

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 29, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 29, 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 416 23
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, 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 15, 2023, were approved by consensus.

**Corre-
spondence**

Mr. Moore reported a letter was received from Society of St. Andrew thanking Council for their support.

**Public
Comments**

Public comments were heard.

Mr. Paul Reiger spoke about public comment period for Planning and Zoning and Board of Adjustment matters.

Ms. Janet Le Digabel spoke about a recent application that was presented for development and the time frame that developers submitted paperwork. She also commented about the phone in comment period for Planning and Zoning Commission meetings no longer being an option.

Ms. Eul Lee spoke about Planning and Zoning Commission phone in comment period and Quality of Life Act, Section 61 Titled "Information

from State and Local Agencies and School Districts”.

Presentation Carvel Research & Education Center Mark Issacs, Director, University of Delaware Carvel Research and Education Center, thanked Council for its continued support of the outreach, research and extension programs at the College of Agriculture and Natural Resources at the Carvel Research and Education Center. Mr. Isaacs gave a brief overview of the how the County’s funding is used by the Center in Sussex County for: Agricultural Courses, 4-H and Youth Development Programs, Family Consumer Science Program, Field Research, Crops Research, Poultry Research, Lasher Lab Poultry Research and Student Work-Based Learning Internship Program.

**Adminis-
trator’s
Report** Mr. Lawson read the following information in his Administrator’s Report:

1. **Delaware State Police Activity Report**

The Delaware State Police year-to-date activity report for July 2023 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 190 troopers assigned to Sussex County for the month of July.

2. **Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, Egret Shores – Phase 2 (Construction Record) and Patriots Glen – Phase 1A (Construction Record) received Substantial Completion effective August 11th and August 18th respectively.

3. **FY 2024 Human Service Grant Program**

Applications for the Fiscal Year 2024 Human Service Grant Program are now being accepted. The Human Service Grant Program provides grants to county-wide nonprofit agencies for the purpose of enhancing health and human services which contribute to a safe, healthy, and self-sufficient community. Funds provide grants that assist organizations with resources in support of programs or capital purchases.

To be eligible for a grant, organizations must fill out an application which is available on the County’s website at www.sussexcountyde.gov.

The deadline for filing grant requests is Friday, September 29th.

4. **Council Meeting Schedule**

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

A reminder that Council will not meet on Tuesday, September 5th. The next regularly scheduled Council meeting will be held on Tuesday, September 12th at 10:00 a.m.

County offices will be closed Monday, September 4th, for the Labor Day holiday.

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

**DE Transit
Reimburse-
ment
Program
Request**

Mrs. Jennings reported that DART, a division of DelDOT has allocated \$796,868.00 for funding of transportation expenses for various senior centers in Sussex County. Mrs. Jennings noted that this amount is the same as last year. The County's responsibility is to approve a recommended funding amount for Fiscal Year 2024 as per State law; this process is an allocation of State grant funds to various senior agencies for transportation purposes. The recommended funding for each agency is the same as the previous year:

Nanticoke Senior Center	\$ 44,962
Indian River Senior Center	2,100
Laurel Senior Center	99,083
Lewes Senior Center	27,123
Cape Henlopen Senior Center	43,066
CHEER, Inc.	<u>580,534</u>

TOTAL	\$796,868
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**M 417 23
Approve
Allocation of
DART
Funds**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved that the Sussex County Council approve the allocation to various senior centers 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

**Third
Quarter
Shining Star
Awards**

Karen Brewington, Human Resources Director presented the Third Quarter Shining Star Awards. Mrs. Brewington reported that there were 25 submissions received for the quarter. The following employees were selected for the third quarter: Jamie Marine, Nathan Spencer, Jody Palmer, and Bob Kreitzer from the Environmental Services Department.

**DE CBP/CO
No. 4**

Mark Parker, Assistant County Engineer presented change order no. 4 for the Delaware Coastal Business Park Improvements, Project A21-1 for Council's consideration.

M 418 23
Approve CO
No. 4/DE
Coastal Bus.
Park

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that change order no. 4 for contract A21-11, Delaware Coastal Business Park Improvements, be approved, for an increase of \$56,970.00.

Motion Adopted: 5 Yeas

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

Bond Recall/
Solitude on
White Creek

Mark Parker, Assistant County Engineer presented a proposed bond recall for Solitude on White Creek for Council's consideration. Mr. Parker reviewed the background and timeframe for the development. Currently, 119 lots have been sold in the community, the last building permit was issued in January 2021 and the last CO was granted in June 2021. The agreements with the developer are listed in the memo in the packet. Mr. Parker reported that based on the department's estimate, the bond amount should be enough to complete the outstanding street improvements. The County Engineer has reached out numerous times to the developer for a status update but has been unsuccessful.

M 419 23
Approve
Bond Recall/
Solitude on
White Creek

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council approves the initiation of bond recalls associated with developer agreements 623-2, 623-3, and 623-4; and that outstanding pavement work in the community be completed under a contracting mechanism with approval of the financing department.

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/
CU2364

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 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" filed on behalf of Seaford Community Energy Initiative, LLC.

On August 15, 2023, Council deferred action for further consideration at the conclusion of the Public Hearing.

