

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 20, 2021**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 20, 2021, at 10:00 a.m., in the Carter Partnership Center at Delaware Technical Community College, Georgetown, 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>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</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 141 21  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas.**

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

**Minutes**

**The minutes of April 13, 2021 were approved by consent.**

**Public  
Comments**

**Under public comments, Keith Steck asked that the Council update its land use practices and ordinances with respect to rezoning.**

**Board of  
Adjustment  
Appoint-  
ment**

**Mr. Lawson reported that Brent Workman, Board of Adjustment member, has indicated that he would like to retire in the upcoming weeks.**

**Mrs. Green nominated Jordan Warfel to fill the upcoming vacancy on the Board of Adjustment (District 2).**

**Mr. Lawson stated that, with that nomination, the public interview process will be initiated, as required by Delaware Code and County Code.**

**Adminis-  
trator's  
Report**

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

**1. Project Receiving Substantial Completion**

**Adminis-  
trator's  
Report  
(continued)**

**Per the attached Engineering Department Fact Sheet, Oyster Cove received Substantial Completion effective April 16<sup>th</sup>.**

**2. Delaware State Police Activity Report**

**The Delaware State Police year-to-date activity report for March 2021 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 193 troopers assigned to Sussex County for the month of March.**

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

**Old  
Business/  
Proposed  
Ordinance/  
Land Use  
Map**

**Under Old Business, the Council considered the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 135-14.00-570.00".**

**The Council held a Public Hearing on the Proposed Ordinance on March 2, 2021, at which time action was deferred.**

**The Planning and Zoning Commission recommended approval of the Proposed Ordinance.**

**M 142 21  
Adopt  
Proposed  
Land Use  
Map  
Ordinance/  
Denied**

**A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 135-14.00-570.00".**

**Mr. Hudson read a prepared statement into the record.**

**Motion Denied: 3 Nays, 2 Yeas.**

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

**Old  
Business/  
CZ 1923**

**Under Old Business, the Council considered the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS" (Change of Zone No. 1923) filed on behalf of Reed Farms, LLC (Tax I.D. No. 235-13.00-29.00, 29.01 and 235-14.00-570.00) (911 Address: 14888, 14866 & 14742 Gravel Hill Road, Milton).**

**Old  
Business/  
CZ 1923  
(continued)**

**The Council held a Public Hearing on the Proposed Ordinance on March 2, 2021, at which time action was deferred.**

**The Planning and Zoning Commission recommended approval of the Proposed Ordinance.**

**A Motion was made by Mr. Rieley, seconded by Mrs. Green, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS” (Change of Zone No. 1923) filed on behalf of Reed Farms, LLC.**

**Motion Denied: 5 Nays.**

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

**Old  
Business/  
CU 2258**

**Under Old Business, the Council considered the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1314 (ORDINANCE NO. 1354) (AS AMENDED BY CONDITIONAL USE NO. 1691 (ORDINANCE NO. 1865) AND CONDITIONAL USE NO. 1962 (ORDINANCE NO. 2311)) TO PERMIT THE PROCESSING AND HANDLING OF POULTRY LITTER TO INCLUDE NUTRIENT RECOVERY FOR NATURAL GAS AND ELECTRICAL GENERATION, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS” (Conditional Use No. 2258) filed on behalf of Bioenergy Development Group, LLC (Tax I.D. Nos. 132-6.00-88.01 and 95.00, and 132-11.00-41.00 and 41.02) (911 Address: 28338 Enviro Way, Seaford).**

**The Council held a Public Hearing on the Proposed Ordinance on March 15, 2021 at which time action was deferred.**

**The Planning and Zoning Commission recommended approval of the Proposed Ordinance, with conditions.**

**M 143 21  
Adopt  
Ordinance  
No. 2769/  
CU 2258**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2769 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1314 (ORDINANCE NO. 1354) (AS AMENDED BY CONDITIONAL USE NO. 1691 (ORDINANCE NO. 1865) AND CONDITIONAL USE NO. 1962 (ORDINANCE NO. 2311)) TO PERMIT THE PROCESSING AND**

