

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 25, 2023**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 25, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 179 23  
Approve  
Agenda**

Mr. Lawson reported that Conditional Use No. 2350 filed on behalf of Beaver Dam Enterprises, LLC under Public Hearings can be removed from the Agenda. A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Agenda, as amended.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Minutes**

The minutes from April 18, 2023, were approved by consensus.

**Corre-  
spondence**

Mr. Moore read correspondence received from the Delaware Manufactured Homeowners Association thanking Council for their support.

**Public  
Comments**

There were no public comments.

**Tributes,  
Resolutions  
& Proclam-  
ations  
Discussion**

President Vincent stated that he brought it up to discuss Tributes, Resolutions & Proclamations in the past. He would like to have all five Council members present for the discussion; Mr. Schaeffer could not be present today so he would recommend deferring this discussion to be included on a future agenda.

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action

**M 180 23**  
**Defer**  
**Action/**  
**Tributes,**  
**Resolutions**  
**& Proclam-**  
**ations**

**on a discussion related to Tributes, Resolutions & Proclamations.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Discussion**  
**& Possible**  
**Action/**  
**Disposition**  
**of County**  
**Owned**  
**property**

**Mr. Lawson presented the disposition of County owned property on what is known as the Jones Farm (rear parcel) on Conaway Road, west of Millsboro for Council's consideration.**

**In 2022, the County purchased three parcels from the Jones Heirs totaling 47 acres with the idea to subdivide the rear parcel off. Within this portfolio, one parcel equaled 1.5 acres and included an old farmhouse and surrounding agricultural buildings. In June 2022, the Council approved the disposition of the farmhouse and surrounding 1.5 acres and that property was sold to the highest bidder.**

**The remaining acreage consists of farmland and woods and is contiguous to land owned by the State of Delaware. The land also neighbors the Midlands Wildlife Area which is actively managed by the State Fish & Wildlife Division. It was always the County's intent to sell the property to the State once the farmhouse was sold and old agriculture structures were removed.**

**The State and the County have reached a tentative agreement to spend an even 50-50 amount for this transaction. The State Open Space Council recommended the purchase at its quarterly meeting held in December 2022. In this agreement, the State will purchase the property from the County and preserve the land in perpetuity.**

**The property appraised at a present fair market value of six hundred and five thousand (\$605,000) and each party will pay 50% of the sale price. Since the County was the original purchaser, the State will now pay the County three hundred and two thousand and five hundred dollars (\$302,500).**

**M 181 23**  
**Approve**  
**Disposition**  
**of County**  
**Owned**  
**Property**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved the Sussex County Council approves the disposition of a certain piece of land with improvements located on Conaway Road, west of Millsboro as explained in today's presentation and as identified as Tax Parcels 133-15.00-6.00 and 133-18.00-19.00.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

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

**Adminis-  
trator’s  
Report**

**1. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, Milos Have – Phase 1A (Construction Record) and Catching Cove (FKA Lands of Robert M. & Debora A. Reed) received Substantial Completion April 17<sup>th</sup> and April 18<sup>th</sup> respectively.

**2. Delaware State Police Activity Report**

The Delaware State police year-to-date activity report for March 2023 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of March.

**3. Sussex County Council FY 2024 Budget Workshop**

On Tuesday, May 2<sup>nd</sup>, the Sussex County Council will meet for its annual budget workshop. The Fiscal Year 2024 Budget Workshop will be held at 9:00 a.m. at the Sussex County Emergency Operations Center. The next regularly scheduled Council meeting will be held on Tuesday, May 9<sup>th</sup>, at 10:00 a.m.

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

**Hazard  
Mitigation  
Plan**

Joe Thomas, Director of Emergency Operations presented a Resolution for the 2022 Sussex County Hazard Mitigation Plan for Council’s consideration. Mr. Thomas reported that he came before the Council on December 13, 2022 to approve and adopt the Sussex County Multi-Jurisdictional Hazard Mitigation Plan. He added that for the previously plan that have been completed, FEMA accepted the Council minutes as the adoption. This time, FEMA has requested that a Resolution be completed.

