

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 18, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 18, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 164 23
Approve
Agenda**

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

Motion Adopted: 5 Yeas

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

Minutes

The minutes from March 28, 2023, were approved by consensus.

**Corre-
spondence**

Mr. Moore read correspondence received from the Greater Lewes Foundation thanking Council for their support of the Beach Bay Association Fund.

**Public
Comments**

Public comments were heard.

Ms. Janet Lee Digabel spoke about language changes in the County Code and the Comprehensive Plan relating to cluster subdivision and bullying occurring during Planning and Zoning meetings.

**Proclama-
tion/Fair
Housing
Month**

A Proclamation entitled "PROCLAIMING THE MONTH OF APRIL AS FAIR HOUSING MONTH IN SUSSEX COUNTY" was presented to Stephanie Moody from the Sussex County Association of Realtors, Ms. Tyesia Dupont-Palmer, Community Development Program Specialist I and

Mrs. Brandy Nauman, Community Development & Housing Director.

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Cardinal Grove – Phase 1 (Construction Record), effective March 23rd, Osprey Point – Phase 6A (Construction Record), effective March 29th, Headwater Cove – Phase 3 (Construction Record) effective March 30th, Plover Point (FKA Oak Landing) – Phase 1 (Construction Record) effective April 3rd, Baylis Estates – Phase 2 (Plan Approval & Construction Record) effective April 3rd and Sherwin Williams – effective April 12th.

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

**Joy Beach
Sewer
Expansion**

Hans Medlarz, County Engineer presented a recommendation to award and change order no. 1 for Joy Beach Sewer Expansion, Project S20-12 for Council's consideration. Six bids were received with Chesapeake Turf being the low bidder. Mr. Medlarz reported that during a debriefing meeting with the contractor, they proposed two cost saving means and methods changes.

**M 165 23
Approve
Recommendation to
Award/Joy
Beach**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department, that Contract S20-12, Joy Beach sewer expansion phase 1, be awarded to Chesapeake Turf for their total bid of \$4,758,640.00, 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 166 23
Approve CO
No. 1/Joy
Beach**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department that change order No. 1 for contract S20-12, Joy Beach sewer expansion be approved, decreasing the contract amount by \$63,250.00 for a new contract total of \$4,695,390.00.

Motion Adopted: 5 Yeas

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

Grant Request

Mrs. Jennings presented a grant request for Council's consideration.

**M 167 23
First State
Community
Action
Agency**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Countywide Youth Grant Account) to First State Community Action Agency for their 8th Annual "It's A Partee" Miniature Golf Tournament to support their youth groups.

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. Vincent reintroduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 23.58 ACRES, MORE OR LESS" filed on behalf of Sussex CSG 1, LLC

The Proposed Ordinance will be advertised for a Public Hearing.

**Public
Hearing/
American
Storage
Annexation
into
SCUSSD**

A Public Hearing was held for American Storage Annexation into the Sussex County Unified Sanitary Sewer District (Long Neck Area).

John Ashman, Director of Utility Planning and Design reported that County Council granted permission to prepare and post notices for a public hearing on February 28, 2023. The Engineering Department received a request from Pennoni Associates, Inc., on behalf of their client, American Storage of Delaware, LLC the owners/developers of parcels 234-29.00-49.02, 49.03 & 50.00 on Route 24 near Autumn Road. The project consists of 140 residential apartments and 3-story self-storage buildings; the project has received conditional use approval from P&Z. The project will be responsible for System Connection Charges of \$6,600 per EDU based on current rates. To date, there has been no correspondence received in support or opposition.

There were no public comments.

The Public Hearing and public record were closed.

