

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 15, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 15, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 387 23
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 from August 1, 2023, were approved by consensus.

**Corre-
spondence**

Mr. Moore reported a letter was received from the Mispillion Performance Series thanking Council for their support.

**Public
Comments**

Public comments were heard.

Mr. Peter Tedesco spoke about interconnectivity from the perspective of a HOA resident.

Mr. Paul Reiger spoke about Board of Adjustment and Planning and Zoning Commission vacancies.

**M 388 23
Approve
Consent
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to approve the following item under the Consent Agenda:

Use of Existing Sewer Infrastructure Agreement, IUA-1013-1

Suncrest (Marsh Homestead), Angola Neck Area

Motion Adopted: 5 Yeas

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

Presentation /United Way of Delaware A presentation was given by Ms. Sarah Carter from the United Way of Delaware. Ms. Carter provided an update to Council and information about the services that the United Way of Delaware provide to residents.

BOA Reappointment Mr. Lawson reported that a reappointment is required for District 4 for Board of Adjustment.

M 389 23 Approve BOA Reappointment/Williamson A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it moved Sussex County Council approves the reappointment of John Williamson to the Sussex County Board of Adjustment effective immediately until such time as the term expires in June 2026.

Motion Adopted: 5 Yeas

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

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

- 1. Project Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets Atlantic East (FKA Ribera-Hall Subdivision, Salt Cedars & Terrapin Island) received Substantial Completion effective July 28th.

- 2. Council Meeting Schedule**

A reminder that Council will not meet on Tuesday, August 22nd. The next regularly scheduled Council meeting will be held on Tuesday, August 29th at 10:00 a.m.

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

Parallel Taxiway B/Task Order 4 Robert Bryant, Airport Manager presented a request for approval for work associated with construction of a new parallel taxiway bravo – Phase 1 for Council's consideration. Mr. Bryant reported that the project will be completed in phases over a six-year period.

**M 390 23
Approve
Taxiway B/
Task Order
4**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it moved based upon the recommendation of the Sussex County Engineering Department that the Sussex County Council approves execution of the Delta Airport Consultants, Inc. Task Order No. 4 for work associated with the design through bidding of the construction Parallel Taxiway Bravo Phase 1 project in the total fee of \$445,000.

Motion Adopted: 5 Yeas

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

**Starlight
Meadows
Rd Improve-
ments**

Mark Parker, Assistant County Engineer presented a Resolution for Starlight Meadows Road Improvements for Council's consideration. Mr. Parker reported that the Resolution outlines the official acceptance of the Starlight Meadows into the program. In addition, the information in the packet includes the estimated cost, establishes a date, time, and location for the election and appoints a judge for the election.

**M 391 23
Adopt
Resolution
No. R 015
23/Starlight
Meadows**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Resolution No. R 015 23 entitled "A RESOLUTION ESTABLISHING A DATE, TIME, PLACE AND JUDGE FOR AN ELECTION TO BE HELD TO CONSIDER THE STARLIGHT MEADOWS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENTS PROJECT".

Motion Adopted: 5 Yeas

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

**CADD
Support
Services**

Mark Parker, Assistant County Engineer presented Amendment No. 9 – CADD support services for the 2019 miscellaneous engineering base contract with Davis, Bowen & Friedel, Inc. for Council's consideration.

**M 392 23
Approve
CADD
Support
services**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, that be it moved based upon the recommendation of the Sussex County Engineering Department that Amendment No. 9 to the 2019 Miscellaneous Engineering Base Agreement with Davis, Bowen and Friedel be approved in the amount not to exceed \$50,000.00 for CAD support on an as-needed basis.

Motion Adopted: 5 Yeas

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

CO No. 2/

Hans Medlarz, County Engineer presented close out change order no. 2 for

Project No. 22-01 **FY2022 general labor and equipment contract with George & Lynch for Council's consideration.**

M 393 23 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it**
Approve CO **moved based upon the recommendation of the Sussex County Engineering**
No. 2/ **Department, that FY23 close out change order no. 2 for George and**
Project No. **Lynch's contract 22-01 FY22 general labor and equipment be approved**
22-01 **which increases the contract amount by \$454,846.74 for a new total of**
 \$5,354,846.74.

