

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 3, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 3, 2015, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Robert B. Arlett	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Councilman Samuel Wilson was absent.

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 048 15
Amend
and
Approve
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to amend the Agenda by deleting “Hal Godwin, Deputy County Administrator, Legislative Update”; by deleting “Old Business – Conditional Use No. 1994 filed on behalf of Robert Wilkerson”; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

**Approve
Minutes**

The minutes of January 27, 2015 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**Olde Tymers Softball League (of Delmarva).
RE: Letter in appreciation of grant.**

**MILTON COMMUNITY FOOD PANTRY, SELBYVILLE, DELAWARE
RE: Letter in appreciation of donation.**

**HOME OF THE BRAVE FOUNDATION, MILFORD, DELAWARE.
RE: Letter in appreciation of donation.**

**Public
Comments**

Public Comments

Dan Kramer commented on the HVAC system in the Greenwood Library.

**Wastewater
Agreement**

Mr. Lawson presented a wastewater agreement for the Council's consideration.

**M 049 15
Approve
Wastewater
Agreement/
CFM
Bayside**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 1015, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and CFM Bayside, LLC, for wastewater facilities to be constructed in Americana Bayside – Village C, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

**Adminis-
trator's
Report**

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

1. Sussex County Citizen Corps Class

The Sussex County Citizen Corps Council, in conjunction with the Delaware Citizen Corps Council, will offer a free, two-day disaster preparedness class for anyone interested in learning how to assist their community before, during, and after a disaster. The class will be held from 5:00 to 9:00 p.m. Friday, March 6th, and from 8:00 a.m. to 4:00 p.m. Saturday, March 7th. Classes will be held at the Sussex County Emergency Operations Center, 21911 Rudder Lane, Georgetown, Delaware.

The classes are open to any County resident 18 and older who has an interest in emergency preparedness and community service.

For more information on CERT, please visit www.ready.gov/community-emergency-response-teams-cert. To register for the class, please email citizencorps@sussexcountymde.gov.

**Grant
Requests**

Mrs. Jennings presented grant requests for the Council's consideration.

**M 050 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,500.00 (\$500.00 each from Mr. Arlett's, Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts) to Sussex Cyclists for the safety awareness program.

Motion Adopted: 4 Yeas, 1 Absent.

M 050 15
(continued)

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

M 051 15
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Delaware Senior Olympics for AED replacement batteries and pads.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

M 052 15
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$2,500.00 (\$500.00 from each Councilmanic Grant Account) to Epworth United Methodist Church for operating expenses for Immanuel Shelter.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

Council Members' Comments

Council Members' Comments

Mr. Arlett reported that he had the opportunity to attend an Airport Advisory Committee meeting and a Public Safety Forum (Route 54 Corridor).

Mrs. Deaver commented on a document submitted by URDC in April 2010 regarding the County's Land Use Plan and specifically regarding B-1 and B-2 zoning. The document will be shared with Council members and Mrs. Deaver noted that she would like the Council to consider the recommendation.

Mr. Vincent commented on the Code Purple initiative in Sussex County.

M 053 15
Recess

At 10:25 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to recess for 5 minutes.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

M 054 15 **At 10:32 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole,**
Reconvene **to reconvene.**

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Arlett, Yea; Mr. Wilson, Absent;
 Mr. Vincent, Yea

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, § 216D.**
Proposed **AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE**
Ordinance **COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION**
Relating to **DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE**
Failure **APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY**
to Appear **WITHDRAW FOR REASONS BEYOND HIS CONTROL”.**

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on January 22, 2015 at which time the Commission recommended approval with the recommendation that it be revised to state that Sussex County Council shall not act upon any matter in which an applicant failed to appear before the Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated January 22, 2015.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank reported that no correspondence was received regarding the Proposed Ordinance.

Mr. Lank referenced instances in the last several months when an applicant has failed to appear at a Public Hearing.

Mr. Lank noted that the County has recently started sending public hearing notices to an Applicant by certified mail.

Mr. Cole referenced the following wording in the Proposed Ordinance - “unless the applicant’s failure to appear was beyond his control...” Mr. Cole questioned the definition of “beyond his control” and suggested that examples be provided. Mr. Cole also suggested that some type of evidence be required thereby putting the burden on the applicant to prove that his failure to appear was “beyond his control”. The Council and Mr. Moore discussed the possibility of amending the Proposed Ordinance or amending the Rules of Procedure.

Public comments were heard.

Public Hearing (continued) **Dan Kramer commented on the Planning and Zoning Commission not wanting the County Council to vote on applications that they have not heard.**

There were no additional public comments and the Public Hearing was closed.

M 055 15 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, § 216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL” (to allow time for Legal Counsel to review the Proposed Ordinance and report back on amendments to the Proposed Ordinance or Rules of Procedure to address Council’s concerns).**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

M 056 15 **At 10:56 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, Recess to recess and go into Executive Session.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

Executive Session **At 11:04 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to personnel and land acquisition. The Executive Session concluded at 11:47 a.m.**

M 057 15 **At 11:52 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, Reconvene Regular Session to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 3 Yeas, 2 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Absent; Mr. Wilson, Absent;
Mr. Vincent, Yea**

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

M 058 15 **At 11:54 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver,**
Recess **to recess until 1:30 p.m.**

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Arlett, Absent; Mr. Wilson, Absent;
 Mr. Vincent, Yea

M 059 15 **At 1:30 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to**
Reconvene **reconvene the Regular Session.**

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Arlett, Yea; Mr. Wilson, Absent;
 Mr. Vincent, Yea

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF**
C/Z **SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL**
No. 1759 **DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL**
 DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A
 CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND
 REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795
 ACRES, MORE OR LESS” (Change of Zone No. 1759) filed on behalf of
 Osprey Point D, LLC (Tax I.D. No. 334-18.00-83.00) (911 Address: 20836
 Old Landing Road, Rehoboth Beach).