**M 143 21  
Adopt  
Ordinance  
No. 2769/  
CU 2258  
(continued)**

**HANDLING OF POULTRY LITTER TO INCLUDE NUTRIENT RECOVERY FOR NATURAL GAS AND ELECTRICAL GENERATION, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS” (Conditional Use No. 2258) filed on behalf of Bioenergy Development Group, LLC, with the following conditions:**

- a. Except as otherwise amended by this grant of Conditional Use, the conditions imposed by Conditional Use No. 1314, as amended, by Conditional Use Nos. 1691 and 1962 shall remain in effect.
- b. The proposed facility shall be subject to DNREC, and other state and federal regulatory approvals.
- c. The proposed facility shall only accept, process, and handle poultry litter and DAF.
- d. There shall not be any stockpiling of DAF, poultry litter, or wastewater on site.
- e. This Conditional Use shall be valid concurrent with DNREC’s permits for this use. If the DNREC permits shall be terminated or expire, this Conditional Use shall also terminate and expire.
- f. The proposed facility, anerobic digesters, pretanks, and other equipment and structures related to this use shall be located behind the site of the existing pelletizing facility and the area of disturbance related to this new use shall be no greater than 11.3 acres.
- g. As proposed by the Applicant, there will be no change to the wooded coverage on the property.
- h. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
- i. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to operate the proposed facility.
- j. As proffered by the Applicant, a landscape buffer shall be installed at the front of the site. A landscape buffer plan shall be included as part of the Final Site Plan for the project.
- k. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.
- l. The Applicant shall submit a Final Site Plan, which shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**Mr. Rieley read a prepared statement into the record.**

**Motion Adopted: 5 Yeas.**

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

**Introduction of Proposed Ordinances**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.25 ACRES, MORE OR LESS” (Conditional Use No. 2262) filed on behalf of Matthew Hete (Tax I.D. No. 334-6.00-686.00) (911 Address: 34360 Postal Lane, Lewes).**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS” (Conditional Use No. 2265) filed on behalf of Pro Carpet, LLC (Tax I.D. No. 234-21.00-189.00) (911 Address: 26315 Miller Street, Millsboro).**

**Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-2 HIGH-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS” (Change of Zone No. 1938) filed on behalf of MARS-RE, LLC (Tax I.D. No. 134-11.00-191.00) (911 Address: 34464 Atlantic Ave, Ocean View).**

**Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO OPERATE AN OUTDOOR RACETRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 27.81 ACRES, MORE OR LESS” (Conditional Use No. 2270) filed on behalf of Gregory P. Mitchell (Tax I.D. No. 231-9.00-5.00 & 5.01) (911 Address 22382 Coverdale Road, Seaford).**

**The Proposed Ordinances will be advertised for Public Hearing.**

**Rules**

**Mr. Moore read the rules of procedure for zoning hearings.**

**Public Hearing/  
CZ 1911**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MEDIUM DENSITY RESIDENTIAL DISTRICT AND A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 43.463 ACRES, MORE OR LESS” (Change of**

**Public  
Hearing/  
CZ 1911  
(continued)**

**Zone No. 1911) filed on behalf of Schiff Land Development Co., LLC (Patriots Glen, Phase 2) (Tax I.D. No. 234-29.00-67.00) (911 Address: None Available).**

**The Planning and Zoning Commission held a Public Hearing on this application on March 25, 2021 at which time action was deferred. On April 8, 2021, the Commission recommended approval with the following conditions:**

- a. There shall be no more than 128 residential units within the project.**
- b. The bulk area standards for the 128 units shall be as follows:**
  - 1. Front yard = 25 feet**
  - 2. Side yard = 10 feet**
  - 3. Rear yard = 10 feet**
  - 4. Corner yard = 15 feet**
  - 5. Minimum Lot Width = 60 feet**
  - 6. Minimum Lot Area = 7,500 square feet**
- c. Site plan review shall be required for each phase of the development.**
- d. All entrances, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT including those required for Patriots Glen, Phase 1.**
- e. The development shall be served as a part of the Sussex County Unified Sanitary Sewer District and shall be constructed in accordance with County engineering specifications and regulations.**
- f. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- g. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with the applicable State and County regulations. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of Sussex County's Conservation District.**
- h. The interior Street Design shall be in accordance with or exceed Sussex County's street design requirements and specifications. The street design shall include sidewalks on both sides of the street.**
- i. There shall be a 30-foot forested landscaped buffer around the entire perimeter of the site.**
- j. The application shall submit as part of the site plan review, a landscaping plan showing the proposed tree and shrub landscape design, including landscaping in all of the buffer areas.**
- k. Construction and deliveries shall only occur from Monday through Saturday and only between the hours of 6:00 a.m. to 6:00 p.m.**
- l. The Applicant shall form a Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**