**M 182 23  
Adopt  
Resolution  
No. R 011 23  
/Hazard  
Mitigation  
Plan**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Resolution No. R 011 23 entitled “Sussex County, Delaware All-Hazards Mitigation Plan”.

Motion Adopted: 4 Yeas, 1 Absent  
Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea

**Stop-Loss**

Karen Brewington, Director of Human Resources presented a recommendation for Stop-Loss insurance coverage for Council’s

**Insurance Coverage**

consideration. Mrs. Brewington reported that stop-loss insurance also known as excess insurance provides protection for self-insured employers by serving as a reimbursement mechanism for catastrophic claims exceeding pre-determined levels.

Currently, the annual specific deductible is \$295,000. Insurance Buyers Council completed an RFQ which resulted in responses from seven carriers, one of those being the incumbent Vista Underwriting. Two of those quotes were competitive – Vista Underwriting and Highmark.

Vista is quoting a laser on their proposal for \$500,000. Lasering is a common stop loss practice in which an individual participant—based on prior claims experience or known conditions—is covered by the stop loss policy at a higher specific deductible than the rest of the group. The County is seeing a 36.21% increase compared to current costs.

Highmark’s quote does not include lasers and is coming in at a 16.89% increase compared to our current costs. Highmark also has an administrative fee savings of \$26,500 when they are utilized as the stop loss carrier. Another positive attribute is they cover a very expensive cancer drug that has a YTD cost of \$88,000.

It is IBC’s recommendation that the County does not renew with Vista Underwriting and accept Highmark’s proposal as our stop loss insurance carrier.

**M 183 23  
Approve  
Stop-Loss  
Insurance  
Carrier**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved that the Sussex County Council terminate its contract with Vista Underwriting/Companion Life for stop loss coverage effective April 30, 2023, and enter into a stop loss contract with Highmark at a rate per month of \$29.34/single coverage and \$83.98/family coverage with an annual specific deductible of \$295,000 effective May 1, 2023.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Demolition  
&  
Abatement  
Contract**

Mike Costello, Government Affairs Manager presented an agreement for demolition and abatement contract for 27177 John J. Williams Highway for Council’s consideration. Mr. Costello reported that in June of last year, Mr. Lawson updated the Council on the County’s acquisition of properties for open space. One of those parcels is known as the Dawson tract, about a 40-acre parcel located on Route 24 which requires some remediation. An RFP was put out soliciting bids from contractors to do the work on the property. There was a total of five bids received.

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved

**M 184 23  
Approve  
Demolition  
&  
Abatement  
Contract**

that the Sussex County Council approve the agreement for the demolition and abatement to be conducted on parcel 234-28.00-172.00, in the amount of \$58,369.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Public  
Hearing/  
Proposed  
Ordinance/  
Removal  
Procedures  
of  
Appointed  
Boards,  
Commissi-  
ons &  
Advisory  
Committees**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO ADD A NEW CHAPTER (CHAPTER 30) TO THE COUNTY CODE TITLED “REMOVAL PROCEDURES FOR MEMBERS OF APPOINTED BOARDS, COMMISSIONS, AND ADVISORY COMMITTEES”.**

**Mr. Moore pointed out that the Proposed Ordinance was discussed back when Mr. Wilson was on County Council. There is some thought that the Council already has the authority because it does reference in the Code that the Council has the right to replace members who have been removed. However, there is nothing discussing that process, therefore, the thought is that it is best to have an Ordinance. The Proposed Ordinance gives the Council the authority with a majority vote to remove any member of the individual entities that are appointed by the Council.**

**Mr. Moore added that there were some typos that were corrected in the Proposed Ordinance, however, there were no substantive changes.**

**There were no public comments.**

**The Public Hearing and public record were closed.**

**M 185 23  
Amend  
Section 30-  
3A/NO  
SECOND**

**A Motion was made by Mrs. Green to amend the first sentence of section 30-3 A. to require that any removal be for cause by adding the words “for cause” after the word “terms”.**

