted. The construction hours on Saturday being requested are 7 a.m. until 6 p.m.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 085 22
Adopt
Ordinance
No. 2831/
CU 2297**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Ordinance No. 2831 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS” (Conditional Use 2297) filed on behalf of Schell Brothers, Inc., with the following condition:

K. “Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday, between the hours of 7:00 am and 6:00 pm, no Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign, in English and in Spanish, confirming these hours shall be prominently

**M 085 22
Adopt
Ordinance
No. 2831/
CU 2297
(continued)**

displayed at the entrance to the site during construction. Route 24 shall be the only point of construction access to the site.”

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
CZ 1939**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 3.16 ACRES, MORE OR LESS” (Change of Zone No. 1939) filed on behalf of Gerald R. and Valerie V. Campbell (Tax I.D. No. 530-17.00-2.01) (911 Addresses: 9155 & 9167 Campbell Lane, Bridgeville)

The Planning and Zoning Commission held a Public Hearing on this application on January 13, 2022, at this time action was deferred. On January 27, 2022, the Commission recommendation approval of the application for the nine reasons outlined.

(See the minutes of the Planning and Zoning Commission dated January 13 and 27, 2022.)

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

The Council found that Mr. John Sergovic, Esq. was present with Ms. Pam Washington Hermann, the Applicant’s daughter. Mr. Sergovic stated that a conditional use was granted in 1973 is for a cabinetry shop; the business is currently still in use and has been for almost 49 years. Mr. Sergovic stated that with Mr. Campbell’s increasing age he would like to ensure if something should happen to him, the property could be used for general business use in the future, rather than limited to a cabinetry shop.

There were no public comments.

The Public Hearing and Public Record were then closed.

**M 086 22
Adopt
Ordinance
No. 2832/
CZ 1939**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to Adopt Ordinance No. 2832 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 3.16 ACRES, MORE OR LESS” (Change of Zone No. 1939) filed on behalf of Gerard R. and Valerie V. Campbell, Trustees for the

**M 086 22
Adopt
Ordinance
No. 2832/
CZ 1939
(continued)**

following reasons:

- 1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low density and medium density neighborhoods.**
- 2. The site has been used as a cabinet shop for decades. Although not discussed in detail during the public hearing, this use may have been in existence long enough for the property to be considered legally non-conforming. Rezoning the property to B-2 is appropriate so that the zoning classification matches the historical use of the property.**
- 3. This property is near other properties that are zoned C-1, which allows more intensive uses than what is permitted within the B-2 zoning sought by the Applicants. The property is also relatively near the boundary of the Town of Greenwood and the business and commercial uses that exist there. B-2 Zoning is appropriate in this location under these circumstances.**
- 4. This location is along Route 13, which is a major arterial roadway in Sussex County. B-2 zoning is appropriate along this section of Route 13 near Greenwood in the vicinity of other Commercial Zoning.**
- 5. The rezoning will not adversely affect area roadways or traffic.**
- 6. The rezoning will also not adversely affect nearby properties or property values.**
- 7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 8. No parties appeared in opposition to the application.**
- 9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and 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**

**Public
Hearing
CZ 1960**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT- RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS” (Change of Zone No. 1960) filed on behalf of OA Oaks, LLC (Tax I.D. 533-11.00-82.00) (911 Address: N/A)

The Planning and Zoning Commission held a Public Hearing on this

**Public
Hearing
CZ 1960
(continued)**

application on January 13, 2022, at this time action was deferred. On February 10, 2022, the Commission recommendation approval of the application for the seven reasons outlined and subject to the recommended revised condition wording as outlined.

(See the minutes of the Planning and Zoning Commission dated January 13 and February 10, 2022.)

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

The Council found that Mr. Jim Fuqua, Esq. and Mr. Preston Schell were present on behalf of the application. Mr. Fuqua shared some history of the property; the original Application requested a change of zone to HR-1 RPC High Density Residential, Residential Planned Community for a 14.8-acre parcel located on the northeast side of Zion Church Rd.; that the proposed used was for 178 unit rental apartment development; that 36 of the apartment sites having income qualifications in order to create a workforce housing opportunity; that the workforce housing opportunity is geared for the moderate to lower income residences within Sussex County; that the need for workforce housing within Sussex County was documented in and designated as a goal within Sussex County's Comprehensive Plan; that in 2008 the County enacted an Ordinance called Sussex County Rental Program to encourage development of affordable rental housing; that unfortunately as of 2018, when the original Application was filed there had been no rental projects proposed under the terms of the Ordinance; that this was due to the requirements of the Ordinance; that it did not seem to working in attracting anyone to make a proposal; that in 2018 the Applicant proposed the Ashton Oaks development; that it is a market rate development but would have the workforce housing component to it; that the Applicant proposed Conditions for the workforce qualifications which were based on the County's requirements, but were different; that they were modified from the County's requirements to allow it to be more economically feasible for the project to work; that the original Application was approved by County Council in December 2018; that it was approved subject to Conditions A through Condition S; that the Applicant is currently requesting to modify Condition B, G and I; that Condition B addressed the operation and tenant qualifications, for the 36 workforce housing units; that the current request is not a land use request; that the request is more of an economic and housing formula; that Condition G addressed the development, streets and parking area; that Condition I addresses the time for completion of the recreational amenities. It is the intent of these proposed modifications to clarify and improve the language of the conditions.