Motion Adopted: 5 Yeas

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

GHD **Hans Medlarz, County Engineer presented an award for advanced**
Admend- **electrical design and expansion of study scope to include option 3c for Wolfe**
ment/Wolfe **Neck RWF professional services for Council's consideration.**
Neck

M 394 23 **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it**
Approve **moved based upon the recommendation of the Sussex County Engineering**
GHD **Department and the Finance Department that Amendment Nos. 22 and 23**
Admend- **to the base engineering contract with GHD, Inc. be approved in the not to**
ment/Wolfe **exceed amounts of \$427,138.72 and \$95,000.00 respectively for electrical**
Neck **design and expansion of the long-range study to include option 3c utilizing**
 ARPA funding.

Motion Adopted: 5 Yeas

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

Wolfe **Hans Medlarz, County Engineer presented amendment no. 2 with George,**
Runne/Am- **Miles & Buhr for the Wolfe Runne sewer expansion project for Council's**
end No. 2 **consideration.**

M 395 23 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it**
Approve **moved based upon the recommendation of the Sussex County Engineering**
Amendment **Department that amendment no. 2 to the Wolfe Runne sewer expansion**
No. 2/Wolfe **agreement with George, Miles and Buhr be approved in the amount not-to-**
Runne **exceed \$325,188.00 for redesign and construction related services**
 contingent upon USDA concurrence.

Motion Adopted: 5 Yeas

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

Mr. Vincent, Yea

**WSUSD/
CO No. 5 &
Substantial
Completion**

Hans Medlarz, County Engineer presented change order no. 5 and substantial completion for segment D for contract 5 for the Western Sussex Unified Sewer District for Council's consideration.

**M 396 23
Approve CO
No. 5 &
Substantial
Completion/
WSUSD**

A Motion was made by Mrs. Green, seconded by Mr. Hudson, that based on the recommendation of the Sussex County Engineering Department, that change order 5 for contract S19-29, Western Sussex Unified Sewer District, Segment D be approved, for a decrease of \$32,236.00 and that substantial completion be granted effected July 21, 2023, with any held retainage released in accordance with the contract documents, contingent upon SRF concurrence.

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/
CU2400**

Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS" filed on behalf of Kent Walston.

On August 1, 2023, Council deferred action for further consideration at the conclusion of the Public Hearing.

**M 397 23
Adopt
Ordinance
No. 2947/
CU2400**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2947 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning and Zoning Commission 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 are available. This Conditional Use application, along the border with the Town of Bethany Beach where central water and sewer is available, complies with the purposes of the MR zone.**
- 2. The property is in the vicinity of other residential housing types including single-family homes, townhomes, and other multi-family development. This Conditional Use is consistent with other zoning**

M 397 23
Adopt
Ordinance
No. 2947/
CU2400
(continued)

- and development in the area.
3. **DelDOT has reviewed the proposed project and has determined that the development’s traffic impact will be “diminutive”. This development will also be required to comply with all roadway and entrance improvements mandated by DelDOT.**
 4. **This small multi-family conditional use meets the purpose of the Zoning Code since it promotes the orderly growth of the County in an appropriate location.**
 5. **The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, 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, 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.**
 6. **There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.**
 7. **This recommendation is subject to the following conditions:**
 - a. **There shall be no more than five (5) 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.**
 - c. **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.**
 - d. **The development shall be served by a central water system providing adequate drinking water and fire protection.**
 - e. **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.**
 - f. **Interior street design shall comply with or exceed Sussex County standards.**
 - g. **Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.**
 - h. **The trash receptacles shall be standard roll-out residential containers assigned to each unit. They shall be stored in an enclosed area. No dumpsters shall be permitted.**
 - i. **Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:30 p.m., Monday through Friday, and between 7:00 a.m. and 4:00 p.m. on Saturdays from October 1st through May 15th of each year. 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.**
 - j. **A 20-foot-wide undisturbed forested buffer shall be installed along**

**M 397 23
Adopt
Ordinance
No. 2947/
CU2400
(continued)**

the perimeter of the development adjacent to Bethany Proper. This buffer area shall utilize existing trees and other vegetation to the fullest extent, with infill planting as needed to comply with the buffer requirements in Section 99-5 of the Sussex County Code in that location.