**Mr. Rieley commented that he believed that all of the reasons would then need to be listed. Mr. Moore reported that it would best to list the specific causes to define those. He added that the Proposed Ordinance was shared with the personnel attorney; at that time, this was the recommended verbiage.**

**Mrs. Green commented that it would provide clarity and there wouldn’t be the idea that someone was being removed because of how they were voting.**

**There was no second to the Motion, therefore, the Motion died.**

**M 186 23**

**A Motion was made by Mrs. Green to amend the first sentence of section 30-3 A by changing it to state that “removal will require an affirmation**

**Amend  
Section 30-  
3A/NO  
SECOND**

**super majority vote of four members by the County Council”.**

**Mr. Rieley commented that it seemed like a high standard.**

**There was no second to the Motion, therefore, the Motion died.**

**M 187 23  
Adopt  
Ordinance  
No. 2919/  
Removal  
Procedures**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2919 entitled “AN ORDINANCE TO ADD A NEW CHAPTER (CHAPTER 30) TO THE COUNTY CODE TITLED “REMOVAL PROCEDURES FOR MEMBERS OF APPOINTED BOARDS, COMMISSIONS, AND ADVISORY COMMITTEES” with the recommended typographical changes.**

**Motion Adopted: 3 Yeas, 1 Nay, 1 Absent**

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

**Permission  
to Prepare  
& Post  
Notices/  
Suncrest  
Annexation  
into  
SCUSSD**

**John Ashman, Director of Utility Planning and Design Review presented an expansion of the Sussex County Unified Sanitary Sewer District (Angola Neck Area) for Council’s consideration.**

**The Engineering Department received a request from Davis, Bowen & Friedel Inc. on behalf of their client WV3, LLC the owners/developers of a project to be known as Suncrest formerly Marsh Homestead. The parcel includes parcel 234-12.00-22.31.**

**The project is proposed at 36 single family homes on 18.02 acres. The project will be responsible for System Connection Charges of \$6,600 per EDU based on current rates.**

**M 188 23  
Approve  
Permission  
to Prepare  
& Post  
Notices/  
Suncrest**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Suncrest Expansion of the Sussex County Unified Sanitary Sewer District to include parcel 234-12.00-22.31 located along Waterview Road as presented.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**EMS Public  
Safety Bldg./  
CO No. 24**

**Hans Medlarz, County Engineer presented change order no. 24 for the EMS Public Safety Building, Project C19-04 for Council’s consideration. Mr. Medlarz reported that the proposed change order includes replacement of five storefront doors, addition of numerous wall sleeves by the electrical subcontractor, new building lettering, additional wood trim around the**

**perimeter of the Awards Wall and a credit for deletion of conductors to the wireless access points.**

**M 189 23**  
**Approve CO**  
**No. 24/EMS**  
**Public**  
**Safety Bldg.**  
A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 24 for contract C19-04, Sussex County Public Safety Building, be approved, for an increase of \$32,358.12.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Bulk**  
**Delivery/**  
**Sodium**  
**Hypochlor-**  
**ite &**  
**Magnesium**  
**Hydroxide**  
Hans Medlarz, County Engineer presented a recommendation to award for bulk delivery of sodium hypochlorite and magnesium hydroxide for Council's consideration. Mr. Medlarz reported that bids were prepared for the annual procurement; two bids were received for each one. It is being recommended to award to the low bidder.

**M 190 23**  
**Approve**  
**Bulk**  
**Delivery/**  
**Sodium**  
**Hypochlor-**  
**ite &**  
**Magnesium**  
**Hydroxide**  
A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department, that contract M23-12 & M23-13, bulk delivery of Sodium Hypochlorite and Magnesium Hydroxide, be awarded to Univar Solutions at the unit price of \$2.37 per gallon and Premier Magnesia at the unit price of \$3.27 per gallon respectively for FY24 and FY25 if extended.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Herring**  
**Creek/CO**  
**No. 1**  
Hans Medlarz, County Engineer presented change order no. 1 for Herring Creek Sanitary Sewer District: South Gravity Sewer and Force Main, Project S20-08 for Council's consideration. Mr. Medlarz reported that the contractor has experienced a number of issues slowing the progress down .0including the lack of workforce.

