

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 26, 2022**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 26, 2022, at 10:00 a.m., in Council Chambers, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>Douglas B. Hudson</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>John L. Rieley</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. 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 335 22  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas.**

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

**Minutes**

**The minutes of the July 12, 2022 meeting were approved by consensus.**

**Corres-  
pondence**

**Mr. Moore read correspondence received from Rehoboth Summer Children's Theatre and Children's Beach House in appreciation of grants received.**

**Public  
Comment**

**There were no public comments.**

**General  
Assembly  
Legislative  
Wrap Up**

**Mr. Lawson provided a summary of the recent legislative session of the 151<sup>st</sup> General Assembly. Mr. Lawson reviewed legislation allowing the expanded use of Realty Transfer Tax (RTT) (HB 426); legislation requiring public comment at all public meetings (HB 293) and the County's agreement with the State to fund additional Delaware State Troopers in Sussex County (HB 250).**

**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, Parkside – Phase 2 received Substantial Completion effective June 23<sup>rd</sup>.**

**2. Delaware State Police Activity Report**

**The Delaware State Police year-to-date activity report for June 2022 is attached listing the number of violent crimes 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 June.**

**3. Council Meeting Schedule**

**A reminder that Council will not meet on Tuesday, August 2<sup>nd</sup>. The next regularly scheduled Council meeting will be held on Tuesday, August 9<sup>th</sup> at 10:00 a.m.**

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

**EMS Public  
Safety  
Building/CO  
No. 15**

**Hans Medlarz, County Engineer presented change order no. 15 for the EMS public safety building for Council's consideration. Mr. Medlarz explained that RFI-60 exposed an issue related to the door jams of the overhead door in the logistics warehouse and a field change for the gutter support in the mechanical well of the sloped roof system were items included in the change order request.**

**M 336 22  
Approve  
EMS Public  
Safety  
Building/CO  
No. 15**

**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. 15 for contract C19-04, Sussex County Public Safety Building be approved, for an increase of \$11,357.87.**

**Motion Adopted: 5 Yeas**

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

**Bulk  
Delivery of  
Magnesium  
Hydroxide/  
Project  
M21-12**

**Hans Medlarz, County Engineer presented a contract escalation for bulk delivery of magnesium hydroxide for Council's consideration. Prior to the one-year extension period, the contractor notified the department they could not hold the price and requested an increase of \$0.36 per gallon due to the current economic conditions. Mr. Medlarz further explained that with this increase, the price is still lower than the second bid received.**

**M 337 22  
Approval of  
Contract  
Escalation**

**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 the base bid for Sussex County Project M20-21, “Bulk Delivery of Magnesium Hydroxide”, be increased by \$0.36 per gallon for a one-year FY23 contract extension.**

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

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

**Landfills  
Site  
Maintenance/CO  
No. 1**

**Hans Medlarz, County Engineer presented change order no. 1 – FY23 for the landfills site maintenance for Council’s consideration. Mr. Medlarz explained to ensure a clear path to the different areas, a mowing quote was requested from the current vendor.**

**M 338 22  
Approval of  
CO No.  
1/Landfills  
Site  
Maintenance**

**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. 1 – FY23 for contract #17-13, Sussex County Landfills Site Maintenance, be approved, increasing the contract amount by \$1,500 for a new total of \$20,901.20.**

**Motion Adopted: 5 Yeas**

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

**Public  
Hearing/  
Proposed  
Building  
Code  
Ordinance**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”.**

**Mr. Moore explained that a public hearing was previously held on this matter and on May 17, 2022, at that time the Ordinance was passed. Subsequent to that, it was noticed that an effective date was not filled in. Mr. Moore further explained that under State law, if there is no date, it takes effective immediately. It was the intent that the effective date be January 1, 2023, as opposed to currently.**

**Andy Wright, Chief of Building Code reminded Council that on May 17,**

**Public Hearing/  
Proposed Building Code Ordinance (continued)**

**2022, an Ordinance was proposed to adopt the 2021 International Building and International Residential Code. Mr. Wright explained the reasons of requesting the January 1, 2023, effective date. It will allow the commercial designers enough time to follow forward with the current code edition and start any new projects after that date to the 2021 code. In addition, it will allow the fast-track residential master plans that are on file time to revamp and update their plans. Lastly, it will allow the yearly applications to start with 2023 so any staff member will know that an application starting with 2023 will have the new code in place.**