The Planning and Zoning Commission held a Public Hearing on this application on January 8, 2015 at which time the Commission deferred action for further consideration and left the record open for the Sussex Conservation District reference to grandfathering of the project and for DelDOT’s comments on the Traffic Operational Analysis and the Applicant’s response to DelDOT’s comments after which public written comments relating to those comments will be accepted for 20 days after the announcement of receipt of those comments by the Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated January 8, 2015.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

Mr. Lank reported that the Applicant provided a revised Exhibit Booklet and a revised set of drawings and that the Applicant has reduced the size of the project by ten lots to 340 (instead of 350). Copies of the revised Exhibit Booklet and revised site plan were distributed to Council members. Also

**Public
Hearing/
C/Z
No. 1759
(continued)**

provided to Council members was a copy of a packet provided by James Fuqua, Attorney on behalf of the Applicant, which makes reference to letters, the Comprehensive Plan, the County's zoning map and a Zoning Ordinance in reference to the purpose of the MR District and the RPC District. Mr. Lank reported that, on February 2, 2015, a letter was received from DelDOT in response to questions raised by the County; copies of the letter were distributed to Council members.

Mr. Lank noted that this application was originally advertised for public hearing on October 23, 2014 before the Planning and Zoning Commission and December 2, 2014 before the Sussex County Council; due to questions raised about the notices sent to adjoining property owners and property owners within 200 feet of the subject site, both Public Hearings were re-advertised and rescheduled.

Mr. Lank reported that, in the Public Hearing process before the Commission, 143 letters and emails in opposition to the application and 1 letter in support were received. As of this date, 25 additional emails and letters in opposition have been received. Mr. Lank reported that correspondence received is on file and available for review by any party.

The Council found that James Fuqua, Attorney; Robert Marshall, Principal of the Applicant and owner of the property; Zac Crouch and D. J. Hughes of Davis Bowen & Friedel; and John Hynes of John D. Hynes & Associates, Inc. were present on behalf of the application.

Mr. Fuqua reported that they have submitted an Exhibit Booklet which includes an Environmental Assessment and Facilities Report, a summary of the responses to the considerations listed in the Subdivision Ordinance, and also an Exhibit entitled the "Comprehensive Plan and Zoning Ordinance Exhibits.

Mr. Fuqua presented general information about the location of the property; presented various aspects of the proposal; and discussed how the application complies with applicable land use regulations of Sussex County. Mr. Fuqua stated that the zoning application is not a popularity contest; that land use decisions are based on the applicable laws and regulations which set forth specific criteria to guide the landowner and the County Council in determining legally permitted development; that this is an application to rezone a 126.88 acre parcel of land to a MR-RPC, a Medium Density Residential Planned Community; that they are proposing a development of 340 residential units consisting of 160 single family detached lots and 180 townhouses; that there would be a recreational amenity center; that under a RPC application, an applicant can request a limited amount of commercial space; that no commercial space is being requested in this application; that the property is located on the west side of Old Landing Road, south of Fairway Drive; that the site is and has been since the early 1960s, the Old Landing Golf Course (with a restaurant located on the site); that the owner of the property, Mr. Marshall, has owned the property in his

**Public
Hearing/
C/Z
No. 1759
(continued)**

own name since 1991 and the property has been owned by his family for over a century; that the property borders Fairway Drive and Old Landing Woods development on the north; that the site plan has been revised to address concerns that were raised at the Planning and Zoning Commission's public hearing; that the original site plan had 12 lots fronting on Fairway Drive and the revised site plan removes those 12 lots from the site plan and in their place, creates a 60 foot open space buffer where existing trees will remain; that 14 lots were removed and four of the lots were relocated internally within the proposed plan, resulting in a net reduction of 10 lots; that the application is now for 160 single family lots (rather than 170) and 180 townhouses; that the site borders a residential development (Old Landing Subdivision) which is located south of the property; that the west side of the property borders Arnell Creek; that the east side of the property borders Old Landing Road; that on the other side of Old Landing Road is residential developments – the Rehoboth Bay Manufactured Home Park and Sawgrass South Residential Planned Community (approved for 282 residential units and is comprised of single family residential dwellings and townhouses); that a wetland delineation of the property was performed by Environmental Resources Inc.; that the study indicated that the site contains 17.25 acres of State tidal wetlands and 4.41 acres of Federal Section 404 non-tidal wetlands; that the wetlands delineation was submitted to the Army Corp of Engineers and a preliminary jurisdictional determination was issued by the Army Corps on December 23, 2014 (a copy of this letter has been submitted for the record); that they are proposing to provide 50 foot wide buffers from all tidal waters and wetlands, as required by the Sussex County zoning ordinance; that Federal wetland buffers or setbacks are not required under Federal, State or Sussex County ordinances or regulations; that opponents to the application have argued that in the PLUS review letter, the watershed assessment section of DNREC recommended a minimum of a 100 foot buffer from all wetlands; that in the PLUS letter, there are 2 parts: the first part addresses Code requirements and agency permitting requirements and these are items that are required to be complied with and all of those items will be fully complied with in this application; that the second part of the PLUS letter is recommendations and additional information and that the recommendation for a 100 foot buffer is under this section and the PLUS letter states (on Page 16) that "these items are suggestions and these suggestions do not represent State Code requirements and are in no way required"; that in 2008, DNREC issued regulations requiring 100 foot buffers from certain water bodies and wetlands and that regulation was challenged in a Court action and was declared invalid by the Superior Court of the State of Delaware; that DNREC appealed that decision to the Delaware Supreme Court who affirmed the lower court and held those regulations invalid; that the plaintiff that filed the action was the Sussex County Council; that, therefore, there is no requirement for a buffer; that, in regards to the State tidal wetlands, the development will have the minimum 50 foot buffer as required by the County; that the development will provide a voluntary 25 foot buffer from all federal non-tidal wetlands (although no buffers are required); that Tidewater Utilities will be