**Public  
Hearing/  
CZ 1911  
(continued)**

- m. The Restrictive Covenants and Final Site Plan shall state that agriculture activities exist nearby, and they shall include the Agriculture Use Protection Notice.**
- n. The amenities shall be combined with Patriots Glen, Phase 1 to include a clubhouse/multi-purpose building, pool and patio area, with at least 24 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of the development upon the issuance of the 81st building permit.**
- o. If required by the Indian River School District, a protected school bus shelter with related parking shall be installed at the entrance to the development. Alternatively, the Developer shall coordinate with the school district for another location, with a preference for the clubhouse building.**
- p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**(See the minutes of the Planning and Zoning Commission dated March 25 and April 8, 2021.)**

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

**The Council found that David Hutt, Attorney, was present on behalf of the application with T.J. Schiff, one of the principals of Schiff Land Development Company and Phil Tolliver with Morris and Ritchie Associates. Mr. Hutt stated that the site is comprised of 43.5 acres which is landlocked; that access to this parcel will be through the Patriots Glen, Phase 1, project which was approved by the Council in 2019 (Ordinance No. 2668); that prior to 2019, this property was rezoned and due to the recession, the project did not move forward; that Change of Zone No. 1977 (Patriots Glen, Phase 1) was filed for a rezoning from CR-1 to a MR-RPC; that this application seeks to change the zoning of the remaining piece of property to MR-RPC; that approval of this rezoning application will result in the whole property having a RPC overlay; that with this new application, all structures proposed will be single family homes; that the combined number of dwelling units for Phases 1 and 2 would be 289 (100 less than approved in 2007; that the MR zoning designation allows for four units per acre where public water and sewer are available or will be provided to the site; that this application is for 128 single-family units and the gross density is 2.95 and the net density is 3.52 and is less than the permitted 4 units per acre; that sewer and water service is available; that the site is currently used for agricultural purposes except for the wooded area; that there are no wetlands on the site; that parts of the property are located in a wellhead protection area; that the project is designed so that the impervious cover would be below the County's Code requirements; that the site is located in the Coastal Area which is a growth area; that according to Delaware State Strategies and Spending, the site is located in Investment Level Areas 2 and 3; that there is a mixture of zoning districts in the area and there are many other developments in the area; that two of the primary reasons for using the RPC tool for this development is to maximize open space and to increase perimeter buffers; that this was done with consideration of**

**Public  
Hearing/  
CZ 1911  
(continued)**

**Phases 1 and 2 being integrated; that open space is proposed for 9.66 acres of the site (22% of the site); that this is consistent with Phase 1 where open space is proposed to be 27% of the site; that the minimum 7,500 square foot lot size is consistent throughout Phases 1 and 2; that the same design approach for Phase 1 will be extended into Phase 2; that the perimeter will vary in width but will be at a minimum of 30 feet (from 30 feet to 278 feet); that there will be a street stub at the back end of the parcel to allow for future interconnectivity; that the community center will be constructed in Phase 1 and will include a multi-purpose building, a pool, a patio area and 24 parking spaces; that there will be sidewalks on both sides of the street and a walking path throughout the community (separate from the sidewalks); that a property owners association will be formed and all of the lots in Phases 1 and 2 will be in the same association; that construction will take place in 3 phases; that sewer service will be provided by the County; that water will be provided by Tidewater; that stormwater management will be by infiltration practices; that a Traffic Impact Study was completed for Phases 1 and 2 combined; that there are five requirements for improvements listed in DeDOT's response; that this application is superior to the previous applications and is consistent with the trend of development in the area; and that the application is consistent with the Comprehensive Plan and the Zoning Ordinance.**