**Public comments were heard.**

**Mr. Jordan Warfel of Dream Designs, LLC discussed the new proposed stair code that he believes will have a negative effect on the entry level affordable models and homeowners that desire to finish off space above their garage or houses to get more finished space. He further explained that when fitting these stairs into tight places, a foot or two could make a difference if the stair could fit or not.**

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

**M 339 22  
Defer Action/  
Proposed Building Code Ordinance**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”.**

**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/  
New Road Estates Improvements Assessment Roll**

**A Public Hearing was held on Proposed New Road Estates Improvements Assessment Roll.**

**Hans Medlarz, County Engineer explained that the project consists of nine residential parcels along New Lane, a private street and cul-de-sac owned and maintained by the community Homeowners Association.**

**There were no public comments.**

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

**M 340 22**  
**Adopt**  
**Resolution**  
**No. R 008 22**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Resolution No. R 008 22 entitled “A RESOLUTION ADOPTING THE UNIFORM ASSESSMENT ROLL FOR THE PURPOSE OF BILLING FINAL COSTS OF THE NEW ROAD ESTATES PAVEMENT IMPROVEMENTS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT T21-08.**

**Motion Adopted: 5 Yeas**

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

**Old**  
**Business/**  
**CZ1967**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Change of Zone No. 1967 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.**

**The initial public hearing was held before the County Council on April 26, 2022. At that time, a motion was made to defer action on the application for a period of two weeks to May 6<sup>th</sup> for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. At the meeting of May 24, 2022, Council closed the Public Record and deferred action on the application for further consideration. At the meeting of June 28, 2022, Council discussed the application and deferred action for further consideration.**

**M 341 22**  
**Adopt**  
**Ordinance**  
**No. 2874/**  
**CZ1967**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2874 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1-7 as follows:**

- 1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.**

**M 341 22  
Adopt  
Ordinance  
No. 2874/  
CZ1967  
(continued)**

2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gills Neck Road and Kings Highway lighted intersection. DelDOT is also planning to improve the Kings Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR-zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
5. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
7. For all of these reasons, MR zoning is appropriate for this site.

**Motion Adopted: 5 Yeas**

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

**Old  
Business/  
CZ1968**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Change of Zone No. 1968 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.**

**This was last considered at Council during the June 28, 2022 meeting, at which time, action was deferred for further consideration.**

**M 342 22  
Adopt  
Ordinance  
No. 2875/  
CZ1968**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2875 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” for the reasons**

**M 342 22  
Adopt  
Ordinance  
No. 2875/  
CZ1968  
(continued)**

**given by Planning and Zoning numbered 1-7 as follows:**

- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
- 2. The Applicant’s property is generally located at the intersection of Gills Neck Road and Kings Highway on the outskirts of the City of Lewes. It is next to an existing medical office building, across from Cape Henlopen High School and there are other businesses, commercial and institutional zonings, and uses in the immediate area. This is an appropriate location for C-2 zoning.**
- 3. C-2 Zoning at this location near the intersection of Gills Neck Road and Kings Highway will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.**
- 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**
- 5. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.**
- 6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas**

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

**Old  
Business/  
CU2334**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Conditional Use No. 2334 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.**

**This was last considered at Council during the June 28, 2022 meeting, at which time, action was deferred for further consideration. During the public hearing held on April 26, 2022 held before Council, there was a request from the applicant to consider a potential amendment to Condition K.**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to change**

**M 343 22  
Amend  
Condition  
K/ CU2334  
M 343 22  
Amend  
Condition  
K/ CU2334**

**Condition K to read: Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and on Saturdays between October 1<sup>st</sup> and April 30<sup>th</sup>. No Saturday hours are permitted from May 1<sup>st</sup> through September 30<sup>th</sup>. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**

**Motion Adopted: 5 Yeas**

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

**The gavel was given to Mr. Hudson.**

**Mr. Vincent stated that based upon the record at both the Planning and Zoning Commission and the County Council hearing, as well as the recommendations of the Sussex County Engineer, he would like to make the following motions for consideration.**

**M 344 22  
Remove  
Condition  
P/ CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to strike Condition P of the April 14<sup>th</sup> Planning & Zoning Commission’s Conditions of Approval in its entirety.**