Public
Hearing/
C/Z
No. 1759
(continued)

providing central water for drinking and fire protection; that Sussex County will be providing central sewer (West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District); that comments from the Sussex County Engineering Department stated that the sewer system design assumption for this parcel of land was 4 units per acre, which amounts to 507 units; that the Engineering Department's comments confirm that the site is in a County operated sewer district; that wastewater capacity is available; that the sewer connection rate is \$5,500 per EDU, amounting to \$1,870,000.00 for the proposed 240 units; that the proposed project is within the planning study and design assumptions for sewer service; that Delaware Electric Cooperative will provide electricity; that the site is in the Cape Henlopen School District; that the site is located in the Rehoboth Beach Volunteer Fire Company service area; that there are no federal or threatened species associated with the site; that the development will provide significant economic impact through the creation of development, construction, and sales related employment to County residents as well as revenue to the County through transfer taxes, property taxes, and sewer fees; that the project meets the legal basis of the Sussex County Code and State regulations; that the State Quality of Life Act required that the County establish a Land Use Plan; that the developer must comply with said Land Use Plan and Map; that the law states that the Land Use Plan shall have the force of law and that no development shall be permitted except in conformity with the Plan's map; that the Future Land Use Plan is probably the most influential part of the Comprehensive Plan; that the County's Zoning regulations are intended to carry out the Future Land Use Plan; that the Future Land Use Plan also designates which parts of the County are to be considered growth areas; that this site is located in a growth area; that he requested Mr. Lank to verify the designations of the site under the Comprehensive Plan's Future Land Use Map and that Mr. Lank estimated that 60 to 75 percent of the site is located in a mixed residential area; that the Land Use Plan references that permitted uses in an Environmentally Sensitive Developing Area allow for a range of housing types including single-family homes, townhouses, and multi-family units; that central water and sewer facilities are strongly encouraged, and that if central utilities are not possible, permitted densities should be limited to 2 units per acre; that the Land Use Plan references that permitted uses in a Mixed Residential Area allow for a full range of housing types in these residential areas, including single-family homes, townhouses and multi-family units; that non-residential development is not encouraged; that the current densities in these areas range from a maximum of 4 homes per acre for single-family detached housing to a maximum of 12 dwelling units per acre for townhouses; that the density they are proposing of 340 residential units on a 126.8 acres is a gross density of approximately 2.68 units per acre; that the development's proposed density is significantly less than the density anticipated by the Comprehensive Plan and planned for by the Sussex County Engineering Department; that the purpose of the MR Medium Density Residential District references that the purpose of this District is to provide for medium-density residential development in areas which are or which are expected to become generally urban in character,

**Public
Hearing/
C/Z
No. 1759
(continued)**

but where sanitary sewers and public water supplies may or may not be available at the time of construction; that public water and public sewer are currently available for the proposed development and with the considerable residential development that already exists surrounding the site, the area is already urban in character; that the area is urban in character with single-family homes, manufactured homes, and townhouses; that the site is the only remaining large undeveloped parcel in the area; that the purpose of the Residential Planned Community District references that, in order to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Land Use Plan, the Residential Planned Community District is hereby established; that this application is consistent with the intent of the Residential Planned Community District designation; that their requested MR-RPC zoning designation is consistent with the character of the surrounding area; that the site is surrounded by other MR zoning classifications, and should be considered an MR infill in an MR area; that a precedent has already been set for MR-RPC developments in the area; that the Sawgrass South project was established in 2003 by obtaining a rezoning from AR-1 Agricultural Residential to MR-RPC Medium Density Residential District – Residential Planned Community (a comparison of Sawgrass South to the proposed project was presented and a comparison sheet was distributed to the Council); that their proposed development will have a lower percentage of townhouses and a higher percentage of single family homes when compared to Sawgrass; that the zoning of both developments would be identical; that both parcels were originally zoned AR-1; that under the Comprehensive Plan, Sawgrass is totally located in the Environmentally Sensitive Development Area and not in the Mixed Residential Area; that 60% to 75% of the site of this application is located in the Mixed Residential Area and, according to the Plan, that is where higher density is appropriate; that in regards to wetlands, Sawgrass has no required buffer from Federal 404 wetlands and within that development, many of the lots border the wetlands line; that Osprey Point will voluntarily provide a 25 foot buffer from all Federal wetlands; that Sawgrass has 5 foot side yard setbacks for single family homes and they are proposing 8 foot side yard setbacks in Osprey Point; and that as compared to the existing Sawgrass South RPC which is located adjacent to the application site, Osprey Point has a lower net density. Mr. Fuqua stated that the application is totally in accordance with the provisions and requirements of the Sussex County Comprehensive Plan and the Land Use Map.