**In response to questions raised by Mr. Rieley, Mr. Tolliver reviewed stormwater management plans.**

**There were no public comments.**

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

**M 144 21  
Adopt  
Ordinance  
No. 2770/  
CZ 1911**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Ordinance No. 2770 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MEDIUM DENSITY RESIDENTIAL DISTRICT AND A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 43.463 ACRES, MORE OR LESS" (Change of Zone No. 1911) filed on behalf of Schiff Land Development Co., LLC (Patriots Glen, Phase 2), with the following conditions:**

- a. There shall be no more than 128 residential units within the project.**
- b. The bulk area standards for the 128 units shall be as follows:**
  - 1. Front yard = 25 feet**
  - 2. Side yard = 10 feet**
  - 3. Rear yard = 10 feet**
  - 4. Corner yard = 15 feet**
  - 5. Minimum Lot Width = 60 feet**
  - 6. Minimum Lot Area = 7,500 square feet**



**M 144 21  
Adopt  
Ordinance  
No. 2770/  
CZ 1911  
(continued)**

- c. **Site plan review shall be required for each phase of the development.**
- d. **All entrances, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT including those required for Patriots Glen, Phase 1.**
- e. **The development shall be served as a part of the Sussex County Unified Sanitary Sewer District and shall be constructed in accordance with County engineering specifications and regulations.**
- f. **The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- g. **Stormwater management and erosion and sediment control facilities shall be constructed in accordance with the applicable State and County regulations. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of Sussex County's Conservation District.**
- h. **The interior Street Design shall be in accordance with or exceed Sussex County's street design requirements and specifications. The street design shall include sidewalks on both sides of the street.**
- i. **There shall be a 30-foot forested landscaped buffer around the entire perimeter of the site.**
- j. **The application shall submit as part of the site plan review, a landscaping plan showing the proposed tree and shrub landscape design, including landscaping in all of the buffer areas.**
- k. **Construction and deliveries shall only occur from Monday through Saturday and only between the hours of 6:00 a.m. to 6:00 p.m.**
- l. **The Applicant shall form a Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**
- m. **The Restrictive Covenants and Final Site Plan shall state that agriculture activities exist nearby, and they shall include the Agriculture Use Protection Notice.**
- n. **The amenities shall be combined with Patriots Glen, Phase 1 to include a clubhouse/multi-purpose building, pool and patio area, with at least 24 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of the development upon the issuance of the 81st building permit.**
- o. **If required by the Indian River School District, a protected school bus shelter with related parking shall be installed at the entrance to the development. Alternatively, the Developer shall coordinate with the school district for another location, with a preference for the clubhouse building.**
- p. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

**M 144 21  
(continued)**        **Vote by Roll Call:    Mrs. Green, Yea; Mr. Schaeffer, Yea;  
                                  Mr. Hudson, Yea; Mr. Rieley, Yea;  
                                  Mr. Vincent, Yea**

**M 145 21  
Recess**            **At 11:17 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley,  
                                  to recess.**

**Motion Adopted:    5 Yeas.**

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

**M 146 21  
Reconvene**       **At 11:48 a.m., a Motion was made by Mr. Riley, seconded by Mr. Hudson, to  
                                  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**

**Public  
Hearing/  
CU 2206**            **A Public Hearing was held on the Proposed Ordinance entitled “AN  
                                  ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR  
                                  GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (200  
                                  UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING  
                                  AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,  
                                  CONTAINING 50.62 ACRES, MORE OR LESS” (Conditional Use No.  
                                  2206) filed on behalf of Linder & Company, Inc. (Evans Farm) (Tax I.D. No.  
                                  134-12.00-74.00) (911 Address: 31434 Railway Road, Ocean View).**

**The Planning and Zoning Commission held a Public Hearing on this  
                                  application on March 25, 2021 at which time action was deferred. On April  
                                  8, 2021, the Commission recommended approval with the following  
                                  conditions:**

- a.    **There shall be no more than 200 units with the development.**
- b.    **All entrances, intersections, roadways and multimodal improvements  
                                  required by DelDOT shall be completed by the Applicant in accordance  
                                  with DelDOT’s determination.**
- c.    **Recreational amenities shall be completed within the project, as follows:**
  1.    **Community Center/Clubhouse, pool, playground and courts on or  
                                  before the issuance of the 50th Certificate of Occupancy.**
  2.    **Multi-modal recreational facilities by the 100th Certificate of  
                                  Occupancy.**
- d.    **Central sewer shall be provided to the development by Sussex County.  
                                  The Developer shall comply with all requirements and specifications of  
                                  the Sussex County Engineering Department.**