**Motion Adopted: 5 Yeas**

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

**M 345 22  
Amend  
Conditions/  
CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to provide independent specialized inspection services during construction of the infiltration facility and to either prefund or bond the 10-year operation & maintenance expense for the infiltration facility, as mutually determined by the Sussex Conservation District and the Sussex County Engineering Department.**

**Motion Adopted: 5 Yeas**

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



**M 346 22  
Amend  
Conditions/  
CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to provide an ephemeral wetland forebay sized to treat the separated rooftop runoff in the stormwater management design.**

**Motion Adopted: 5 Yeas**

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

**M 347 22  
Amend  
Conditions/  
CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to install two 4-inch monitoring wells downstream of the infiltration facility prior to any land disturbing activity and have each well analyzed annually for the following classes of substances regulated under the National Primary Drinking Water Regulations for a period of five-years or final County Engineering Department acceptance whatever, date comes later:**

- A. Inorganic chemicals (§ 141.11)**
- B. Organic chemicals (§ 141.12)**
- C. Volatile organic contaminants (§ 141.61)**

**Motion Adopted: 5 Yeas**

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

**M 348 22  
Amend  
Conditions/  
CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to either grant perpetual access rights for the Lewes Board of Public Works or prefund a contract with a certified laboratory to annually analyze groundwater quality for the following classes of substances regulated under the National Primary Drinking Water Regulations for an additional ten-years after final County Engineering Department acceptance:**

- A. Inorganic chemicals (§ 141.11)**
- B. Organic chemicals (§ 141.12)**
- C. Volatile organic contaminants (§ 141.61)**

**Motion Adopted: 5 Yeas**

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

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

**M 349 22  
Amend  
Conditions/  
CU2334**

**A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to incorporate a first flush sand filtration component in the stormwater conveyance design for the imperious areas commercially utilized by vehicular traffic under a Sussex County Engineering Department permit.**

**Motion Adopted: 5 Yeas**

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

**The gavel was given back to Mr. Vincent.**

**M 350 22  
Adopt  
Ordinance  
No. 2876/  
CU2334**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2876 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1-12 with conditions 13 A-R as amended by this Council by the deletion of 1 condition and the addition of 5 new conditions as follows:**

- 1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units is in compliance with the purposes of the MR Zone.**
- 2. Both central water and central sewer will be available to this site.**
- 3. This site is the location of the Gills Neck Road and Kings Highway lighted intersection. DelDOT is also planning to improve the Kings Highway Corridor in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.**
- 4. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential,**

**M 350 22  
Adopt  
Ordinance  
No. 2876/  
CU2334  
(continued)**

**General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This conditional use at approximately 6 units per acre is consistent with other zoning and multi-family developments in the area.**

- 5. There are no wetlands located on the property.**
- 6. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.**
- 7. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed use, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions will not have an adverse impact upon the City of Lewes Wellheads that are off-site and across Kings Highway.**
- 8. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development's traffic impact will be minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT.**
- 9. DelDOT has issued and updated its Traffic Impact Study review letter for the project. That letter requires several offsite roadway improvements including, but not limited to, the construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.**
- 10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.**
- 11. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan,**

**M 350 22  
Adopt  
Ordinance  
No. 2876/  
CU2334  
(continued)**

**which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.**

**12. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.**

**13. This recommendation is subject to the following conditions:**

**A. There shall be no more than 267 units within 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. The developer shall also coordinate with the Lewes ByWays Committee on the design and landscaping within the ByWay corridor.**

**C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeological study prior to their removal from the property.**

**D. All recreational amenities shall be completed within the development as follows:**

**i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125<sup>th</sup> Building Permit;**

**ii. The dog park shall be completed on or before the 150<sup>th</sup> Building Permit.**

**E. 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.**

**F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**

**G. 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.**

**H. Interior street design shall comply with or exceed Sussex County standards.**

**I. Road naming and addressing shall be subject to the review**

**M 350 22  
Adopt  
Ordinance  
No. 2876/  
CU2334  
(continued)**

**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, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and on Saturdays between October 1<sup>st</sup> and April 30<sup>th</sup>. No Saturday hours are permitted from May 1<sup>st</sup> through September 30<sup>th</sup>. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**
- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.**
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.**
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.**
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- P. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- Q. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**
- R. The applicant is to provide independent specialized inspection services during construction of the infiltration facility and to either prefund or bond the 10-year operation & maintenance expense for the infiltration facility, as mutually determined by the Sussex Conservation District and the Sussex County**