Mr. Crouch stated that in the 1960s when the golf course was developed, there were no requirements for stormwater management; that today, a couple of ponds (for features) exist on the golf course, but there is no stormwater management; that with the development of this property, there is going to be some drainage issues that will be improved; that existing problems with low areas will be addressed as part of the design and approval process; that reference to an archaeological site was made during

**Public
Hearing/
C/Z
No. 1759
(continued)**

the Planning and Zoning Commission's Public Hearing; that an email was received from the Delaware State Historic Preservation Office stating that, after a field visit, there was insufficient information for that site; that the project went through the PLUS process and the TAC process; that the revised plan shows 340 lots; that the area of single family homes is 34.27 acres and the area of townhouses is 15.89 acres; that active open space consists of a clubhouse, pool, basketball court, tennis court, dog park and 24 boat slips; that there will be no boat launch; that the total open space for this project is 58.13 acres, which is 45.8% of the total area of the project; that the uplands open space is 36.29 acres (not federal or state wetlands); that in regard to the RPC calculation, allowable units for this property is 396.66 units and the request is for 340 lots; that interior roads will be built to Sussex County standards; that the roads will be privately owned; that a Traffic Impact Study is not required; that in regards to the Pollution Control Strategy regulations approved in 2008 for the Indian River Bay, Rehoboth Bay, and Little Assawoman Bay watersheds, this project as well as surrounding projects fall within the load reduction area which means 40% reduction in nitrogen and phosphorus is required; based on the Pollution Control Strategy requirements (Best Management Practices), during the design process they will be implementing bio-swales, bio-filters, infiltration and wet and dry ponds to meet those requirements; that they will have to submit their designs to the review agencies for approval to address stormwater management for the site; that there are flooding issues, however, once stormwater management is implemented, the water will have somewhere to go; that a nutrient management analysis was performed; that nitrogen will be reduced (76% reduction) with this proposed change in land use and the water quality will be better protected; and that regarding stormwater regulations, this project would be designed based on the old regulations (the project must be approved within 18 months for it to fall under the old regulations, which is June 2015).

Mr. Hynes reported that there were questions about developing on the poorly draining soils on this site and he presented a map showing the various degrees of poorly draining soils; that his firm did test borings on the poorly draining soils on the Osprey Point project site; that they were hired to address the question of hydric soils; that regarding the question of whether residences, roadways, and infrastructure can be built in areas with poorly draining soils, they drilled 20 test borings on the property so they could determine the consistency/variability of the soils (report was distributed to Council); that the reports showed that the soils are good enough to support houses on common footing foundations; that they also looked at groundwater conditions and they found that groundwater depths range from 2 to 5 feet at the boring locations; that the areas drilled meet frost-depth requirements which is a major issue with foundation construction; that the site and grading design will be done by Davis Bowen & Friedel and will undergo a review and approval; that developers/builders build on these types of conditions every day; that in the 20 borings, from a geotechnical standpoint, they did not find anything that is unbuildable; that this is a preliminary study; and that before the Developer proceeds with the

**Public
Hearing/
C/Z
No. 1759
(continued)**

building design, the architects and structural engineers should engage a geotechnical engineer to drill additional borings and provide final recommendations.

Mr. Hughes discussed the traffic impact and proposed actions to mitigate it as determined and required by DelDOT. He stated that that a Traffic Impact Study was not required by DelDOT; that DelDOT did require a Traffic Operational Analysis (TOA), which has been submitted (December 2014) and is being reviewed by DelDOT; that they are still waiting on a response on the final TOA recommendations from DelDOT; that it was stated that this area has not been studied since 2011 and that is not correct as intersections in the area were studied in 2013 and 2014; that the property owner will be required to pay a \$24,000 fee to DelDOT for an area-wide study; that the initial report addressed 170 single family homes and 180 townhomes and that has now been reduced to 160 single family homes and 180 townhomes; that another change is the 12 lots that were going to access Fairway Drive, and now those lots have been removed from the plan and no one will be turning onto Fairway Drive from Osprey Point; that townhouses generate less traffic than single-family homes (based on national data); that the Traffic Operational Analysis included addressing eight (8) developments and a 10 year build out, 2 offsite intersections and 2 site access points; that the northernmost site access point is opposite Bonaire Drive, an access point for Sawgrass South, and there will be a dedicated turn lane into each development as well as a dedicated bike lane; that the existing golf course access would be relocated to align with the southernmost Sawgrass site access; that both of the access points and Fairway Drive all operate with acceptable levels of service delays; that regarding the all way stop intersection, it operates with the acceptable level of service and delays and no significant queuing problems with the exception of Warrington Road; that it has been determined that the left turn lane on Warrington Road is too short and needs to be extended; that a signal is likely to be installed at Warrington Road and Old Landing Road; however, they are still waiting on the final recommendations of DelDOT; that several developers are involved in establishing the necessary improvements/signal agreements; that additional turn lanes and bike lanes are needed; that local road improvements will include paved shoulders/bike lanes; that a traffic signal may be required; that in the last three (3) years there have been three (3) crashes along the site frontage, all being single vehicle crashes; that they are still waiting for a response from DelDOT on the TOA and the Letter of No Objection; however, even with the Letter of No Objection, they will need entrance approvals and permits; and that 2013 and 2014 traffic data is included in the TOA. It was noted that a copy of the TOA was submitted and made a part of the record.