**M 168 23
Adopt
Resolution
No. R 009
23/American
Storage**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Resolution No. R 009 23 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCELS 234-29.00-49.02, 49.03 & 50.00 ON THE WEST SIDE OF JOHN J. WILLIAMS HIGHWAY (RT. 24). THE PARCELS ARE LOCATED IN THE INDIAN RIVER

Annexation into SCUSSD **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**

**Public Hearing/
Mulberry Knoll Store Annexation into SCUSSD** **A Public Hearing was held for Mulberry Knoll Store Annexation into the Sussex County Unified Sanitary Sewer District (West Rehoboth Area).**

John Ashman, Director of Utility Planning and Design reported that County Council granted permission to prepare and post notices for a public hearing on February 28, 2023. The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client V&M, LLC the owners/developers of the project at the corner of Route 24 and Mulberry Knoll Road. The project is proposed to consist of a convenience store and office building. The project has received conditional use approval from P&Z. The project will be responsible for System Connection Charges of \$6,600 per EDU based on current rates. To date, one letter was received inquiring as to how the new development is able to get water and sewer; their existing parcel is not yet served. The process was explained, and the questions were answered. There has been no other correspondence either in support or opposition to this expansion.

There were no public comments.

The Public Hearing and public record were closed.

M 169 23 Adopt Resolution No. 010 23/ Mulberry Store Annexation into SCUSSD **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Resolution No. R 010 23 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE EIGHT PARCELS ON THE SOUTHEAST SIDE OF JOHN J. WILLIAMS HWY. THE PARCELS ARE LOCATED IN THE LEWES & REHOBOTH 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**

Council Member **Mrs. Green commented about a tornado that occurred on April 1st in her district that resulted in a lost of life and lots of damage. She added that**

Comments **there was a great response from first responders, Sussex County staff and neighbors. She thanked everyone for their efforts and help with the cleanup process that will be ongoing.**

Mr. Vincent commented that he attended a celebration event of residents of Sussex County that are becoming U.S. citizens. He added that some of those people worked eight years to become a U.S. citizen.

M 170 23 **At 10:23 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session to discuss matters relating to land acquisition and pending/potential litigation.**

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 10:28 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus for the purpose of discussing matters relating to land acquisition and pending/potential litigation. The Executive Session concluded at 12:29 p.m.**

M 171 23 **At 12:32 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to come out of Executive Session and reconvene the Regular Session.**

Motion Adopted: 5 Yeas

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

M 172 23 **A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to grant ES Action – the authority to the County Administrator to negotiate, enter into a contract and proceed to closing on a parcels identified as 2023-E, F, G, H, G, H & I**

Motion Adopted: 5 Yeas

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

M 173 23 **At 12:33 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Recess Schaeffer to recess until 1:30 p.m. Public Hearings.**

Motion Adopted: 5 Yeas

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

M 174 23 Reconvene At 1:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to reconvene.

Motion Adopted: 4 Yeas, 1 Absent

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

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

**Public Hearing/
CU2340** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WASTEWATER RECLAMATION TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26.05 ACRES, MORE OR LESS” (property lying on the northeast side of Banks Road [S.C.R. 298], approximately 400 feet northwest of Green Road [S.C.R. 298A]) (911 Address: N/A) (Tax Parcel: 234-17.00-170.00 [P/O]) filed on behalf of Inland Bays Preservation Company, LLC

The Planning & Zoning Commission held a Public Hearing on the application on February 9, 2023. At the meeting of March 9, 2023, the Planning & Zoning Commission recommended approval of the Ordinance for the 5 reasons stated and subject to the 8 recommended conditions as outlined.

(See the minutes of the Planning & Zoning Commission dated February 9, and March 9, 2023.)

Mr. Jamie Whitehouse, Planning and Zoning Director, presented the Proposed Ordinance.