- k. The Final Site Plan shall include a landscape plan for the development showing the forested areas to be preserved, the proposed tree and shrub landscape design, and the buffer areas. The existing trees and other vegetation that will not be disturbed shall be clearly shown on the Final Site Plan and marked on the site itself so that they are not disturbed during construction.
- l. 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, and open space.
- m. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- n. 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.
- o. 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.
- p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & 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**

**Grant
Requests**

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

**M 398 23
American
Cancer
Society, Inc.**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,500 (\$300 from all Council Members Councilmanic Grant Account) to American Cancer Society, Inc. for their Relay for Life of Sussex County.

Motion Adopted: 5 Yeas

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

**M 399 23
Western
Sussex
Chamber of
Commerce**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mr. Vincent's Councilmanic Grant Account) to Western Sussex Chamber of Commerce for their 11th Annual Broad Creek Bike and Brew.

Motion Adopted: 5 Yeas

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

**M 400 23
West Side
New
Beginnings,
Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,700 (\$1,700 from Mr. Schaeffer's Councilmanic Grant Account) to West Side New Beginnings, Inc. for Project Safety Street Lights.

Motion Adopted: 5 Yeas

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

**M 401 23
Shoes That
Fit**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,500 (\$1,000 from Mr. Hudson's Councilmanic Grant Account and \$500 from Mrs. Green's Councilmanic Grant Account) to Shoes That Fit for their Sussex County back to school program.

Motion Adopted: 5 Yeas

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

**M 402 23
Clear Space
Theatre
Company**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account) to Clear Space Theatre Company for their Art Institute.

Motion Adopted: 5 Yeas

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

**M 403 23
Delaware
Botanic
Gardens,
Inc.**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$4,000 (\$2,500 from Mr. Hudson's Councilmanic Grant Account, \$1,000 from Mr. Rieley's Councilmanic Grant Account and \$500 from Mr. Vincent's Councilmanic Grant Account) to Delaware Botanic Gardens, Inc. for their Annual Fundraising dinner.

Motion Adopted: 5 Yeas

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

**M 404 23
Delaware
State
College**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer’s Councilmanic Grant Account and \$500 from Mr. Hudson’s Councilmanic Grant Account) to Delaware State College Alumni Association for their Band to the Beach program.

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. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MODIFICATION OF CONDITIONS OF APPROVAL RELATING TO CONDITIONAL USE NO. 1018 TO MODIFY BUILDING SIZE LIMITATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.915 ACRE MORE OR LESS” filed on behalf of Nanticoke Indian Association.

Mrs. Green introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MODIFY CONDITIONAL USE NO. 1094 (ORDINANCE 998) TO ALLOW FOR THE ADDITION OF TWO WAREHOUSES, IN ADDITION TO THE RETAIL SALE OF WHOLESALE NURSERY PRODUCTS, FARM PRODUCTS, FERTILIZERS, POTS, GARDENING EQUIPMENT AND ETC., TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.01 ACRES, MORE OR LESS” filed on behalf of Garden Estates, Inc.

Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.34 ACRES, MORE OR LESS” filed on behalf of Horacio Paxtor.

The Proposed Ordinances will be advertised for a Public Hearing.

**Council
Member
Comments**

There were no Council Member comments.

**M 405 23
Go into
Executive
Session**

At 11:08 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess the Regular Session, and go into Executive Session to discuss matters relating to pending/potential litigation.

Motion Adopted: 5 Yeas

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

Executive Session At 11:15 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus for the purpose of discussing matters relating to pending/potential litigation. The Executive Session concluded at 11:46 a.m.

M 406 23 Reconvene At 11:50 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of Executive Session 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

M 407 23 Approve Pending Litigation 2023-B A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve an agreement that would resolve any potential litigation matter identified as 2023-B.

Motion Adopted: 5 Yeas

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

M 408 23 Recess A Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess until 1:30 p.m. Public Hearings.

Motion Adopted: 5 Yeas

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

M 409 23 Reconvene At 1:31 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to come out of recess and reconvene the Regular Session.

Motion Adopted: 5 Yeas

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

Public Hearing/ Long Neck A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,036,840 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN

**Communit-
ies** **CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE LONG NECK COMMUNITIES SEPTIC ELIMINATION PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.**

Mr. Medlarz provided a summary of the history of the project.

There were no public comments.