Mr. Fuqua concluded by stating that an internet petition was submitted in opposition to the application; that the substance of the petition makes allegations that are without merit or substance and he commented on those allegations; that the townhouses in the proposed project have no impact on the area and are consistent with what already exists; that the front of the

**Public
Hearing/
C/Z
No. 1759
(continued)**

townhomes face Old Landing Road and additionally, those homes front on an interior street; that there will be an open space between the interior road and Old Landing Road of at least 100 feet and Old Landing Road itself has a 50 foot right-of-way; that Sawgrass South itself contains at least 176 townhouses, or 62 percent of that development; that townhouses in Sawgrass are visible from Old Landing Road contrary to comments made by the opposition; that the requested gross density of 2.68 units per acre is significantly less than that anticipated by the Comprehensive Plan and the County Engineering Office and it is similar to the density approved for the Redden Ridge subdivision on Old Landing Road, which is 2.45 units per acre (approved by the Planning and Zoning Commission in October 2013); that when you deduct the unbuildable wetlands from the gross acreage of Osprey Point and the Sawgrass sites, Osprey Point is 3.2 units to the acre compared to the net density of Sawgrass which is 3.7 units to the acre; that there is no basis to a density argument; that the opposition prefers to have a golf course/open space, however, there is no right to a scenic view and a property owner cannot be denied the right to develop his property in a manner that neighboring properties have been developed; that the only way you can preserve a view is to buy the property; that the soils are the same as in other numerous developments in the Inland Bays area; that the site is located in a flood plain area, similar to the areas around it; that all developments in a flood plain have to comply with FEMA regulations that are enforced by the County; that the opposition states that the State of Delaware has very limited funds to address the roads, sewer and water facilities and that DNREC has limited resources to monitor and inspect stormwater management; that the answer to this is that the developer pays for the required road improvements as determined by DelDOT, the developer pays for sewer improvements, impact fees and sewer connection charges as determined by the Sussex County Engineering Department, the developer pays for water infrastructure and other fees per an agreement with Tidewater Utilities, and stormwater management improvements are approved and inspected by the Sussex Conservation District, the cost of which is paid by the developer; that this proposed development, like every development, adds additional traffic to area roads; and that the impact of this development, like every development, will be reviewed by DelDOT and the project will be required to fund an equitable share of the improvements as determined by DelDOT.

Mr. Fuqua referenced and commented on the court decisions on the Gibson case and the Brockstedt case.

Mr. Fuqua referenced and commented on a letter published in the Cape Gazette.

Mr. Fuqua referenced and commented on a posting on Councilwoman Deaver's website.

Mr. Fuqua submitted proposed Findings and proposed Conditions of approval into the record. Mr. Fuqua also submitted the following Exhibits

**Public
Hearing/
C/Z
No. 1759
(continued)**

that he referred to during his presentation: Google Earth photo of the townhouses at Sawgrass, a copy of the FEMA flood map for the area, a copy of the County Council decision on Change of Zone No. 1503 (Sawgrass South), the Planning and Zoning decision for Subdivision No. 2013-8 (Jack Lingo Management, LLC (now Redden Ridge), and a copy of the Gibson decision.

There were no public comments in support of the application.

At the request of the Council, William Brockenbrough, County Coordinator with DelDOT, commented on his letter sent to Todd Lawson, County Administrator, in response to questions about the Osprey Point development. Mr. Brockenbrough read the questions referenced in the letter and summarized his responses. The letter was made a part of the record.

**M 060 15
Recess**

At 4:15 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to take a five minute recess.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

**M 061 15
Reconvene**

At 4:23 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to reconvene.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

**Public
Hearing/
C/Z
No. 1759
(continued)**

Public comments were heard in opposition to the application.

William Dunne, Attorney, was present representing the interests of individuals and families who reside near Old Landing Road and who will be among the most negatively affected by the Change of Zone request pertaining to the parcel of land known as Old Landing Golf Course filed on behalf of Osprey Point D, LLC. He stated that they ask Council to decline the rezoning request and allow time for all issues to be fully developed; that the submission of the application is incomplete; that there are too many open issues for Council to close the record at this time; that the Applicant has just submitted a new site plan and they have not had the opportunity to review it; that they request that Council keep the record open; that the request should be denied, however, should the Council determine to allow the petitioner to go forward under AR-1 up-zoning, the Council, at a minimum, should strictly control density, preserve the character of the

**Public
Hearing/
C/Z
No. 1759
(continued)**

area, require adequate buffers, prevent flooding, and adverse impacts on adjacent properties, minimize adverse environmental impacts, mitigate increased traffic and provide community safety; that any proposed plans or construction of Osprey Point should be subject to all requirements of the Code of Sussex County, and State and Federal environmental laws, as well as all sediment and stormwater management regulations and Best Practices; that, to accomplish this, they propose that Council require Restrictive Covenants and Disclosures in the courts with applicable law; that they look to the Planning and Zoning Commission and the County Council to protect this sensitive area by mandating a project designed with lower density, greater open space, appropriate stormwater management, consideration for environmental elements, and mitigation of traffic and safety concerns; that the proposed subdivision presents a number of complex legal, environmental, and community impact issues; that all development in Sussex County is subject to the County's Comprehensive Plan Update and Future Land Use Plan, which has the force of law provided in Sussex County Ordinance No. 1980; that the Comprehensive Plan Update and Future Land Use Plan designates growth areas including Environmentally Sensitive Developing Areas; that the Planning and Zoning Office has determined that, based on a review of the Future Land Use Map in the Sussex County Comprehensive Plan Update, the Old Landing Golf Course is located in the Environmentally Sensitive Developing Area and partially within an area designated as Mixed Residential; that this Environmentally Sensitive Developing Area is designated by the State as an Investment Level 3 Area according to the Delaware Strategies for State Policies and Spending; that DNREC requires the Applicant to submit a Stormwater Assessment Study that must be evaluated prior to submission of a detailed stormwater management plan and that neither of those requirements have been met; that the fact that the entire parcel is located in a flood plain should raise caution about development; that the parcel borders Arnell Creek, contains State and Federal wetlands, and serves as an excellent groundwater recharge area; that under applicable laws, the goal is to protect critical natural resources, such as the Inland Bays, by guarding against over-development and permanently preserving selected lands; that the Applicant has not provided complete information and documentation pertaining to various issues concerning a flood plain, wetlands, buffer requirements, and other essential requirements including a summary of proposed restrictive covenants which provide for the perpetual maintenance of the buffer areas and the maintenance of all streets, roadways, and other rights-of-way; that in the TAC comments, DNREC recommended a minimum of a 100 foot buffer around the perimeter; that the site plan is not in compliance since forested and/or landscape buffers are not depicted; that there is no soils report; that the soils are poorly drained or very poorly drained; that the Applicant's response to the PLUS comments are inadequate; that the PLUS review strongly recommended that the U.S. Army Corps of Engineers approve that a wetlands delineation study be conducted; that the Council should require an independent geotechnical report (which apparently was turned in on this date) on the effects of building on hydric soils that do not have adequate bearing