The Council found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application for Inland Bays Preservation Company, LLC; that also present were Mr. Robert Tunnell on behalf of the applicant, Mr. Jason Palkewicz with Solutions IPEM, LLC, Mr. Arijit Sarkar, Senior Wastewater Project Manager with Tunnell Companies, LLC; that an Exhibit Booklet was submitted for the record; that the Exhibit Booklet does contain architectural renderings of the proposed facility; that the Conditional Use request is for a new wastewater reclamation treatment facility for the Inland Bays Preservation Company; that the Inland Bays Preservation Company was founded by the Tunnell

**Public
Hearing/
CU2340
(continued)**

Companies, L.P. in 1988 to provide central sewer service to the Pot Nets developments, located along Long Neck Rd.; that the Inland Bays Preservation Company is a public utility company that is regulated by the Delaware Public Service Commission; that the company does hold a Certificate of Public Convenience and Necessity (CPCN) to provide central sewer service in their franchise area along Long Neck Rd.; that the company constructed the existing wastewater facility in approximately 2000, as part of the development of the Baywood Greens Residential Community and Golf Course; that the operation consisted of the collection treatment and disposal of domestic wastewater from the Baywood Greens development; that the existing Baywoods facility is located on the golf course of the Baywood Greens development, along the development street named Back Nine Way; that the existing treatment facility is designed to provide tertiary treatment for up to 95,500 gallons per day of domestic wastewater; that the existing treatment facility is designated as a Class 3 facility; that the current facility operation consist of one 4.3 million gallon line treatment lagoon, one 8.3 million gallon lined treatment storage lagoon, a disinfection chamber, a building housed screen filtration unit and a SCADA control unit; that a SCADA control unit is a sophisticated control system, which is comprised of computers with networked data communication and sensors, providing constant supervision of the equipment and operation of the facility; that the treated effluent is dispersed by spray irrigation on 54 acres of the existing golf course, consisting of holes 10 through 18, and the driving range; that the operation produces an effluent that meets or exceeds DNREC's standards; that the Inland Bays Preservation Company's treatment and spray irrigation operations are authorized by issued permits by DNREC; that the current Application only involves the relocation and construction of a new wastewater treatment facility on a parcel of land, located on northside of Banks Rd.; that the subject property is owned by the Tunnell Companies, L.P.; that the property is part of the Keystone Bay subdivision; that once operational, the new facility will replace the existing facility; that the new facility will be designed to treat an average daily flow of up to 390,000 gallons of domestic wastewater; that the operation would be designed under a Class 4 facility classification; that the proposed facility would be constructed in two phases; that the first phase will be improvements and the processing equipment to treat approximately 193 gallons of wastewater; that the second phase would expand the equipment to allow for treatment of 390,000 gallons of wastewater; that the Conditional Use request only pertains to the wastewater treatment facility; that the two existing lagoons, located on the golf course, will be repurposed as covered storage basins for treated and disinfected effluent from the new facility; that ultimately, the treated effluent will be sprayed onto the golf course, under the same process currently being performed; that the new facility is designed to address any potential odor and noise concerns; that the operation will be enclosed in the building, which incorporates ventilation, climate control and biological odor control systems; that the solids dewatering operation will be performed in an enclosed building with similar ventilation and control systems; that the systems will minimize or eliminate any potential nuisance from the facility;