The Public Hearing and public record were closed.

M 410 23 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to**
Amend **change the language from Bonds to Bond.**
Language

Motion Adopted: 5 Yeas

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

M 411 23 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt**
Adopt **Ordinance No. 2948 entitled “AN ORDINANCE AUTHORIZING THE**
Ordinance **ISSUANCE OF UP TO \$2,036,840 OF GENERAL OBLIGATION**
No. 2948/ **BOND OF SUSSEX COUNTY IN CONNECTION WITH INCREASED**
Long Neck **COSTS ASSOCIATED WITH THE LONG NECK COMMUNITIES**
Communit- **SEPTIC ELIMINATION PROJECT AND AUTHORIZING ALL**
ies **NECESSARY ACTIONS IN CONNECTION THEREWITH”.**

Motion Adopted: 5 Yeas

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

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

Public **A Public Hearing was held on a Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-**
CU2364 **1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM**
TO BE LOCATED ON A 26.72 ACRE PORTION OF A CERTAIN
PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED,
SUSSEX COUNTY, CONTAINING 40.97 ACRES, MORE OR LESS”
(property lying on the east side of Conrail Road [S.C.R. 546] approximately
0.71 mile south of Hearn's Pond Road [S.C.R. 544]) (911 Address: N/A) (Tax
Map Parcel: 331-3.00-138.00)

Public **The Planning & Zoning Commission held a Public Hearing on the Proposed**
Hearing/ **Ordinance on July 13, 2023. At the meeting of July 27, 2023, the Planning &**
Zoning Commission recommended approval of the Application for the 11

**CU2364
(continued)**

reasons and the 11 recommended conditions as outlined.

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

The Council found that Mr. Jon Falkowski, with Becker Morgan Group, Inc., presented on behalf of the Applicant; that also present was Mr. Michael Redding with ECA Solar.

Mr. Falkowski stated the property for C/U 2364 Seaford Community Energy Initiative, LLC is located north of the City of Seaford, along Conrail Rd.; that the property is 40.97 acres; that the area proposed for the Conditional Use, being the location of the solar arrays, consists of approximately 26.72 acres; that the property is zoned AR-1 (Agricultural Residential); that the site is currently utilized for agricultural use; that the proposed Conditional Use is for utility solar; that they have provided landscape buffers around the property; that there is one area where they did not provide a landscape buffer, as there is already an existing landscape hedge row; that they did provide landscaping around the residential properties located at the front; that they did not provide landscaping in the back of the property, as that area is within the existing Delmarva Power easement located along that portion of the boundary line; that the application was filed in April 2022; that the application submission was made prior to the adoption of Ordinance No. 2920, being the recent Ordinance adopted by the County regarding solar projects; that both solar applications do generally comply with the new Ordinance requirements; that within the newly adopted Solar Ordinance, there is a distance requirement of 200 ft. between adjacent dwellings and the nearest solar panel; that for the subject application, they are slightly off meeting the 200 ft. distance requirement in one particular area; that within that area the nearest point of distance is 184 ft; that the application was submitted prior to the adoption of Ordinance No. 2920, and due to this, they would request the 184 ft. proposed distance be permitted; that the reason for the encroachment is due to their efforts to save the existing tree on the site, by pushing the location of the solar panels away from the tree; that there will be perimeter fencing, which will have Knox Box access for the Fire Marshal; that access is proposed from Conrail Rd.; that the application is for a community solar facility, which is a ground mounted, three megawatt, tracking system; that these types of solar projects do not generate traffic other than a couple maintenance visits per month; that the project is a renewable energy resource, which create no odors, gas, smoke or fumes; that the project will create low noise, which will mostly come from the power inverters; that the inverters are to be centrally located in the facility, which is a requirement within the new Solar Ordinance; that stormwater runoff tends to be reduced as the land is moved from an agricultural activity to the placement of pollinator grasses and plantings across the facility; that they propose a 25 ft. landscape buffer and that the project will include a Decommissioning Plan and bonding to provide financial assurance of the project.