**Public
Hearing/
C/Z
No. 1759
(continued)**

capacities to support such construction; that since this report was just turned in on this date, it is another reason to keep the record open; that the traffic load on Old Landing Road should raise a red flag with the Council; that they take strong exception to the Division of Planning's response to the Service Level Evaluation Request filed with the Planning and Zoning Commission in July 2014 and that office declined to require a Traffic Impact Study for the application notwithstanding that the proposed development meets the volume for requiring a TIS; that this departure from procedure premised on a 2011 traffic study of Old Landing Road is misplaced; that DelDOT should require a Traffic Impact Study since the last traffic report from 2011 is inadequate and outdated; that the Applicant has a right to develop his property and current and future residents have a right to a well-planned and safe community; that they ask the Council to protect this sensitive area, to keep the land AR-1 zoning, have the Applicant resubmit an AR-1 zoning plan with lower density, allow no building on environmentally sensitive areas and hydric soils, require larger buffers to protect the Inland Bays, and to mitigate increased traffic and provide for community safety. Mr. Dunne stated that Leslie Ledogar, George Barstar, Richard Morgante, and Donna Voigt would also be speaking on behalf of individuals and families who reside near Old Landing Road

Leslie Ledogar presented a powerpoint presentation on the group's concerns regarding the proposed project: (1) the proposed plan contravenes Sussex County's Comprehensive Plan for developing in Environmentally Sensitive Development Districts and for the requirements of Superior Design, (2) the development is improperly proposed in the flood zone, (3) the development is improperly proposed on hydric soil, (4) a wetlands mitigation plan may be required for the site; and (4) stormwater control planning is insufficient to protect neighboring drinking water wells in the area. Ms. Ledogar stated that the area is prime for residential development but it also contains beautiful environmental areas; that the key is to balance safeguarding natural areas and the concept of mitigating roadway congestion with the tourism and real estate markets that drive the economy of this area; that the Plan, which has the force of law, does have some flexibility and allows Investment Level 3 Areas to allow development as the County's future growth zone; however, there is a caveat as to when that is allowed – proposals must be evaluated with special scrutiny, which is where the Council's discretion comes in; that it must be consistent with State and local development and preservation policies; that this plan, as currently proposed, does not do that – it removes all the trees and it proposes to build on hydric soil much too close to critical wetlands notwithstanding the fact that the plan has been re-modified to take out a mere 10 lots and to put in additional buffers; that the Comprehensive Plan allows the combination of development if special environmental concerns are addressed; that this plan does not adequately address flooding, stormwater management or wellhead and wetland protection; that this plan exceeds 4 units per acre; that the Comprehensive Plan requires superior design in these areas; that the developer does not propose cluster options and lots are to be evenly spread across the tract; that this plan does not direct buildings away from steep

**Public
Hearing/
C/Z
No. 1759
(continued)**

slopes, wetlands, waterways and other important natural features; that there is some delineation of wetlands but not enough; that the proposal does not preserve thick natural vegetation along creeks; that homes should be placed on track portions most environmentally suitable for development; that poor and natural drainage should be located early in design; that the Applicant claims that Osprey Point is not a cookie cutter design but there is uniform development of the lots and there is very little variation in type and style; that they meet only minimum standards without consideration of environmental or historical features; that there is no design ingenuity; that regarding a comparison of the layout of Sawgrass to Osprey Point, there is absolutely no comparison; that the proposal fails to meet the Comprehensive Plan; that clustering homes on most suitable portions of the site is a requirement of the Plan; that Osprey inaccurately stated that there are no archaeological sites on the parcel; that they have gone to the archaeological office and have found that there is an archaeological site; that the Applicant sought density over preservation as most existing trees are to be removed; that DNREC's soil scientist strongly recommended against building on all hydric soils; that 58% of the Old Landing Golf Course site lies in a floodplain; that the property is designated Zone AE, which requires mandatory flood insurance; that the current owners must use a pumping system to drain the golf course of stormwater to render it playable after a storm; that FEMA does not prohibit building in a floodplain but they recommend avoidance; that Sussex County has requirements for building in wetlands and floodplains; that the Osprey plan fails to deal with flood hazards; that the wetlands may not be fully delineated; that ERI did a Preliminary delineation and they urge Council to do a site specific on-the-ground delineation; that hydric soils are an indication of wetlands; that all wetlands are not easily recognized; that the Applicant has obtained a Preliminary Jurisdictional Determination Letter from the U.S. Army Corps of Engineers and has chosen not to contest it; that building on hydric soils should be prohibited pursuant to the Future Land Use Plan; that they ask Council to require additional field mapping of hydric soils; that they question where the Mitigation Plan is; that the stormwater plan is insufficient; that the project should be subject to stormwater regulations effective January 1, 2014; that the plan does not adhere to the PLUS recommendation to include in the calculation all forms of post-construction surface imperviousness, whether created or constructed; that the planned stormwater retention basins are unlikely to retain stormwater; that the stormwater retention basins in current locations will likely intercept groundwater, given they are so close to surface; and that planned stormwater retention basins will likely serve as a direct conduit to groundwater that is used by neighboring property owners as a source for potable water. Ms. Ledogar presented copies of an article printed in the News Journal (entitled "Report: Sandy was a warning") regarding a new Army Corps of Engineers report on flooding.