**Public
Hearing/
CU2340
(continued)**

that the aeration system and blowers systems are designed with sound control enclosures that limit noise levels; that the blower enclosures will be relocated into a separate blower room which will eliminate the blower noise to be heard from outside the building; that all other mechanical equipment, such as pumps and motors, will be installed inside the equipment and operations building; that the facility will be staffed by three to four licensed operators; that the staff will typically be present at the facility from 6:00 a.m. until 4:00 p.m.; that staff will be present at the facility during off-hours on an as needed basis; that the site consists of 1.7 acres; that the entrance to the site would be from Banks Rd.; that four parking spaces and a loading zone will be provided; that DelDOT indicated the traffic impact for the proposed use would be negligible; that a 30-ft. forested landscape buffer is proposed along the east and west sides of the property; that the Applicant intends to preserve and incorporate the existing trees along the buffers; that the buffers will be supplemented with additional plants in areas where the buffer requirement is not fully met; that a six foot privacy fence is proposed within the side buffers; that fencing located within the front yard setback will be shorter in height to keep in compliance with the Code; that a 20-ft. landscape buffer is proposed at the rear of the property, being adjacent to the Keystone Bay development; that stormwater management from the site will be managed as part of the Keystone Bay development system, which is located adjacent to the site; that central water will be provided by the Longneck Water Company; that there are no wetlands located on the site; that the site is located within Flood Zone X, being outside of the Flood Hazard area, according to the FEMA Flood Insurance Maps; that the appearance of the building will be residential in character; that there are several significant reasons for the necessity of the proposed facility; that modern central wastewater facilities are essential for the health and welfare of the current and future residents of Sussex County, as well as offer protection to the environment, specifically being the Inland Bays; that the existing wastewater facility has been in operation for over 20 years; that over the last 20 years the facility's technology has aged, causing a lack of treatment capacity future growth of the area; that the proposed facility will utilize state-of-the-art equipment, that will allow for a much higher quality of treatment than the current operation; that the new facility will provide increase capacity and will be designed to conserve energy consumption; that the main reason for the new facility is to provide the ability to serve the future growth of the area; that the existing facility must remain fully operational until the new facility is fully completed and placed into operation; that there is no sufficient space for the new facility on the existing facility site; that the subject site is part of the Keystone Bay development; that Keystone Bay is a 651 lot cluster subdivision, being located on 319 acres, on both sides of Green Rd.; that Keystone Bay also has frontage along Banks Rd.; that the Keystone Bay subdivision was approved by the Planning & Zoning Commission in January 2020; that the same property had previously been approved for a 597 lot subdivision, by the name of Bridlewood, in 2005; that Bridlewood did not occur; that under the previous Bridlewood application, the subject site was proposed for the placement of a maintenance building; that the proposed site is located

**Public
Hearing/
CU2340
(continued)**

between the Keystone Bay development and Baywood Greens development; that the location of the site will enable the efficient collection and treatment of wastewater from both developments, while allowing storage and spray disposal operations to remain on the golf course; that Sussex County also provides sewer service for the area; that Sussex County has an existing sewer main running along Banks Rd.; that the proposed site provides efficient means for interconnection between the County and Inland Bays Treatment systems, which can be utilized in the event of a major equipment failure of either system or other emergencies; that within the Sussex County Engineering memorandum, dated January 13, 2023, the Engineering department requested the ability of interconnection be placed along Banks Rd, between the facilities; that the site is zoned AR-1 (Agricultural Residential); that the property is part of the Keystone Bay subdivision; that Conditional Uses for the use of public utilities, including treatment plants, are permitted for AR-1 as a Conditional Use; that the purpose of a Conditional Use is to provide for certain uses of a public or semi-public character, that are essential and desirable for the general convenience and welfare of Sussex County; that the proposed Conditional Use was reviewed as part of the State's PLUS process; that the PLUS Review letter, dated January 13, 2022, stated that the Office of State Planning Coordination had no objection to the proposed Conditional Use for a water reclamation facility; that the Zoning Code recognized the important relationship between a Conditional Use and the Sussex County Comprehensive Plan; that Chapter 7 of the Comprehensive Plan addresses utilities; that the Comprehensive Plan states the envision for utilities is to ensure safe, reliable, economical utility services are available to Sussex County residents and businesses; that on Page 7-13 of the Comprehensive Plan, the Inland Bays Preservation Company is listed as one of the private sewer service providers in Sussex County; that the Comprehensive Plan states that private utility companies are a viable option for wastewater treatment; that Page 7-15 within the Plan contains a map reflecting Inland Bays Preservation Company's service area along Long Neck Rd.; that the Plan states as goal 7.1, to encourage adequate central sanitary sewer service in a coordinated approach; that the Plan anticipates future demand, with the objectives of continual maintenance and upgrading to the existing sewer infrastructure to ensure sound operations; that the Applicant feels the proposed Conditional Use is in compliance with the goals of the Comprehensive Plan Utility section; that the proposed use is essential and desirable for the general convenience and welfare of residents; that the proposed use is necessary for public health, safety and protection of the environment; that at the Planning and Zoning meeting on March 9, 2023, the committee unanimously recommended approval of the Application subject to conditions A-H; that all of the conditions are acceptable to the applicant; that for the reasons stated the Applicant requested a recommendation of approval from the Council for the proposed Conditional Use.