**M 191 23**  
**Approve CO**  
**No. 1/**  
**Herring**  
**Creek**  
A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 1 for Contract S20-08, Herring Creek Sanitary Sewer District: South Gravity Sewer and Force Main, Phase III be approved, increasing the contract time by 180-calendar days, contingent upon USDA concurrence.

**Motion Adopted: 4 Yeas, 1 Absent**

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

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

**Grant  
Requests**

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

**M 192 23  
First State  
Community  
Action  
Agency**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$500 (\$500 from Mr. Rieley's Councilmanic Grant Account) to First State Community Action Agency for their CommUnity clean-up for Georgetown.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**M 193 23  
DE  
Community  
Foundation**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,000 (\$200 from each Councilmanic Grant Account) to Delaware Community Foundation for their Flags for Heroes program.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**M 194 23  
Rehoboth  
Summer  
Children's  
Theatre**

**A Motion was made by Mr. Hudson, seconded Mr. Rieley to give \$1,480 (\$1,480 from the Countywide Youth Grant Account) to Rehoboth Summer Children's Theatre for their Summer Outreach Tour – Jack and the Beanstalk.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Introduction  
of Proposed  
Ordinances**

**Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS" filed on behalf of Elk Development, LLC.**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS" filed on behalf of Elk Development, LLC.**



**Introduction  
of Proposed  
Ordinances  
(continued)**

**Mrs. Green introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 6.57 ACRES, MORE OR LESS” filed on behalf of Budget Holdings, LLC.**

**Council  
Member  
Comments**

**There were no Council member comments.**

**M 195 23  
Go Into  
Executive  
Session**

**At 10:46 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess the Regular Session, and go into Executive Session to discuss matters relating to land acquisition and personnel.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Executive  
Session**

**At 10:52 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 personnel. The Executive Session concluded at 11:28 a.m.**

**M 196 23  
Reconvene**

**At 11:31 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Executive Session and reconvene the Regular Session.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**E/S Action**

**There was no action on Executive Session matters.**

**M 197 23  
Recess**

**At 11:31 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess until 1:30 p.m. Public Hearings.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to**

**M 198 23  
Reconvene**

reconvene.

**Motion Adopted: 4 Yeas, 1 Absent**

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

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

**Rules**

**Public  
Hearing/  
Ord. No.  
23-04**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES”.**

**On February 7, 2023, the County Council introduced an Ordinance to consider a potential amendment to the Code for Sussex County relating to the Special Requirements for Solar Farm Conditional Uses. The Planning & Zoning Commission held a Public Hearing on the application on March 23, 2023. At the meeting of April 20, 2023, the Planning & Zoning Commission recommended approval of the Ordinance for the 3 reasons stated and subject to the 5 recommended conditions as outlined.**

**(See the minutes of the Planning & Zoning Commission dated March 23, and April 20, 2023.)**

**Mr. Jamie Whitehouse, Planning and Zoning Director, presented the Proposed Ordinance; that the first revision as recommended from the Commission was the words “A landscaped ....” Should be added at line 64 of the Ordinance prior to the words “buffer strip”; that a new sentence should be added at line 65 before the final sentence to clarify how the buffer is measured, stating, “These measurements shall be taken from the property line to the nearest point of the solar panels or their support structures”; that the next revision is to revise the sentence at line 65 to confirm that waivers from the buffer strip requirement are possible in appropriate circumstances, so that this sentence now states “Provided, however, that the setbacks and/or buffering may be increased or waived due to particular site-related conditions”; that Condition D is to revise line 118 so that it now states “Solar panels and similar uses that are accessory to or ancillary to the principal or permitted use ...”; that the last condition is the phrase “and not used for commercial purposes” should be deleted from Line 119; that during the public hearing it was discussed that all solar farms are commercial; that the owners of the farm generate electricity for credits which is a commercial activity.**