George Barstar presented a powerpoint presentation on the group's concerns regarding the proposed Point project. He stated that the existing zoning allows for the maximum amount of development capable for the site.

**Public
Hearing/
C/Z
No. 1759
(continued)**

Mr. Barstar provided a project overview of the number of units and the open space acreage, allowable uses, allowable site development, the zoning change, environmental sensitive exclusions, wetlands, hydric soils, stormwater management, stormwater plan approval, stormwater project application meeting, DNREC Stormwater Assessment Report, soils, runoff potential, water resource protection, discharge points, and conclusions which reference that: the site's potential for development is limited by environmental constraints; that the proposed rezoning is incompatible with the environmental constraints and should be rejected; that a significant portion of the site may be suitable for development of single family units without a zoning change with approximately 100 units compatible with local lot sizes and existing development; that recommended geotechnical investigation and soil surveys should be conducted to determine the full extent of hydric soils and infiltration in preparation of the Stormwater Assessment Study; that prior to submission of the subdivision plan, a sediment and stormwater program project application meeting with the Sussex Conservation District is necessary; that review of the Stormwater Assessment Report is required prior to subdivision or rezoning approval; that 50 acres of passive open space is not sufficient to address the entire site; that there should be a full delineation of wetlands and hydric soils; that development of the site is likely subject to the Sediment and Stormwater Regulations promulgated July 18, 2013, effective January 2014; that the site's potential for development is limited by environmental constraints; that the proposed application is incompatible with the environmental constraints and should be rejected; that a significant portion of the site may be suitable for development of single family units or cluster development without a zoning change; that they recommend a geotechnical investigation and soil survey to determine the full extent of hydric soils and infiltration in preparation of the Stormwater Assessment Study; and that prior to submission of the subdivision plan, a sediment and stormwater program project application meeting should be held with the Sussex Conservation District.

Richard Morgante, President of Old Landing Woods Homeowners Association, spoke on behalf of the Association with approval from the Board of Directors. Mr. Morgante presented a powerpoint presentation on the group's concerns regarding the proposed project. He stated that they believe there are serious questions and serious flaws with the proposal; that Old Landing Woods consists of two roads which are Fairway Drive and Clubhouse Drive; that Old Landing Woods consists of 41 large lots; that the proposal has an uncertain impact on the value of their homes and neighborhoods; that Old Landing Woods will be the one most directly impacted by the rezoning and development of the site; that the subdivision was established in the 1970s; that the residents request that the Commission closely examine this application; that the residents feel that the plans are seriously flawed and do not meet the Code requirements; that many of the residents reviewed the existing zoning prior to purchasing their lots; that increasing the density is contrary to the residents reasonable expectations for the development of the property and should be rejected; that the

**Public
Hearing/
C/Z
No. 1759
(continued)**

residents urge the County to consider the character of the area; that this is not a rural, undeveloped landscape, rather it is a settled community; that it is not open farmland, it is a well-developed community surrounding a golf course; that AR-1 zoning is reasonable with respect to this land and is in keeping with the character of the adjoining community; that the residents are concerned about environmental and flooding impacts, the density of the proposed community, the worsening of traffic congestion and safety, and road ownership; that they have environmental and flooding concerns; that the site is located in an Environmentally Sensitive Development Area adjacent to Arnell Creek and Rehoboth Bay; that it is replete with critical habitat; that according to FEMA's flood maps, 58% of the property is in an AE-1 Flood Zone; that even modest rainfalls cause flooding on the golf course property; that the particularly flood-prone area is within the horseshoe of Fairway Drive/Club House Drive; that the proposal is contradictory to the Sussex County Code which dictates the minimal use of wetlands and floodplains; that according to the PLUS Report, adding impervious surfaces to this area will adversely impact both the quantity and quality of the water; that they depend on wells for their drinking water; that they should not have to pay for water through a water utility because of someone's development; that further investigation is needed on that point to insure that their well water will not be impacted; that they questioned why DNREC's stormwater management division grandfathered Osprey Point's stormwater management plan and the response was that if Osprey gets its stormwater management plan approved by July 1, 2015, they will be covered by the old regulations; that they thank the Applicant for removing the 12 lots on Fairway Drive; that another issue is road ownership; that the Applicant owns Fairway Drive and Clubhouse Drive; that complicating the roads management issue is the fact the Robert Marshall actually owns the roads, but does not maintain them, nor does he contribute to their upkeep; that the roads should be turned over to the Old Landing Woods Homeowners Association; that they have paved and maintained those roads and it is time that the roads be turned over; that in regards to density, the proposed project is now at a density of 2.6 homes per acre; that the Applicant asserts that it is in line with nearby communities; that the density of Old Landing Woods development is 1.57 per acre; that the density of The Woods at Arnell Creek is 1.72 per acre; that the density of Sawgrass south is 1.97 per acre; and that Osprey Point should follow suit with neighboring developments.

Mr. Morgante showed pictures of flooding during a moderate rainfall event (December 9, 2014) and the Hurricane/Superstorm Sandy rainfall event. Mr. Morgante shared a picture of an accident on Fairway Drive that occurred on January 23, 2014.