**Public  
Hearing/  
CU 2206  
(continued)**

- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- g. No wetlands shall be disturbed except as authorized by State and Federal permits.
- h. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
- i. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- j. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- k. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
- l. The Developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
- m. The Final Site Plan shall include a landscape plan for the development, including all buffer areas. This shall also depict the landscaping and vegetation included in the bermed area at the entrance to the community along Old Mill Road. Landscape and lawn maintenance shall be the responsibility of the Developer or its assigns.
- n. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.
- o. There shall be an emergency entrance via Railway Road. This entrance shall be shown on the Final Site Plan.
- p. There was testimony in the record about the adverse impact of the proposed maintenance buildings across Railway Road from the rest of this development. As one person stated, these facilities impact other properties while having no adverse effect on the new units they will serve in the new development. The Applicant shall safely remove the existing dilapidated farmhouse, outbuildings and chicken house from this area but leave the area as open space. All maintenance facilities shall be located within the larger parcel where the residential units are planned. Any maintenance buildings shall be located and screened from view of adjacent properties to mitigate any impact on them.
- q. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.

**Public  
Hearing/  
CU 2206  
(continued)**

- r. **There shall not be any lighting at the rear of the proposed garages/storage buildings. There shall also be vegetation planted and maintained by the Developer at the rear of each of those buildings to reduce the visual impact of them on neighboring and adjacent properties. The design and location of these vegetative screens shall be shown on the Final Site Plan.**
- s. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**(See the minutes of the Planning and Zoning Commission dated March 25 and April 8, 2021.)**

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

**Mr. Whitehouse reported that the County has received a total of 293 written responses on this application and that also received was a petition containing 280 signatures in opposition to the application. All correspondence received was circulated to the Council members.**

**The Council found that David Hutt, Attorney, was present on behalf of the Applicant with Andrea Fineroksy, Land Development Manager with Linder and Company; Mark Davidson and Alan Decktor of Pennoni; and Erik Wall, a Landscape Architect.**

**Mr. Hutt stated that Linder & Company, Inc. is the Applicant and the owner of the property; that this application has received a large response from the public and he noted that land use is not a popularity contest; instead, Delaware Law references land use tools that are to be used to make decisions and those tools include information from the Delaware State Strategies Office (PLUS process), the Comprehensive Plan, and the Zoning Code; that this application is consistent with the land use tools; that an almost identical concept (with identical number of units – 200 units) for this same site was presented to this Council in 2010 as Conditional Use No. 1849 and in 2011, Council adopted Ordinance No. 2176 and Final Site Plan was granted in March 2016; that the project (Conditional Use No. 1849) was not built and the approval for that application lapsed; that numerous developments have been constructed in the area since that approval; that almost all of the area used to be agriculture or wooded and the application site is one of the few remaining undeveloped areas; that this is not a Change of Zone application – the site is zoned GR and will remain so; that the application is not a high density application and no bonus density is being sought; that the application seeks a multi-family use of the property; that the base density is 4 units per acre; that they seek to use 4 units to the acre with 17 housing units throughout the site; that the application site is located at the intersection of Railway Avenue and Old Mill Road and the property is bifurcated by Railway Avenue; that the east side of that portion of the property contains approximately 2.25 acres on which a farmhouse and other outbuildings are located; that the west side of the property contains 48.4 acres which is unimproved and is currently used for agriculture purposes; that the proposal**