**Public comments were heard.**

**Mr. Mike Riemann from Becker Morgan Group, Inc. spoke on behalf of the**

**Public  
Hearing/  
Ord. No.  
23-04  
(continued)**

**American Council of Engineering Company; that a letter was submitted; that the revisions all make sense after review of the Proposed Ordinance; that he is in agreement of an adoption of an Ordinance that provides clarity to designers; that he would suggest a setback of 75-ft. versus 100-ft., which would be more consistent to setbacks in other jurisdictions; that they would suggest consistently using the term solar panel within the ordinance; that their biggest request was for the County to find some way for solar farms to be permitted as a by-right use; that the ordinance maintains the Conditional Use requirement; that the Conditional Use is a lengthy process, taking a year or more; that requirements within the ordinance will answer many of the concerns typically raised by the public; that solar farms create a minimal impact; that there is no increase to traffic, no noise, no smell or run off; that the majority of the objects they typically hear are related to visibility screening and decommissioning; that the proposed ordinance properly addresses these concerns with the requirement of a Decommissioning Plan and bonding to be put into place; that there has not been any significant opposition to any of the solar applications which had previously been heard by the Council; that Kent County created an acreage requirement for the by-right use for solar projects; that in Kent County, the solar project is only required to go through the Conditional Use process if someone were to object, otherwise, it is processed under Administrative Review; that he suggested consideration on the landscaping buffering; that in some instances, there is already existing forest; that the portion of the solar facility backs up to the remainder of the farm; that the intent is in 25 or 30 years it can go back to farming; that if you buffer the facility from the farm, you now have a buffer in the middle of the farm.**

**The Council found that Mr. David Hutt, Esq. with Morris James. LLP spoke on behalf of the Ordinance Application; that he commented during the Planning and Zoning Commission meeting; that the PZ Commission did incorporate his concerns with items D and E that he referenced; that the concern was it had to be accessory to or ancillary to the principal use; that it requested that it be the permitted use as well; that there are items that rise by Conditional Use and Special Use exception; that the additional language in D incorporates all of the various ways that a person can use their property; that the nature of solar panels is that they are used for commercial purposes; that if that language is not stricken, it would give Mr. Whitehouse and his staff a difficult time interpreting how to apply the Ordinance; that he supports the Planning and Zoning Commission's recommended changes.**

**The Public Hearing and public record were closed.**

**M 199 23  
Approve  
Amendmen-  
ts**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson that the Proposed Ordinance be amended with Items 4 A-E as recommended by the Planning and Zoning Commission.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**M 200 23  
Approve  
Ordinance  
No. 2020/  
Solar Farms**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2020 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES” for the reasons and conditions given by the Planning and Zoning Commission as amended:**

- 1. The County has seen a lot of applications for large scale solar facilities recently. Unlike other examples of similar applications like borrow pits, campgrounds and other codified uses, there is no set of standards in our zoning code for these solar farm applications. This Ordinance will codify the typical conditions that the County has placed upon solar farm applications and that will provide uniformity and predictability as to how they are considered.**
- 2. This Ordinance is consistent with our Comprehensive Plan’s directive to encourage the development of renewable energy from a utility-level standpoint.**
- 3. There was no opposition to the Ordinance, only constructive comments on ways to improve it.**
- 4. This recommendation is subject to the following suggested revisions to the text of the Ordinance:**
  - a. The words “A landscaped...” should be added at line 64 of the Ordinances prior to the words “buffer strip”.**
  - b. A new sentence should be added at line 65 before the final sentence to clarify how the buffer is measured, stating, “These measurements shall be taken from the property line to the nearest point of the solar panels or their support structures.”**
  - c. Revise the sentence at line 65 to confirm that waivers from the buffer strip requirement are possible in appropriate circumstances, so that this sentence now states, “Provided, however, that the setbacks and/or buffering may be increased or waived due to particular site-related conditions.”**
  - d. Revise Line 118 so that it now states “Solar panels and similar uses that are accessory to or ancillary to the principal or permitted use . . .”**
  - e. The phrase “and not used for commercial purposes” should be deleted from Line 119.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Public  
Hearing/  
Ord. No.  
23-01**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04” (properties lying on the southwest side of Zion Church Road [Route 20], approximately 605 feet northwest of Deer Run Road [S.C.R. 388], and the north side of Deer Run Road [S.C.R. 388], approximately 159 feet southwest of Zion Church Road [Route 20] (911 Address: 36054 Zion Church Road, Frankford) (Tax Map Parcels: 533-11.00-23.00, 23.03 & 23.04) (Zoning: AR-1 [Agricultural Residential])**