Donna Voigt stated that she was speaking on behalf of a large group of people that oppose the rezoning application. She presented a powerpoint presentation on the insufficient considerations of life safety impacts and increased traffic without any planned relief. Ms. Voigt referenced the Sussex County Mobility Element of the Comprehensive Plan, the Sussex

**Public
Hearing/
C/Z
No. 1759
(continued)**

County Code and Delaware Strategies for State Policies and Spending. Ms. Voigt also referenced an email received from Representative Pete Schwarzkopf discussing his views on this proposed application and a meeting he was having with Senator Lopez and DelDOT regarding Old Landing Road improvements; in his letter he states that “in my opinion, the number of houses already permissible will exacerbate the traffic conditions there, let alone if they grant this increase in density... I don’t think it’s in the communities’ best interest to allow any rezoning request that would increase the housing density until there is a transportation plan in place”. Ms. Voigt stated that Old Landing Road is a narrow, winding, 2-lane rural road that is dark at night; that a lot of accidents happen along that road; that residents along the road have one way in and one way out; that improvements have not been made and more development was approved with a promise of remediation; that there appears to be a lack of coordination and cooperation between the County and the State to lessen the congestion and secure residents’ safety from fire, flood, and other dangers; that they believe a Traffic Impact Study is needed; that the 2011 TIS is outdated; that key concerns are not being addressed, i.e. impact to emergency response, increased risk to pedestrians and bicyclists, and an evacuation zone has not been considered; that there were 18 reported crashes from 2009 to 2014; that DelDOT’s TIS criteria that no deaths have occurred is not comforting; that limited remediation alternatives were considered and none that considered the entire length of the road; that they only looked at the chokepoints and the intersections; that the purpose of the Traffic Operational Analysis was to save DelDOT money needed to review a TIS and generate \$24,500 in revenue to the State; that there are concerns with the TOA; that Old Landing Road is operating at a Level of Service F with no commitment from DelDOT to remedy; that the application further endangers the life/safety of residents of Old Landing Road communities; that they question what happens when an emergency response is needed; that the Delaware State Police Strategic Plan for 2014-2018 noted that traffic safety is one of their key concerns and their ability to provide adequate services and they expect to have another 16,000 residents move into Sussex County; that the Osprey Point project with 350 homes will add approximately 1,300 additional residents and will mean increased pedestrian and bicycle traffic and well as well as more cars and trucks involving over 2,900 trips per day; and that they request that the application be denied and re-evaluated after the traffic and life safety issues have been addressed and the transportation plan for Old Landing Road is developed, approved and funded and that the Council limit the density to insure alignment with the Old Landing Road improvements.

Mr. Dunne commented that many of the other developments on Old Landing Road were constructed under old regulations; that there are new regulations and a new Comprehensive Plan; that they do not consider this a popularity contest and they have given genuine concerns with regard to density, environment, flooding, and traffic; and that if the development is to proceed, it should proceed sensibly. Mr. Dunne presented proposed Findings and proposed conditions. Lastly, Mr. Dunne stated that they

**Public
Hearing/
C/Z
No. 1759
(continued)**

request that Council defer a decision and keep the record open based on the new information that has been submitted.

Additional comments in opposition to the application were heard.

Al Bradley commented on the effects of asphalt and he stated that Arnell Road was never meant to be a dead end road; that it was always intended that Arnell Road would have a second exit and entrance and those plans have been abandoned; that Mr. Marshall maintained ownership of the roads so that he would have the ability to develop the golf course; that it is a life safety issue that Arnell Road be extended and not be cut off; that there is no off-season in the area anymore; and that they are not all summer homes in the area and they are not all retirees in the area.

Josephine Hamilton commented that it was determined that there is an archaeological site on the property; that in 1989, native American artifacts were found and that is why the site was recommended to have further survey done; and that Dan Griffith, a certified archaeologist in the State of Delaware, stated that, best guess, there are several burial sites on this property given the history. Ms. Hamilton presented a copy of a map regarding the archaeological site.

Ed Rynex stated that he supports smart growth and controlled growth.

Dennis Burlin commented on EMS response times and he provided timeframes for trips he has made to the hospital.

Henry Frederickson referenced the traffic situation on Old Landing Road and suggested that Fairway Drive be extended with a small bridge or a box culvert across Arnell Creek that could connect into Mulberry Knoll. Mr. Frederickson recommended a building moratorium until the traffic situation is straightened out and proper infrastructure is in place to insure safety.

Jeanne Goldy-Sanitate (a retired para-olympian) stated that she used to train on Old Landing Road with her hand cycle and she commented on the dangerous situation on the road that will become more dangerous with the approval of the proposed project.

There were no additional public comments and the Public Hearing was closed.

Mr. Cole requested that the public record be left open for additional stormwater management information and he suggested that the Council invite a representative of DNREC's Division of Soil and Water Conservation to speak to Council as soon as it can be scheduled by staff.

It was noted that the Planning and Zoning Commission deferred action for further consideration and left the record open for the Sussex Conservation

**Public
Hearing/
C/Z
No. 1759
(continued)**

District reference to grandfathering of the project, for DelDOT's comments on the Traffic Operational Analysis, and for the Applicant's response to DelDOT's comments after which public written comments relating to those comments will be accepted for 20 days after the announcement of receipt of those comments by the Planning and Zoning Commission.

Mr. Arlett referenced comments made during the Public Hearing regarding road ownership and the possible archaeological find.

**M 062 15
Defer
Action on
CZ 1759**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on and to leave the record open on Change of Zone No. 1759 filed on behalf of Osprey Point D, LLC for the sole purpose of receiving the reports that the Planning and Zoning Commission is waiting for and to have a representative from DNREC's Division of Soil and Water Conservation address the County Council (at the soonest possible date) to discuss the soil conservation regulations pertaining to this specific site; once the reports have been received and the presentation made to the Council, the record will remain open for 20 additional days for written comments only for the public and the applicants to comment on those items that the record was held open for.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

**M 063 15
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 7:06 p.m.

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**