Public

**Hearing/
CU2364
(continued)**

The Council found that Mr. Michael Redding came forward to speak on the Application; that he is from ECA Solar, however, he is also representing the applicant; that ECA's main business is the development of community solar projects; that they have several projects in Delaware that are currently in development; that these two projects will be a part of the community energy program in Delaware; that this allows power to be exported to the Delmarva grid; that then it can be used by residents and businesses that can benefit from that power; that the program also requires to set aside a portion of the power for low to moderate income residents so that they can benefit; that a mailer was completed to the community; that two responses were received; that it was addressed that the back lane will not be used for this project; that the main access will be from Conrail Road.

Mr. Vincent pointed out that anyone that is a Delmarva Power customer can buy the energy from this grid.

Mr. Falkowski shared pictures of the proposed project; that the solar facility is a public utility use under the County Code; that the project meets the purpose of a Conditional Use in that it is of public or semi-public character, it is essential and desirable for the general community and welfare of the County; that the proposed facility promotes the Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar farms; that the proposed use will not have an impact on neighboring property by providing adequate landscape buffering and fencing; that the facility will not generate increased traffic on area roadways; that there are no regular employees at the site; that there will only be periodic visits for maintenance; that the project will not generate noise, dust, or odors; that the project is in general conformance with the newly adopted Solar Ordinance No. 2920, other than the one exception previously discussed.

There were no public comments.

The Public Hearing and public record were closed.

**M 412 23
Defer
Action/
CU2364**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 26.72 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 40.97 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

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

Public
Hearing/
CU2365

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS” (property lying on the east side of DuPont Boulevard [Rt. 113], approximately 250 feet south of Lazy Lagoon Road [S.C.R. 380]) (911 Address: N/A) (Tax Map Parcel: 533-4.00-23.00) filed on behalf of Frankford Community Energy Initiative II, LLC.

The Planning & Zoning Commission held a Public Hearing on the application on July 13, 2023. At the meeting of July 27, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and subject to the 12 recommended conditions as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Jon Falkowski, with Becker Morgan Group, Inc., presented on behalf of the Applicant; that also present was Mr. Michael Redding with ECA Solar.

Mr. Falkowski stated the property for C/U 2365 Frankford Community Energy Initiative II, LLC, is located just south of Frankford, along Rt. 113; that the total area of the site consists of 42.95 acres; that the Conditional Use area consists of 17.68 acres; that the property has split zoning being, C-1 (General Commercial) and AR-1 (Agricultural Residential); that the C-1 zoning runs along the front portion of site; that the property also falls within the CHCOZ (Combined Highway Corridor Overlay Zone); that the property does contain some existing forest; that the property is a combination of agricultural open land, and some existing woods; that the wooded area is approximately 31.85 acres; that they proposed to clear approximately 15.47 acres of the total 48.6 acres of woods; that there is a small area of wetlands located in the middle of the site; that the wetland area consists of approximately 1,000 sq. ft.; that they have received a permit issued from the Army Corp of Engineers to fill the area, as it was an isolated wetland area; that he believed there was some debate regarding if the area would still be considered a wetland, but nonetheless, they have obtained a permit; that the project will have some mitigation areas around the perimeter of the property that consist of some pollinator gardens and habitat supplements which were part of the permit; that this area is reflected in dark green color, surrounding the property on the rendering; that in this area, the woods will be cut down, however, the stumps will remain; that there is a 25 feet buffer proposed; that the proposed Conditional Use is for utility solar; that both applications were filed in April 2022; that the applications submissions were made prior to the adoption of Ordinance No. 2920, being the recent Ordinance adopted by the County regarding solar projects; that this solar application does comply with all of the requirements set forth in the newly adopted Solar Ordinance; that

Public

Hearing/
CU2365
(continued)

the application is for a community solar facility, which is a ground mounted, three megawatt, tracking system; that these types of solar projects do not generate traffic other than a couple maintenance visits per month; that the project is a renewable energy resource, which create no odors, gas, smoke or fumes; that the project will create low noise, which will mostly come from the power inverters; that the inverters are to be centrally located in the facility, which is a requirement within the new Solar Ordinance; that stormwater runoff tends to be reduced as the land is moved from an agricultural activity to the placement of pollinator grasses and plantings across the facility; that they propose a 25 ft. landscape buffer and perimeter fencing, which will have Knox Box access for the Fire Marshal; that the project will include a Decommissioning Plan and bonding to provide financial assurance of the project; that the solar facility is a public utility use under the County Code; that the project meets the purpose of a Conditional Use in that it is of public or semi-public character, it is essential and desirable for the general community and welfare of the County; that the proposed facility promotes the Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar farms; that the proposed use will not have an impact on neighboring property with provided adequate landscape buffering and fencing; that the facility will not generate increased traffic on area roadways; that there are no regular employees at the site; that there will only be periodic visits for maintenance; that the project will not generate noise, dust, or odors; that the project is in general conformance with the newly adopted Solar Ordinance No. 2920.