There were no public comments.

The Public Hearing and public record were closed.

**M 175 23
Adopt
Ordinance
No. 2918/
CU2340**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2918 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WASTEWATER RECLAMATION TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26.05 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission as follows:

- 1. The Applicant is a public utility regulated by DNREC, the Public Service Commission, and other Federal, State, and Local agencies. The proposed use will be reviewed, regulated, and approved by DNREC and will be designed and constructed in accordance with all other applicable federal, state, and county requirements.**
- 2. The Applicant proposes to use the site for public utility purposes as a water reclamation facility, a use that is essential and desirable for the general convenience and welfare of neighboring properties and Sussex County.**
- 3. Inland Bay Preservation Company has applied for Certificates of Public Convenience and Necessity to serve the area and has or will have the tariffs approved by the Public Service Commission.**
- 4. This application is in an appropriate location for a regionalized water reclamation facility to insure treatment for existing and future residents of the surrounding area.**
- 5. The Conditional Use requested will promote the health and safety of the residents of Sussex County and with the conditions placed upon it, will not have an adverse impact on the neighboring properties or community.**
- 6. This recommendation is subject to the following conditions:**
 - a. All improvements for collection, treatment, and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Sussex County Engineering Department, if any, and the Delaware Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site, or any modification thereto.**
 - b. All equipment needed in the operation of the facility shall be housed indoors with the exception of emergency generators and holding and treatment tanks that may be located on the site. The generators shall be housed in enclosures to reduce noise.**
 - c. There shall be forested buffers of at least 30-foot-wide along the eastern and western sides of the property consisting of the existing woodlands which shall not be cut or removed except for normal safety and maintenance purposes. There shall be a 20-foot-wide landscaped buffer along the northern rear of the site, adjacent to the Keastone Bay development.**
 - d. One lighted sign shall be permitted, not to exceed 32 square feet in**

**M 175 23
Adopt
Ordinance
No. 2918/
CU2340
(continued)**

- size. The sign shall identify the operator of the facility and shall provide contact information in case of emergency.
- e. As stated by the Applicant during its presentation, the exterior treatment of the building will be designed with residential-style architectural features and elements.
 - f. Any security lighting shall be screened so that it does not shine onto neighboring properties or County Roads.
 - g. Construction, site work, and deliveries shall only occur on the site between the hours of 7 a.m. and 6 p.m. Monday through Saturday. No Sunday hours for construction will be permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in Spanish and English shall be prominently displayed at the site of the entrance during construction.
 - h. The Final Site Plan shall be subject to review and approval 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/
CU2349**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (10 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS” (property lying on the northwest side and the southeast side of Oak Orchard Road [Rt. 5], approximately 300 feet east of River Road [S.C.R. 312]) (911 Address: 32768 Oak Orchard Road, Millsboro) (Tax Parcel: 234-35.09-6.00) filed on behalf of Lessard Builders

The Planning & Zoning Commission held a Public Hearing on the application on February 9, 2023. At the meeting of March 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 12 recommended conditions as outlined.

(See the minutes of the Planning & Zoning Commission dated February 9, and March 9, 2023.)

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

The Council found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application; that also present were Mr. Brian Lessard and Mr. Zachary Crouch with Davis, Bowen & Friedel, Inc. (DBF, Inc.); that the original Application was a Conditional Use request for