**M 350 22  
Adopt  
Ordinance  
No. 2876/  
CU2334  
(continued)**

**Engineering Department.**

- S. The applicant is to provide an ephemeral wetland forebay sized to treat the separated rooftop runoff in the stormwater management design.**
- T. The applicant is to install two (2) 4-inch monitoring wells downstream of the infiltration facility prior to any land disturbing activity and have each well analyzed annually for the following classes of substances regulated under the National Primary Drinking Water Regulations for a period of five-years or final County Engineering Department acceptance whatever, date comes later:
  - A. Inorganic chemicals (§ 141.11)**
  - B. Organic chemicals (§ 141.12)**
  - C. Volatile organic contaminants (§ 141.61)****
- U. The applicant is to either grant perpetual access rights for the Lewes Board of Public Works or prefund a contract with a certified laboratory to annually analyze groundwater qualify for the following classes of substances regulated under the National Primary Drinking Water Regulations for an additional ten-years after final County Engineering Department acceptance:
  - A. Inorganic chemicals (§ 141.11)**
  - B. Organic chemicals (§ 141.12)**
  - C. Volatile organic contaminants (§ 141.61)****
- V. The applicant is to incorporate a first flush sand filtration component in the stormwater conveyance design for the imperious areas commercially utilized by vehicular traffic under a Sussex County Engineering Department permit.**

**Motion Adopted: 5 Yeas**

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

**Grant  
Requests**

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

**M 351 22  
Kody's Kids**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000 (\$1,000 from Mr. Hudson's Councilmanic Grant Account) to Kody's Kids, Inc. for activity supplies.**

**Motion Adopted: 5 Yeas**

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

**Mr. Vincent, Yea**

**M 352 22**  
**The**  
**Nemours**  
**Foundation**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green’s Councilmanic Grant account) to The Nemours Foundation for Vaccine and Medication Barcoding.**

**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**

**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 TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.296 ACRES, MORE OR LESS”**

**Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.83 ACRES, MORE OR LESS”**

**Mr. Hudson introduced 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 14.64 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.09 ACRES, MORE OR LESS”**

**Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BUSINESS PARK TO INCLUDE WAREHOUSES AND OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 22.29 ACRES, MORE OR LESS”**

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

**Council Member Comments**

**Mr. Schaeffer commented that recently, the Georgetown Historical Society requested a Councilmanic Grant. Mr. Rieley granted \$2,000 from his account and the Council did vote unanimously for that grant. He commented that he recently learned that there is a Confederate flag displayed on the property which he believes is unacceptable, inappropriate and an expression of racism. Mr. Schaeffer stated that if the Historical**

- Council Member Comments (continue)**      **Society is displaying that flag, he would like to ask for the donation back.**
- M 353 22 Go Into Executive Session**      **Mr. Moore explained that the item would need to be placed on an agenda for a future meeting if desired. In addition, a motion would need to be made to ask for the request as stated. Mr. Schaeffer commented that he would like to add it to a future agenda for discussion.**
- At 11:04 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess the Regular Session, and go into Executive Session for the purpose of discussing matters relating to land acquisition, pending/potential litigation, and personnel.**
- Motion Adopted:      5 Yeas**
- Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
   **Mr. Hudson, Yea; Mr. Rieley, Yea;**  
   **Mr. Vincent, Yea**
- Executive Session**      **At 11:09 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to land acquisition, pending/potential litigation, and personnel. The Executive Session concluded at 12:05 p.m.**
- M 354 22 Reconvene**      **At 12:10 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session and back into 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**
- E/S Action**      **Mr. Moore shared that there was one item that he had a conflict on, so he was out of the room during that time. Therefore, Mr. Lawson will provide some proposed motions.**
- M 355 22 Parcel 2022-L**      **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to authorize the County Administrator to go into negotiations and purchase the property identified as 2022-L.**
- Motion Adopted:      5 Yeas**
- Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
   **Mr. Hudson, Yea; Mr. Rieley, Yea;**  
   **Mr. Vincent, Yea**
- M 356 22 Parcels 2022-M &**      **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that the County Council agree to participate in round 26 of the Delaware Ag Land Preservation Program and authorize the County Administrator to allocate**



**2022-N funding to the State for two properties identified as 2022-M & 2022-N.**

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

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

**M 357 22 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess  
Recess until 1:30 public hearings.**

**Motion Adopted: 5 Yeas**

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

**M 358 22 At 1:32 p.m., a Motion was made by Mr. Hudson, seconded by Mr.  
Reconvene Schaeffer to reconvene.**

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

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

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

**Public Hearing/  
Ordinance 22-05,  
CZ1949 &  
CU2304** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

**The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the Ordinance for the four reasons stated.**

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

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62**

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**ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)**

The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the application for the seven reasons stated.