The Council found that Mr. Michael Redding came forward to speak on the Application; that he is from ECA Solar, however, he is also representing the applicant; that ECA main business is the development of community solar projects; that they have several projects in Delaware that are currently in development; that these two projects will be a part of the community energy program in Delaware; that allows power to be exported to the Delmarva grid; that then it can be used by residents and businesses that can benefit from that power; that the program also requires to set aside a portion of the power for low to moderate income residents so that they can benefit.

There were no public comments.

The Public Hearing and public record were closed.

M 413 23
Defer
Action/
CU2365

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS" (property lying on the east side of DuPont Boulevard [Rt. 113], approximately 250 feet south of Lazy Lagoon Road [S.C.R. 380]) (911 Address: N/A) (Tax Map Parcel: 533-4.00-23.00).

M 413 23

**Defer
Action/
CU2365**

Motion Adopted: 5 Yeas

(continued)

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

**Public
Hearing/
CZ1989**

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 C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS” (property lying on the northwest side of County Seat Highway [Rt. 9], approximately 0.85 mile southwest of DuPont Boulevard [Rt. 113]) (911 Address: 19724 Justin Drive, Georgetown) (Tax Map Parcel: 135-19.00-23.03 [p/o]) filed on behalf of Ferando Robles

The Planning & Zoning Commission held a Public Hearing on the application on July 13, 2023. At the meeting of July 23, 2023, the Planning & Zoning Commission recommended denial of the application for the 7 reasons as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, presented on behalf of the Applicant; that also present were Mr. Eric Wall, Registered Landscape Architect and Project Manager with Pennoni Associates, and Mr. Fernando Robles, who presented on behalf of the Robles family; that the application is a request to amend the Comprehensive Zoning Map of Sussex County for a property currently located within the AR-1 (Agricultural Residential) Zoning District of Georgetown; that the property is located on the northside of County Seat Hwy (Delaware Rt. 28) (U.S. Rt. 9); that the property is located 4,300 ft. west of DuPont Blvd (U.S. 113); that the request is to rezone a 2.47 acre portion of the total 5.42 acre property, from AR-1 (Agricultural Residential) to C-2 (Medium Commercial); that the property has been owned by the Robles family since 2007, being approximately 16 years; that the Robles currently reside on the property, as well as, own a large farm property across the road; that the Robles family have their residential home and equestrian activities located toward the rear of the property; that the property is bordered on the south by County Seat Highway, which is considered a minor arterial highway; that the property is bordered on the north, east and west by lands zoned AR-1 (Agricultural Residential); that the adjacent lands to the north and west do have Conditional Uses, with one Conditional Use being for a used automotive business; that there is a landscape business and livestock company located near the property; that across the street are two parcels owned by churches;

Public

Hearing/
CZ1989
(continued)

that the adjacent AR-1 to the east is used for agricultural and residential purposes; that Planning and Zoning recommended a denial of this Application; that they stated seven reasons why this was not appropriate for this property; that these lands are located within a growth area for Sussex County, and within the Future Annexation Area for the Town of Georgetown; that commercial is starting to move into this direction from the Town of Georgetown; that one of the reasons of denial mentioned was that C-2 (Medium Commercial) is designed to support retail sales and performance of consumer sales intended to be near arterial and collector roads; that a main concern was the uncertainty what may be constructed on site when rezoned; that in Ordinance 2550, Sussex County stated the desire to create more specific C-2 (Medium Commercial) Zoning District, with smaller, more related uses within the district, to promote better planning and predictability within Sussex County that the purpose of the C-2 (Medium Commercial) district is to support uses that include retail sales and performance of consumer services; that the C-2 District permits a variety of retail, professional and service businesses; that the district shall be primarily located near arterial and collector streets, accommodating community and commercial uses that do not have outside sales or storage; that during those presentations for the Ordinance, it talked about the smaller style; that in the 2019 Sussex County Comprehensive Plan, the area of the proposed rezoning is identified as a Developing Area; that one of the other reasons stated was that there are no other commercially zoned properties in the immediate area of this property; that this would be an isolated area of spot zoning; that the Comprehensive Plan states that this is the right zoning category for the developing area; that the Comprehensive Plan states that the County has authority over these types of zoning classifications; that Table 4.5-2 is provided as a tool for assisting with and determining which zoning districts are applicable to each Future Land Use Category; that under Table 4.5-2 for the Developing Area, C-2 (Medium Commercial) Zoning is an applicable district within that area; that Mr. Davidson believes that this is not spot zoning; that a zoning designation being requested is part of the developing area.