**Public
Hearing/
CU2349
(continued)**

a multi-family building, to contain ten residential units to be constructed on 0.84 acres; that the property is located within Oak Orchard, with frontage on the Indian River Bay of 130-ft.; that the property depth is 360-ft.; that the property is zoned MR (Medium-Density Residential), as well as most of the surrounding area; that that the MR zoned area, is surrounded by areas zoned as GR (General Residential) and multiple parcels zoned C-1 (General Commercial); that within the MR Zoning District multi-family structures may be permitted as a Conditional Use; that according to the 2019 Comprehensive Plan the site is located within the Coastal Area, which is considered a Growth Area; that the Plan further states that within the Coastal Area, a range of housing types should be permitted, including multi-family units; that medium to higher density, being of four to 12 units per acre, can be appropriate at certain locations; that the original Application has been modified; that the original site plan proposed a 10-unit building to be located on the water front portion of the property; that there would be parking located on the northern portion of the property; that there would be a 30x30 foot storage building and a trash dumpster enclosure area; that based on the previous presentation and comments from some of the area residents that were made at the Planning and Zoning Commission hearing, the Commission in their decision concluded that 10 units was too much density on this parcel of land; that the PZ Commission concluded that 6 new units at this location was appropriate and would not overburdened the site or area; that the Commission found that the approval of the use would allow an existing deteriorating property be redeveloped and improved; that the Commission unanimously recommended approval of the 6 unit Application subject to Conditions A-L; that the Applicant accepts the Commission's recommendation; that the Applicant has submitted a revised site plan; that the revised site plan limits the number of units to 6; that it fully complies with all of the conditions given by the Planning & Zoning Commission; that the revised application is for 6 units subject to the recommendation made by the Planning and Zoning Commission; that in 1994 a Conditional Use application (C/U 1088) was filed proposing a two-story building, with a bait & tackle shop, a sandwich shop, and a marina office located on the first floor and a residence on the second floor; that in addition to that application, there would be a fishing pier, provide 20 boats slips to be rented by the general public; that the minutes of that Application's Planning & Zoning Commission meeting indicated that the site had previously been the location of the Oak Orchard Hotel and Restaurant; that the Oak Orchard Hotel and Restaurant had a 520-ft. pier extending into the Indian River Bay; that he believed the hotel dated back to when Oak Orchard and Riverdale were popular resort destinations; that the old hotel fell into disrepair, being torn down in 1986; that a Conditional Use was approved the County Council in September 1994 (C/U1088); that in 2010, a second Conditional Use (C/U1863) application was filed by Mr. & Mrs. Walton; that the application proposed the relocation of the existing building on the site to the northern end of the site, which would be converted to a single-family residence; that at the location of the existing building, the application proposed to build a new three-story building containing four multi-family residential units located

**Public
Hearing/
CU2349
(continued)**

on the second and third floors; that on the first floor, a 2,800 sq. ft. restaurant, a 700 sq. ft. waterfront patio and 1,600 sq. ft. retail store was proposed; that the new building proposed in that application would have a 30-ft. front yard setback from the bulkhead; that the patio would have a 20-ft setback from the bulkhead; that a boardwalk was proposed between the patio and the bulkhead; that the application proposed ten boat slips be provided along the existing pier, which would be available for lease to the general public; that the application proposed 30 parking spaces be provided at the north end of the property; that the Commission unanimously recommended approval of the application; that County Council unanimously approved the application for C/U 1863 in June 2010; that none of the construction proposed for C/U 1863 was started; that the Walton's land use plans for the property were derailed due to their son being in a horrific motorcycle accident, which resulted in catastrophic injuries to their son; that this event consumed all of the Walton's time, energy and resources; that the existing building, pier and bulkheading have all deteriorated over time; that the existing building was vandalized; that the current condition of the site is not an asset to the community; that the Applicant believes the current proposal will remedy the current situation of the site; that the previous Planning & Zoning Commission and County Council meeting minutes for both C/U 1088 and C/U 1863 were included in the record; that the previous meeting minutes from 1994 state the land fronts along a 20-ft. private road; that at the 1994 public hearing, the owner stated that there was no record of a road dedication across the property, but he would allow the road to remain open; that the minutes of the 2010 public hearing also noted the owner did not propose to close the roadway that runs across the property; that according to previous meeting minutes, the property is not two parcels separated by a road; that the minutes confirm there is no road crossing the site; that Oak Orchard Avenue terminates at the northeast and southwest boundaries of the property; that this is also confirmed by the Sussex County Tax Map which shows the site as one contiguous parcel; that the Sussex County online map reflect the public roads terminating at the property boundary; that the Applicant recognizes the use of the road is not only a convenience to the general public, but also provide access to Smiths Landing Rd.; that both Site Plans were designed with the road maintaining its current position; that a building is proposed along the waterfront portion of the site; that parking and a storage building are proposed on the northern portion of the site; that the Applicant proposes to pave the private road, as well as the entrance onto Smiths Landing Rd.; that the pavement would be constructed to Sussex County standards; that the Applicant will provide a perpetual easement to be used by the general public; that central water will be provided by Tidewater Utilities; that central sewer will be provided by Sussex County; that wastewater capacity was noted to be available for ten units; that there are no wetlands on the site; that the areas around the site are in a special flood hazard area as shown on the FEMA maps; that the proposed building design and base floor elevation will meet or exceed the FEMA Coastal construction standards and fully comply with Article 18 of the Zoning Ordinance regarding new construction in flood prone districts;