Mr. Schell discussed the challenges presented with the household income requirements. Mr. Schell reported that Mr. Robertson recommended a clause at the end of Section 2 to read "Eligible Income—Eligible income is 50% to 80% of the area median income for Sussex County adjusted for household size and as updated annually by HUD, provided that the average household income for all of the Restricted Units within the RPC is at or below 70% AMI

on an annual basis.” Mr. Schell stated that is problematic from the management perspective. He added that at the time of rental, people meet the income requirements, however, as people earn more money, they would no longer meet the qualifications. Therefore, the way this is written, it would push his company above the average that they agreed to for the 36 units. Mr. Schell discussed the issues that this could cause to include discrimination. Mr. Schell is recommending making the eligible income for the initial lease (not an existing tenant) be between 50% and 70% AMI and make the eligible income for renewal leases be between 50% and 80% AMI. Mr. Schell explained that those tenants that no longer qualify due to their income will be moved to the front of the line for the market rate units.

Mrs. Green asked if there was estimated amount of what the monthly rent would be. Mr. Schell replied that the rent is set at 70% AMI; a one-bedroom unit would be approximately \$975.00; two-bedroom unit would be approximately \$1,175.00 and a three-bedroom unit would be approximately \$1,375.00 monthly. He added that the market rate would be approximately \$1,195.00 for a one-bedroom unit, \$1,495.00 for a two-bedroom unit and \$1,795.00 for a three-bedroom unit.

Mr. Rieley discussed the possibility of wage inflation that cause people to hit the 80% AMI. Mr. Rieley asked the risk of people moving out of the program but choosing not to move meaning the percentage set aside will not be there that were anticipated. Mr. Schell replied that it is in his best interest to have all of the 36 units rented to qualifying tenants and not to market rate tenants.

Mr. Vincent asked for clarification of Condition G.

Mr. Russell Huxtable from Milford Housing Development Corporation spoke in support of the Application. He stated that the income levels set between 50% AMI and 70% AMI do achieve the goals that are set for this program. He added that his company is in favor of this project to allow affording housing.

Ms. Sheri Kastner spoke in opposition of the Application. She questioned how many amendments a developer can submit until they are told no and made to start over.

Ms. Diana Huber spoke in opposition of the Application. She questioned if the zoning was being changed. She also questioned if the units were three or four stories.

Mr. Rieley asked Mr. Schell to show the buffering and the distance from the neighboring properties.

The Public Hearing and the Public Record were closed.

**Conditions
CZ 1960**

Section 8 B 2 to read: Eligible income for initial or first-time leases shall be 50% to 70% AMI for Sussex County as established by the US Department of Housing Urban Development (HUD) and updated annually and as adjusted for the household and unit size, eligible income for renewal leases shall be between 50% and 80% of AMI.

Motion Adopted: 5 Yeas.

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

**M 088 22
Adopt
Ordinance
No. 2833/
CZ 1960**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2833 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT- RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning #1-7 with conditions of approval 8 B, G, I as amended.

- 1. The Applicant seeks to amend Condition B regarding the income eligibility and rent standards for the affordably-priced units within Ashton Oaks; Condition G regarding entrance road and sidewalk requirements; and Condition I regarding the timeframe for completing the recreational amenities.**
- 2. According to the Applicant, these amendments are minor in nature, and primarily seek to clarify the requirements imposed upon the project. In the case of the amendment to the income eligibility standards for the affordably-priced units, the Applicant seeks to broaden the income range so that this project can serve a greater number of lower-income families in Sussex County.**
- 3. These amendments will not affect the Findings contained in Ordinance No. 2621 stating that this project will create modern, safe affordable and fair housing options for residents of Sussex County, including specifically housing for the Sussex County workforce. These amendments will allow the Applicant to continue to help address the rental housing needs of Sussex County’s low- and moderate-income workforce in a location that is in close proximity to employment and town centers.**
- 4. The amendment to Condition B regarding income eligibility is reasonable in that it adds clarity to the requirements, while providing some flexibility so that the restricted units are rented to as many qualified tenants as possible. However, the average household income**

**M 088 22
Adopt
Ordinance
No. 2833/
CZ 1960
(continued)**

for all of the restricted units within the RPC must still remain at or below 70% AMI on an annual basis. Such an average will ensure that this project is available to a more diverse applicant pool, which is an important aspect of fair housing and was a fundamental part of the Applicant's stated intention to include workforce housing within the RPC based upon income eligibility.