Jamie Whitehouse, Planning and Zoning Director presented the application.

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)**

The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the application for the ten reasons stated and subject to the sixteen recommendation conditions.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc. and Mr. Cliff Mumford, professional engineer with Davis, Bowen and Friedel; that the site is known as the “Howeth Property”; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from the Howeth Family; that historically the Howeth Farm was much larger than it currently is; that not too long ago, it was more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the result of those discussions was a minor subdivision plan; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek

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**Elementary School; that Parcel B was purchased by the State of Delaware; that it is now the home of Troop 7 for the Delaware State Police; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the west is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; that the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of non-tidal wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that the Applicant's intention is to have the entire property located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on the Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24; that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential) along this area; that there are three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that correspondence was filed with the Planning and Zoning Department relating to an easement on the property; that a parcel owned by Mr. and Mrs. Lang has an easement; that the easement is 12 ½ foot wide easement that starts at Rt. 24 and runs in a straight line back to their property; that after being contacted by the Planning and Zoning Department and reading the correspondence, the applicant has reached out to the Lang's and looks forward to working that out with them.**

**The Council found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group effort between DelDOT**

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**and Sussex County; that the agreement was approved on October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2021 was \$341,796.00; that the fee does increase annually on January 31st; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that a wildlife habitat report was completed by Environmental Resources Inc.**

**The Council found that Mr. Edward Launay, with Environmental Resources Inc. did prepare a wetland delineation of the property; that there was an area of isolated non-tidal wetlands found on the property; that there are no state regulated wetlands in the vicinity of this project; that because the wetlands are isolated and in depression, they are not regulated by the Corp of Engineers; that there is no required buffer from those wetlands; that under the newly passed Buffer Ordinance, there will be a 30 foot buffer from wetlands that are regulated by the Corp. of Engineers and it not subject to a buffer from Sussex County and not subject to any regulations from the State of Delaware; that the applicant chose to buffer that wooded wetland with a minimum 50-ft buffer; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that within DNREC's Fish and Wildlife comments from the PLUS review, it mentions three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site.**

**The Council found that Mr. Ring Lardner spoke on behalf of the Application; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval of Love Creek Elementary School the stub was connected to the parcel; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the**

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(continued)**

**site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of “School Lane” as well as the road names; that proposed amenities include a pool house, pool, centralized mailbox and a sports field area; that there is an ability to provide the 12 ½ foot easement from the T turn around at the end of the property to still provide access to the site; that the project will be served by Tidewater Utilities, Inc. for water services; that Sussex County will provide sanitary sewer services; that they have received willing and able to Serve letters from Tidewater Utilities, Inc., Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant’s written response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.**

**The Council found that Mr. David Hutt, Esq. spoke on behalf of the Application; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in the their comments “in Investment Level 2 areas, like Investment Level 1 areas, State investments and polices should support and encourage a wide range of uses and densities” and “Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable”, which ensures that the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the Comprehensive Plan states “while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex**

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**County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concerns; that the proposed buffer to the wetlands exceeds Sussex County's recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units; that the next Section it states that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and employment centers; that the project is located along Rt. 24, which is a major collector road; that the project is located at a signalized intersection on Rt. 24; that although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft.; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that a reference was made that it would devalue the future residential uses being so close to a school; that a letter was provided from Harold Carmine, a certified appraiser; that Mr. Carmine's letter stated that it has been his experience that proximity to a school does not negatively impact property**

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(continued)**

values, in fact, proximity to schools with a good educational reputation such as the Cape Henlopen School District is a positive factor for purchasing a home; that a copy of the letter was provided to Mr. Moore; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many schools which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham Elementary School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that the project as proposed is consistent with Chapters 4 & 8 of the County's Comprehensive Plan which indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requests approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes.