Mr. Vincent noted that the change was made in 2017; that it occurred because prior to that, there was only one zoning commercial in the entire County. The Council desired for it to be narrowed down to smaller things; that the public commented that once the zoning is changed, there are many things that can be done. Anything that is authorized in C-2 can go there once the zoning is changed.

Mr. Davidson stated that specific limitations were placed on the C-2 zoning code that allowed it to stay at a small, lesser intense use when developing on that piece of property; that the approval of the rezoning request to C-2 will allow the Robles to relocate their family business, El Gran Charro, to a portion of their family lands on a particular stretch along County Seat Hwy.; that they desire to expand their existing restaurant, which is currently located at the College Park Shopping Center in Georgetown, which is more familiarly known as the Walmart Shopping Center; that the Robles have outgrown their

Public

**Hearing/
CZ1989
(continued)**

current area in the shopping center; that they desire to create a quality restaurant that will focus on the customers for the nearby, existing and future communities; that a site plan was done to allow the family to expand their restaurant to approximately 6,000 square feet and keep the farming activity in the back without having to rezone the entire parcel; that the Robles are looking to grow their restaurant on their family land; that they believe that using the front part of this property will better serve their purposes; that the property is in the Georgetown CPC for all utilities; that once the utilities migrate out to this property, they will connect and annex in; that the majority of their land, including the large farm area across the street are located within the future annexation area; that the existing entrance is already in place; that the entire parcel is in the Developing Area and could support a higher, more intense zoning such as C-3 or C-4; that the desire of the Robles family is to expand their restaurant with a C-2 zoning; that the existing concrete pad on the site is where the building will be placed; that the parking lot will be pushed back away from the road; that the stormwater pond is located in the front of the property; that improvements will need to be made by the Robles family as requested by DeDOT; that the PZ Commission mentioned there could be all of types of permitted uses; that the C-2 is a much lesser intense use; that the uses with the size and restrictions would restrict any higher intense use; that the PZ Commission thought that a Conditional Use was more appropriate; that back in 2017, all of the Conditional Uses that were occurring were trying to get cleaned up; that a C-2 zoning district was established to help; that in a Conditional Use, it states that it provides for certain uses that cannot be well adjusted to their environment in particular locations; that based on the C-2 zoning and based on the requirements that you can place in a development area along arterial and collector roads; that there will be water and sewer; that water is planned to extend out to this area in the future; that it was also stated that the PZ Commission was not satisfied with the proposed isolated commercial rezoning in this location; that C-2 was designed to be near arterial roads; that nobody came out in opposition against this application; that a letter of support was received from an adjacent neighbor; that the Future Land Use Map shows that this application does meet the requirements of No. 6 of the reasons of denial given by the PZ Commission; that the future of the Future Land Use Map identifies those areas where this type of zoning is to occur; that the Robles family would like to expand their business that is currently within the Town of Georgetown; that under the Comprehensive Plan, it talks about developing areas with good road access and few nearby homes should allow for commercial uses; that there are no large developments near this property; that according to the 2020 State Strategies for Policies and Spending, the property is within Investment Level 2.

Public comments were heard.

Mr. Nathan Zimmerman spoke in favor of the application. He is a life-long resident of Sussex County; that the restaurant is this family's life and he felt compelled to speak in favor of this application.

The Public Hearing and public hearing were closed.

**M 414 23
Defer
Action/
CZ1989**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action 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 C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**M 415 23
Adjourn**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to adjourn at 2:43 p.m.

Respectfully submitted,

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

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