**The Planning & Zoning Commission held a Public Hearing on the application on March 23, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the application for the 4 reasons stated.**

**(See the minutes of the Planning & Zoning Commission dated March 23, 2023.)**

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

**The Council found that Mr. Hans Medlarz with Sussex County Engineering spoke on behalf of the Application; that the County Council has the exclusive right to extend the sewer district boundary under Delaware law; that is the transition from a Tier 2 to a Tier 1; that Tier 2 is the planning area which gives the County the exclusive right to service in the future for that particular area; that the Tier 3 area is where the County has a first right of refusal, however, other private sewer providers can also operate in Tier 3; that within Tier 4, central sewer service and community sewer service is optional; that after land use approval, it will come before the County Council again to move it without a request into Tier 1.**

**Public comments were heard.**

**The Council found that David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Proposed Ordinance; that he represents the owner of the property and the applicant that started the process; that Chapter 4 is significant to the Planning Commission, as it defines the property’s designation on the Future Land Use Map; that when looking at the four where-as clauses for the Ordinance, it states that part of the property is found within the Developing Area, with the balance of the property being located within the Coastal Area; that both of these areas are considered Growth Areas within Chapter 4 of the Comprehensive Plan; that the Ordinance states and supports the reasons why the amendment should be granted; that the Ordinance notes that within both growth areas, as stated by the Comprehensive Plan, central sewage is strongly encouraged and**

based on this reasoning, and the Applicant would request the Council recommend approval of the Sewer Tier Map amendment.

The Public Hearing and public record for the purpose of a response from the Office of State Planning.

**M 201 23  
Defer  
Action/Ord.  
No. 23-01**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Public  
Hearing/  
CU2346**

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 SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS” (property lying on the north side of Dorothy Road [Rt. 64] and the west side of Sussex Highway [Rt. 13]) (911 Address: N/A) (Tax Map Parcel: 332-7.00-19.00)

The Planning & Zoning Commission held a Public Hearing on the application on March 9, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 11 recommended conditions as outlined.

(See the minutes of the Planning & Zoning Commission dated March 9 and 23, 2023.)

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

The Council found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Application; that also present was Mr. Jordan Belknap, Director of Development with Turning Point Energy; that the property is located in Laurel, along Dorothy Road; that the proposed use is for a community solar project; that the property is zoned AR-1 (Agricultural Residential); that half of the site is in existing agricultural use; that the remaining half of the site is comprised of existing woodlands; that the existing woodlands are intended to remain; that the solar array area is comprised of just over 20 acres; that when

**Public  
Hearing/  
CU2346  
(continued)**

**including the proposed buffers the solar array area is comprised of approximately 27 acres of the site; that the total parcel area is just under 74 acres.**

**The Council found that Mr. Jordan Belnap spoke on behalf of the Application; that Turning Point Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that Turning Point Energy focuses on developing community solar energy facilities; that Turning Point believes their projects should create economic, environmental and community value; that their business creates economic value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17, 2021, Senate Bill 2 was signed into the law in the State of Delaware, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may not be well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life; that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that Turning Point Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms,**

**Public  
Hearing/  
CU2346  
(continued)**

and the solar farm will be a benefit to Sussex County citizens. Mr. Falkowski stated that they have proposed a 25-ft wide landscaped buffer between the site and adjacent residential properties; that the 25-ft wide landscape buffer will be comprised of 12 trees and 15 understory shrubs, per 100 linear feet of the buffer; that the landscape buffer will surround the site until it ties into the existing woodlands on the rear of the site; that additionally, they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; Mr. Belnap did host and attend a community outreach meeting on February 8, 2023, which was held at the Laurel Fire Department; that the project would not create an increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents and the proposed project will have no adverse impact on any of the neighboring properties.