**Public  
Hearing/  
CU 2206  
(continued)**

is for the 17 housing buildings on the western portion of the site containing 200 units; that there would be 17 corresponding single story garages that are across from those 17 housing buildings; that at the entrance to the site would be a community center and other amenities proposed, including a swimming pool, a pool house, and sport courts; that the entrance is proposed to be off of Old Mill Road; that upon entering off of Old Mill Road, there would be a looped parking lot that connects all of the 17 buildings; that a sidewalk is proposed that connects the interior of all of the units – this pathway/sidewalk will be an internal walking area; that there would also be a sidewalk on the outer edge; that a 30 foot landscaped buffer is proposed along the entire perimeter of the property, including the frontages; that there are 3.6 acres of wooded wetlands which will remain undisturbed; that stormwater management will be along the side and rear of the property; that Best Management Practices will be used for stormwater management; that ephemeral wet ponds are proposed as part of the Best Management Practices; that there will be an access off of Railway Avenue for emergency access for first responders and can also be used as a connection to the shared use path that will be added as part of the improvements to Railway Avenue; that the buildings on the east side of the property will be removed from the property; that the Applicant will follow the asbestos abatement process in the removal of those buildings; that the Planning and Zoning Commission has recommended that the parcel containing 2.25 acres remain vacant and this is acceptable to the Applicant; that sewer service will be provided by Sussex County; that the Applicant is considering a condominium-type ownership for the property; that whether the units are considered apartments or condominium units, the units are the same and the proposal presents another housing opportunity in the Coastal Area; that if the Applicant proceeds with apartments, they will be market rate apartments with a maximum of 2 people per bedroom; that there is a growing market for seniors who seek maintenance-free living and this project would provide for that; that there is a similar project in the area known as Bethany Bay where there are multi-family structures; that according to Delaware Strategies for State Spending, this project site is located in Investment Levels 2 and 3; that according to the service level evaluation response from DelDOT, this project is expected to have a minor impact on area roadways and therefore, a Traffic Impact Study was not required; that in lieu of a Traffic Impact Study, the Applicant agrees to contribute to an area wide study fee and agrees to off-site road improvements; that traffic for this site is estimated at 1,088 trips per day and according to DelDOT calculations, if there were 112 single-family homes on this site, an equal amount of traffic would be generated; that berming is proposed at the entrance to the project; that this proposal is far greener than the previous proposal for this site; that the proposed 3-story structures are just less than the 42 height limit; that 42 feet is the maximum height limit in all area zoning districts and nothing would prohibit someone in Bethany Bay or Banks Acres from constructing a building with a height of 42 feet; that there is a demand for multi-family housing; that there are requirements the application will have to meet to obtain site plan approval; that this was an active project and was on the books throughout the time of many of the adjacent properties; that this 200-unit multifamily proposal had prior

**Public  
Hearing/  
CU 2206  
(continued)**

**approval and the plan for this application is very similar with enhancements made, some at the request of neighbors as the project was being put together; and that the project complies with the Comprehensive Plan and the Zoning Code. During the presentation, Mr. Hutt reviewed the site plan and other zonings and developments in the area, and presented a drainage analysis. Mr. Hutt noted that the Applicant agrees to the conditions recommended by the Planning and Zoning Commission.**

### **Public Comments**

**There were no public comments in support of the application.**

**The following members of the Evans Farm Watch Coalition spoke in opposition to the application: Matthew Page, Jackson Chen, Tom Goglia, Darrell Wiles, Marty Lampner, Chris Falvello, and Teresa Scapato. In their presentations, they stated that they are not against renters; that Bethany Bay has rental units (approximately 20% of 550 units); that the rental aspect is not the source of the opposition; that they are not against development, just this development as it is not compatible with the rest of the area; that this proposal, if approved, will set a precedent; that the proposed project is out of character with the area due to density, visibility and location; that stormwater is a concern; that because of the nature of the design, the only option for the placement of stormwater is at the northeast corner and the adjoining community will be the ones to suffer if the ephemeral wetlands fail; that there is a lot of unknowns/uncertainties regarding the elevation drop/slope from Old Mill back towards the woods; that the Applicant's formula for volume of water is not correct; that they ask that the Sussex Conservation District and DNREC look at the calculation/formula regarding the actual amount of rain used in the criteria; that the opposition signers are a coalition of 13 communities on White's Neck (a map of the petition signers and their location was shown); that the proposal will put stress on EMT services in the area; that when a Conditional Use is considered, Council needs to consider working families and traffic – 2 vehicles each; that the traffic estimate is misrepresented; that the rapid development in the area is outpacing road improvements; that the traffic counts referenced are from 2019; that traffic on these roads has not been counted for up to 16 years and since then, there has been substantial development; that this area is not urban or suburban; that the volume of traffic for multi-family units will generate significantly higher traffic (twice as much) than single family homes permitted by right; that they request that the traffic studies be updated; that they are asking the County to provide legal resources for citizens groups as all attorneys in the area that were asked to represent the group had potential conflicts; that the project will be an attractive nuisance; that some adjacent neighbors will see a blank wall; that Bethany Bay has low density despite the apartments and they are a minimum of 800 feet from other developments' single family homes; that the community has changed since the original application was approved so it is irrelevant that the area residents should have known about the active application as larger housing developments have been added since the approval of that application; that affordable housing is**