**Public comments were heard.**

Ms. Judy Rose Siebert came to speak in opposition of the applications. Ms. Siebert distributed a petition consisting of 119 signatures. She expressed her concerns about the trees and forest in the area. She also discussed the monarch butterfly habitat that is located in the area. She asked the Council to create a win-win solution that will allow the development of the crop land portion of the parcel, while following Chapter 4 guidelines of the Comprehensive Plan for conservation and the DNREC guidelines given in the PLUS review to preserve the forest. She added that this is the request of the 119 people that signed the petition distributed. Ms. Siebert has also discussed the easement located on the property with Mr. and Mrs. Lang. Ms. Sibert stated that she believes that the project is not in compliance with Chapter 5 of the Comprehensive Plan. Ms. Siebert shared pictures of mature trees located in the area.

Ms. Siebert shared that a master Arborist, Jeremy Hager, provided some guidelines relating to tree roots. Ms. Siebert shared a copy of his guidelines and recommendations.

Ms. Siebert asked for minimization of impact on natural resources as set forth in the Comprehensive Plan Chapter 5.

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(continued)**

**Ms. Siebert reviewed the submitted petition and the requests of those that signed the petition. In addition, she requested that stormwater management pond edges be planted with native species to include milkweed species to provide habitat for federally endangered monarch butterflies.**

**Mrs. Nancy Lang, owner of the 6.7-acre property adjoining the northwest side of the proposed School Lane development, spoke about the applications. Her property includes a twelve-and-a-half-foot right-of-way easement. The easement runs across the middle of the School Lane development, from Route 24 to her property. Her easement would be breached by this development.**

**Mrs. Lang stated that the Cape Gazette published a picture of the proposed School Lane development on its front page on July 5<sup>th</sup>. That article altered her and her husband that a developer was intending to build townhomes over their entire right-of-way easement. At that time, the developer had not initiated contact about their easement, or proposed mitigation for a breach of their easement.**

**In response to the Cape Gazette article, her and her husband gathered and copied relevant documents, and wrote a letter with their concerns to the Sussex County Planning and Zoning commission. Her and her husband even visited the Sussex County Administration Building on July 11<sup>th</sup>, to ensure that the Planning and Zoning office was aware of the situation. The current plans for the School Lane development would violate her right-of-way easement.**

**As a result, and to avoid a breach of her easement, her and her husband request a hold on the School Lane development until plans can be made to address and resolve any breach of their easement.**

**Mr. Thomas Negrán expressed concerns about the traffic at the entrance with the additional load of the proposed townhomes. He requested that the County consider all of the impacts included in this proposal.**

**Ms. Pat Hutchinson stated that she agrees with maintain the forestry as much as possible. She expressed concerns about transportation issues for the nearby school. She encouraged more information to be done about the impact that will occur on the school. She expressed concerns if the design will be completed as it has been discussed and if the units will be owner occupied.**

**Ms. Melanie Bernstein spoke about the animals in the area that will lose their habitat. She also discussed the preserving the existing forest.**

**The Public Hearing was closed.**

**Mr. Schaeffer stated that he questioned the engineer if there was an opportunity to utilize a different zoning designation to redesign the**



subdivision and give the applicant the same business opportunity but preserve the forest land. Mr. Moore recommended to defer action; there is an application that the applicant has submitted for action that needs to be honored. If the applicant decides while action is deferred that they have a different design that they can come forward with, at that point, they can file with Planning and Zoning for a different zoning application. At that point, the application presented today would be withdrawn. If a new zoning designation is not needed, some of the conditions could be changed considering buffering.

**M 359 22  
Defer  
Action/  
Ordinance  
22-05,  
CZ1949 &  
CU2304**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04" for the reasons given by Planning and Zoning numbered 1-4, Change of Zone No. 1949 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-7 and Conditional Use No. 2304 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-10 with conditions numbered 11 A-P and the record to remain open just to give the applicant the opportunity to discuss with the engineer whether or not they would like a new proposal for the design that will preserve the forested area and then the record would be closed after that.

**Motion Adopted: 5 Yeas**

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

**M 360 22  
Adjourn**

A Motion was made by Mr. Schaffer, seconded by Mr. Hudson to adjourn at 3:34 p.m.

**Motion Adopted: 5 Yeas**

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

**Respectfully submitted,**

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

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