5. The Amendment to Condition G regarding entrance road and sidewalk requirements is reasonable. Because this will be a rental project with parking lots, it is appropriate to seek relief from certain design requirements that are primarily applicable to single family subdivisions.
6. The amendment to Condition I regarding the timeframe for completion of recreational amenities is also appropriate. The original approval stated that the recreational amenities must be completed by the issuance of the building permit for the 4th apartment building. These timing requirements are generally used to ensure that recreational amenities are open and available to third-party purchasers of homes. In this case, the Applicant will be the developer and owner of all of the rental units within the project, so there are no third-party property owners to protect. However, it is appropriate to ensure the completion of these amenities within a reasonable time.
7. These changes do not affect the substance, density or appearance of the RPC. As a result, they have no impact on the community, neighboring properties or area roadways.
8. For all of these reasons, it is appropriate to modify Conditions B, G and I of Ordinance No. 2621 so that they now state as follows:

CONDITION B:

B. As offered by the Applicant, 36 of the units shall be designated as "Restricted Units" for the purpose of providing "workforce housing" for a period of 30 years following the date the first building receives its Certificate of Occupancy, subject to the following terms and conditions:

1. **Rent--The rent for the Restricted Units shall be established based upon 30% of gross household income for 70% of the Area Median Income ("AMI") for Sussex County as established by the U.S. Department of Housing and Urban Development ("HUD") and updated annually and as adjusted for household and unit size.**
2. **Eligible Income-- Eligible income for initial or first-time leases shall be 50% to 70% AMI for Sussex County as established by the US Department of Housing Urban Development (HUD) and updated annually and as adjusted for the household and unit size, eligible income for renewal leases shall be between 50% and 80% of AMI.**
3. **Vacant Units--During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market rate units. Post lease-up, any vacant units for**

**M 088 22
Adopt
Ordinance
No. 2833/
CZ 1960
(continued)**

which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered or lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.

4. **Qualifying Tenants–Eligible tenants for the Restricted Units must:**
 - a. **Provide proof of citizenship.**
 - b. **Be of eligible income as defined in “2”, above.**
 - c. **Be employed and live in Sussex County for at least one year preceding the date of application.**
 - d. **Occupy of Restricted Unit as the tenant’s principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant’s principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.**
 - e. **Comply with other requirements that apply to tenants of Non-Restricted Units.**
5. **Unit Integration–Restricted Units must be fully integrated into the community and shall not be substantially different in external or internal appearance and fit out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit with the exception that the Applicant may have up to 10% more 3–Bedroom Restricted Units, and therefore fewer 1-and 2-Bedroom Units in proportion to the total number of apartment units. For example, if 25% of the units are 3-Bedroom Units, then between 25% and 35% of the Restricted Units must be 3-Bedroom Units.**

Conditions B.5. through B.7 are unchanged from Ordinance No. 2621 and are renumbered as B.6 through B.8.

CONDITION G:

- G. **The entrance road up to and including the first intersection must meet or exceed the street design requirements contained in Section 99-18 of the Sussex County Code. There shall be a fully-connected, ADA compliant internal sidewalk and multi-modal path pedestrian system serving all buildings. This internal sidewalk and pathway system shall extend to the public right-of-way. The location and type of construction of the sidewalk and pathway system shall be shown on the Final Site Plan.**

**M 088 22
Adopt
Ordinance
No. 2833/
CZ 1960
(continued)**

CONDITION I:

- I. Recreational amenities, including the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park shall be completed prior to the issuance of the Building Permit for the sixth multi-family building.**

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Schaeffer introduced the 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 A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS”

Mr. Schaeffer introduced the 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 CERTAIN PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.23 ACRES, MORE OR LESS”

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Member
Comments’**

There were none.

**M 089 22
Go Into
Executive
Session**

At 3:15 p.m., a Motion was made by Mrs. Green, seconded by Mr. Rieley to recess the Regular Session, and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation, and land acquisition.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 3:20, an Executive Session of the Sussex County Council was held in the Council Chambers to discuss matter relating to pending/potential litigation, and land acquisition. The Executive Session concluded at 3:28 p.m.

**M 090 22
Reconvene**

At 3:30 p.m., a Motion was made by Mr. Hudson seconded by Mr. Rieley to reconvene.

Motion Adopted: 5 Yeas

Vote by Roll Call: Motion Adopted: 5 Yeas.

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

**M 091 22
E/S Action**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to authorize the County Administrator to negotiate, enter into a contract and proceed to closing for a parcel identified as 2022-A.

Motion Adopted: 5 Yeas

Vote by Roll Call: Motion Adopted: 5 Yeas.

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

**M 092 22
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to adjourn at 3:32 p.m.

Motion Adopted: 5 Yeas

Vote by Roll Call: 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.}