**Public  
Hearing/  
CU 2206  
(continued)**

**needed and the proposal is not for affordable housing; that drainage and flooding will be a problem if this application is approved; that the project fails to integrate with its neighbors; that there is a potential for vandalism, crime, and a fire threat (near the wooded area); that if the development will be a residential neighborhood surrounded by blank walls; that traffic on Old Mill Road is already a concern; that Mediacom is the only option in the area; that according to Sussex County's Strategic Plan (2019), the population in Sussex County is becoming older; that the population is getting larger and older; that Sussex County is Delaware's fastest growing County and it will remain so for the foreseeable future; that fast growth is a notable demographic change; Sussex County is experiencing a "Grey Wave"; that the County will continue to grey according to the Comprehensive Plan; that the fastest growing segment of this County is from age 50 to 65; that the number of new residents projected to come into the County by 2045 is 46,500; that this has huge implications on how the Council plans; that regarding health and safety and COVID-19, multi-family housing increases the risk of spreading the virus since there is an increased risk of exposure; that according to the CDC, multi-family housing may face certain challenges during the COVID-19 pandemic; that there is limited access to health care in the Ocean View area; that the proposed location is the wrong location as the area is 1 and 2 story neighborhoods; and that the application does not promote the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.**

**Also speaking in opposition to the application were Tracy Bryan, Connie Eich, Carole Dougherty, Lauri Phillips, Mark Willoughby, Manda Crawford, Patricia Pocsiae, and Michael Peterson. They stated support of the maintenance shop being moved to the larger parcel of the application and that the smaller parcel remain vacant; that they are concerned with the impact on wildlife; that the proposal is not for affordable housing; that some people living in surrounding communities do work and will take jobs in the area; that the proposed project will negatively impact surrounding communities; that noise will increase in the area; that drainage is a problem; that excess water will be a breeding ground for mosquitoes; that there are environmental concerns; that their quality of living has been negatively impacted by all of the development; that vacationers will stop coming because of this impact; that this is not a pedestrian friendly area as there are narrow roads and no lighting; that there is concern about the availability of health care services; and that 3-story buildings are not compatible with the area. Ms. Bryan stated that she did not receive a notice on the Public Hearing and that her property abuts the application site.**

**It was noted that Bill Brockenbrough of DelDOT was on the phone to answer questions. Mr. Rieley questioned when the last traffic study was done. Mr. Brockenbrough stated that he did not have the answer at that time but would find out and submit the answer. Mr. Riley also asked how up to date the traffic counts are. Mr. Brockenbrough stated that the count on Route 26 is from the Year 2018 and for the local roads, it is from 2011/2012. Mr. Riley commented on the 1,088 trips that was referenced. Mr. Brockenbrough**

**Public  
Hearing/  
CU 2206  
(continued)**

stated that this is the daily number based on midrise (3 to 10 floor apartment buildings) and he noted that it could be a little higher, and that if it was 2 floors, the number would be 1471. Mr. Whitehouse noted that the last Traffic Impact Study was in 2008 and that this Study was included in Council's packet.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 147 21  
Defer  
Action on  
CU 2206**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to defer action on Conditional Use No. 2206 filed on behalf of Linder & Company, Inc. (Evans Farm).

**Motion Adopted: 5 Years.**

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

**Council  
Members'  
Comments**

**Council Member Comments**

Mr. Schaeffer stated that a Transportation Improvement District (TID) is needed on the Route 26 corridor.

Mr. Schaeffer stated that Sussex County needs to think about improving signage for the advertisement of zoning / land use applications.

**M 148 21  
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to adjourn at 5:04 p.m.

**Motion Adopted: 5 Years.**

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

**Respectfully submitted,**

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

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