**Public
Hearing/
CU2349
(continued)**

that stormwater management will be constructed in accordance with DNREC regulations; that there is no stormwater management on the site currently; that the proposed building will comply with all Delaware State Fire Marshall Office requirements and will be reviewed and approved by that office; that the building will have a sprinkler system; that the Applicant will consult with Tidewater Utilities to determine if adequate water pressure is available for a hydrant; that if pressure is available, a hydrant will be located on the property; that if water pressure is not sufficient, then a dry hydrant will be installed on the site; that DelDOT's Service Level Evaluation Response stated that a Traffic Impact Study (TIS) was not warranted, as the traffic impact would be considered negligible; that entrance and improvements to the parking area will be designed in compliance with DelDOT standards; that the site is located within the Indian River School District; that the Indian River Volunteer Fire Company, Inc. will provide fire service for the site; that the site is bulkheaded; that the bulkhead wraps around the two corners of the property; that there is an existing pier, which is in a state of disrepair; that the pier does extend 500-ft. into the Indian River Bay; that there are 10 boat slips located at the end of the pier; that there is an existing building, with a front setback from the bulkhead of 26-ft.; that there is a covered porch area extending from the building to the bulkhead; that the bulkhead and boat slips will be repaired and renovated; that the Applicant anticipates the pier length will be shortened; that the pier will maintain ten boat slips; that all repair and renovations would be in accordance with approval and permits from DNREC; that the new building would be located on the waterfront portion of the site, with a front setback of 30-ft. from the bulkhead; that the 30-ft. setback is the same setback requirement approved by Sussex County for the 2010 C/U 1863; that the proposed setback for the new building is greater than the setback of the existing building; that the new building is proposed to be three stories that will not exceed 42-ft.; that the building will contain 6 residential units; that there will be two units on each floor; that they average 1,460 square foot of floor area per unit; that the building will have elevator; that outdoor open space and access to the pier will be located on the bayside of the building; that each of the unit owners would require the right to the exclusive use of a designated boat slip; that the boat slips are not proposed to be rented to the general public; that the private road will be paved to Sussex County standards and dedicated to public use; that a sidewalk is proposed along the building side of the private road; that parking would be provided on the northern portion of the site; that 12 parking spaces are required; that 18 parking spaces are being provided; that an enclosure for trash receptacles will be located next to the storage building; that the parking area would have minimal, non-intrusive, directional lighting for safety purposes; that the building area, parking area, storage area, and trash receptacles would be attractively landscaped; that a detailed landscape plan will be submitted as part of the Final Site Plan review; that architectural renderings were submitted reflecting the bay view and street view of the building; that the building look and design is handsome in appearance, which will enhance property values of surrounding properties; that public water and sewer are available; that the