**Public comments were heard.**

Mr. Judson Malone spoke in favor of the application; that he is the Executive Director of the Pallet Shelter Village for people who are chronically homeless; that he is in favor of this project; that there is a crisis in the housing and energy costs; that there are times that people are unable to afford a house; that community solar is an excellent approach; that solar does not have to be put on every rooftop and you still receive the same benefits.

**The Public Hearing and public record were closed.**

**M 202 23  
Defer  
Action/  
CU2346**

**A Motion was made by Mr. Vincent, seconded by Mr. Rieley to defer action on 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 63.86 ACRES, MORE OR LESS”.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Public  
Hearing/  
CU2347**

**A Public Hearing was held for 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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS” (property lying on the east side of North Old State Road [S.C.R. 213], approximately 0.10 mile north of the intersection of Haflinger Road [S.C.R. 625]) (911 Address: N/A) (Tax Map Parcel: 230-12.00-39.00)**

**The Planning & Zoning Commission held a Public Hearing on the application on March 9, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 9 recommended conditions as outlined.**

**(See the minutes of the Planning & Zoning Commission dated March 9, and 23, 2023.)**

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

**The Council found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Application; that also present was Mr. Jordan Belknap, Director of Development with Turning Point Energy; that the customer has to be with the same utility company as where the project is located; that these are DP&L projects; that the customer would also have to be a customer of DP&L; that it is desired for those in the surrounding community to participate in these projects; that most utility companies are not going to write out a check to a customer for exceeding the amount that they use; that a customer’s usage on an annual basis is reviewed to target the amount of credits that are purchased; that most markets are fully subscribed.**

**The Council found that Mr. Jordan Belnap spoke on behalf of the Application; that Turning Point Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that Turning Point Energy focuses on developing community solar energy facilities; that Turning Point believes their projects should create economic, environmental and community value; that their business creates economic**

**Public  
Hearing/  
CU2347  
(continued)**

**value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17, 2021, Senate Bill 2 was signed into the law in the State of Delaware, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may not be well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life; that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that Turning Point Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms, and the solar farm will be a benefit to Sussex County citizens.**

**Mr. Falkowski stated that there were not many differentiators between the previous solar project application and the subject Application; that the subject site is located in Lincoln; that the parcel is zoned AR-1; that the property does not have many residential dwellings surrounding the site; that the parcel is comprised of 41 acres; that the portion proposed for the solar project is comprised of 18 acres; that they have modified the solar array layout from what was initially submitted; that the modification came after discussions with the property owner, to avoid an existing irrigation**

**Public  
Hearing/  
CU2347  
(continued)**

**pivot, located at the center of the site; that by avoiding the pivot it would allow existing full irrigation and farming operations to continue on the site; that the site is mostly surrounded by agricultural uses, therefore they are not proposing a landscape buffer on the site; that there are adjacent buffers; that there is a considerable amount of space between the array and any residential units; that the railroad is to the East; that there is no objection if the same 25-foot landscape buffer as shown previously along the road frontage if desired; that it is a 2 mega-watt AC system; that they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property; that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; that Mr. Belnap did host and attend a community outreach meeting on February 7th, 2023; that the project will not create any increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated that there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that a seven foot chain-link fence is proposed to surround the site; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents; that the proposed project does promote Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy and the proposed project will have no adverse impact on any of the neighboring properties.**

**Public comments were heard.**

**Mr. Randy Ennis spoke in favor of the application; that he is the trustee of the property; that also present was his mother, Joyce; that the land has been in the family for many years; that the family is against the idea of developing the land; that he is a supporter of green energy; that they have accommodated the irrigation with the existing farmer; that there is bonding and other measures to be sure that it will be restored to farming in the future; that he requested support for the Application.**

**Mr. Falkowski noted that if needed, they agree to provide the same 25-ft. buffer along Loftland Drive and any other areas as requested.**

**Mr. Judson Malone spoke in favor of the application; that he supports all of these solar projects.**

**The Public Hearing and public record were closed.**

**M 203 23  
Defer  
Action/  
CU2347**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to defer action on 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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS”.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**M 204 23  
Adjourn**

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

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Respectfully submitted,**

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

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