**Public
Hearing/
CU2349
(continued)**

site is zoned MR; that it is located in the Coastal Area which is where the Comprehensive Plan recognizes multi-family units can be appropriate at a higher density; that the proposed use will replace a deteriorating property with a new attractive building and landscaping; that the proposed use will resolve this unusual private road issue by repaving the private road and dedicating it to public use; that in 2010, the County determined the site was appropriate for five residential units, a 2,800 sq. ft. restaurant, a 700 sq. ft. patio, 1,600 sq. ft. rental store; that the current Application is requesting one additional use and eliminating the restaurant, deck and retail store; that five units were approved prior; that this would make it six and eliminate all of the commercial uses that were approved back in 2010; that the use would have a significantly less of an impact in terms of noise, odors, smells, traffic impact, and impact on property values; that the Planning and Zoning Commission did determine that 6 residential units is an appropriate density of the site; that the Commission unanimously recommended approval subject to conditions A-L; that the applicant has amended its site plan to accommodate the Planning and Zoning Commission's recommendation; that the Applicant requests approval based on the Commission's findings and subject to the Commission's recommended conditions; that it was stated at the Planning and Zoning meeting that there would be a private restriction in the condo documents that would limit any rentals to 30 days; that these are designed to be owner occupied; that it would be a minimal rental of a month or more; that it could be rented year round or seasonally; that Zach Crouch from DBF reported that there will be 2 parking spots per unit; that additional parking will be provided; that it was questioned if setbacks come into play with the private road; that it is not a public street, therefore, no setback is required; that the 6 parking spaces on the building side are meant for the primary vehicle; that low lighting will be provided; that there will be an easement for the road for the public to use; that a revised landscaping plan was distributed.

Public comments were heard.

Mr. Mike Masciandro spoke on the Application; that he is unsure if he is in favor or against the Application; that the site is currently unacceptable; that he is happy to see some investment going into the area; that Mr. Lessard came out to speak to the residents; that he was aware that it was approved by the Commission for 6 units; that it is nice to see a new plan, however, it is brand new; that he questioned if anything would govern the new plan; that he requested that the conditions set in the previous Conditional Use (#1863) be brought forward; that one of those conditions stated that no boats were to be stored on the property; that now there is a big open space, he believes that is a good condition to be included; that there are things stored on the property today that do not belong there; that he questioned the remedy to be sure that the conditions are complied with; that it is apparent that they have not been complied with in the past resulting in the property being in disrepair; that he requested that the previous conditions be brought forward into this Conditional Use; that it is a pretty quiet place; that people do walk up to the river; that there are not

**Public
Hearing/
CU2349
(continued)**

many places to do that; that he wants to be behind this project; that he would like to see an ability for the neighborhood to be a part of the process; that there are osprey nests on the pier today; that there are regulations on moving those nests; that if there is something in the condo association documents relating to rentals, he questioned if that something is appropriate for the Conditional Use; that Patrick Miller, President of the fire department spoke at the PZ meeting; that the fire department is concerned about fire access; that there are many electrical lines that run through the property; that the setbacks being met were questioned.

Mr. Fuqua stated that due to the change of the number of units, that caused a wider space between the back of the building to the private road which allowed for the parking spaces to be closer and there would be a larger space from the last parking spot to the road. This means that it may comply with the setbacks.

Ms. Margaret Hurt spoke in opposition of the Application; that she lives adjacent to the property; that she believes that the development will be beautiful once it is complete; that the property has been an eye sore for years; that the use of the road will be excellent for the community; that she has a concern about the property where there will be nothing; that in the past, that property has been used as a dumping site; that the residents have always kept it clean; that she requests that they keep that area for their residents and do not allow people to park or dump stuff there.

Ms. Cindy Battles spoke in opposition of the Application; that she is excited about the cleaning up of the property; that she has concerns about the electrical wires in the area; that she questioned the open space and how it would be used.

The Public Hearing was closed.

**M 176 23
Leave
Record
Open/
CU2349**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to leave the public record open until April 28, 2023, at 4:30 p.m. and to allow the applicant until May 2, 2023, at 4:30 p.m. to respond to any comments and all comments must be submitted in writing.

Motion Adopted: 5 Yeas

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

**M 177 23
Defer
Action/
CU2349**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (10 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84

ACRE, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**M 178 23
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mrs. Green to adjourn at
2:51 p.m.**

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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