M 420 23
Amend

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to add Condition L to read "The solar panels, solar farm or solar array area shall

**Conditions/
CU2364** be designed using best efforts to site solar panels and equipment 200 feet from any dwelling on property of other ownership. Where physical on-site constraints are proven to exist, the Planning & Zoning Commission may approve a reduced separation provided that the separation is not reduced to less than 180 feet.”

Motion Adopted: 5 Yeas

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

**M 421 23
Adopt
Ordinance
No. 2949/
CU2364** A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2949 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” for the reasons and conditions given by the Planning and Zoning Commission as follows and amended:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 26.72 acres of a larger 40.97-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. Although the submission of this application pre-dated the adoption of Ordinance No. 2920 governing solar farms, this project generally complies with that ordinance as to buffers and setbacks.
5. With the conditions imposed in this recommendation including landscaped buffers, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted or retained vegetation along the

**M 421 23
Adopt
Ordinance
No. 2949/
CU2364
(continued)**

northern, western, and southern sides of this site to screen the view of the solar farm while allowing the solar arrays to function properly.

10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.

11. There was no opposition to this Application.

12. This recommendation is subject to the following conditions:

- a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.**
- b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use.**
- c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.**
- e. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
- f. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.**
- g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.**
- h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.**
- i. There shall be a 25-foot-wide buffer of planted vegetation along the northern, western, and southern sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing them to function properly. No buffering shall be required along the eastern boundary of the site adjacent to other lands that are being farmed. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in this buffer area.**
- j. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.**
- k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**
- l. The solar panels, solar farm or solar array area shall be designed using best efforts to site solar panels and equipment 200 feet from any dwelling on property of other ownership. Where physical on-site**

M 421 23 constraints are proven to exist, the Planning & Zoning Commission
Adopt may approve a reduced separation provided that the separation is
Ordinance not reduced to less than 180 feet.
No. 2949/

CU2364 Motion Adopted: 5 Yeas
(continued)

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

Old Under Old Business, Jamie Whitehouse, Planning and Zoning Director
Business/ presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT
CU2365 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” filed on
behalf of Frankford Community Energy Initiative II, LLC.

On August 15, 2023, Council deferred action for further consideration at
the conclusion of the Public Hearing.

M 422 23 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt an
Approve Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL
CU2365/ USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND
DENIED 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” for the reasons and
conditions given by the Planning and Zoning Commission.

Motion DENIED: 3 Nays, 2 Yeas

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

Mr. Schaeffer and Mrs. Green voted no based on the reasons given by Mr.
Hudson.

Old Under Old Business, Jamie Whitehouse, Planning and Zoning Director
Business/ presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT
CU2353 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” filed on behalf of Sussex
CSG2, LLC.

On June 6, 2023, County Council deferred action for further consideration at the conclusion of the Public Hearing.

**M 423 23
Adopt
Ordinance
No. 2950/
CU2353**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2950 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” for the reasons and conditions given by the Planning and Zoning Commission as follows:

- 1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.**
- 2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 28.09 acres of a larger 54-acre tract.**
- 3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.**
- 4. With the conditions imposed in this recommendation including landscaped buffers, the proposed use will not have any adverse impact on the neighborhood.**
- 5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.**
- 6. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.**
- 7. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.**
- 8. There will be a buffer of planted vegetation along the southern, southeastern, and southwestern sides of this site to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly.**
- 9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.**
- 10. There was no opposition to this Application.**
- 11. This recommendation is subject to the following conditions:**
 - a. The use shall be for ground-mounted solar farm. No other types of electric generation shall be permitted at the site.**
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use.**

**M 423 23
Adopt
Ordinance
No. 2950/
CU2353
(continued)**

- c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- e. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
- f. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- i. There shall be a 25-foot-wide buffer of planted vegetation along the southern, southeastern, and southwestern sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing the solar arrays to function properly. The Final Site Plan shall include a Landscape Plan showing the proposed tree and shrub landscape design in this buffer area. Areas where the 25-foot required buffer depth cannot be achieved shall be clearly shown on the Landscape Plan.
- j. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- k. 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. Rieleley, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

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

**M 424 23
Friends of
Cape
Henlopen
State Park**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,500 (\$1,500 from Mr. Schaeffer’s Councilmanic Grant Account) to Friends of Cape Henlopen State Park for their Borrow-a-bike 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 425 23 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give
Rehoboth \$1,000 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account) to
Concert Rehoboth Concert Band for their 12th concert season.
Band

Motion Adopted: 5 Yeas

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

M 426 23 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give
Urban \$1,625 (\$625 from Mr. Vincent's Councilmanic Grant Account and \$1,000
Youth Golf from Countywide Youth Grant Account) to Urban Youth Golf Program
Program Association for their Sussex County expansion.
Association

Motion Adopted: 5 Yeas

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

M 427 23 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$500
DE Seaside (\$250 from Mr. Hudson's Councilmanic Grant Account and \$250 from Mr.
Railroad Rieley's Councilmanic Grant Account) to Delaware Seaside Railroad Club,
Club Inc. for their annual Georgetown Library holiday display.

Motion Adopted: 5 Yeas

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

M 428 23 A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,200
New (\$1,200 from Mrs. Green's Councilmanic Grant Account) to New Coverdale
Coverdale Outreach Mission Inc. for Back-to-School supplies.
Outreach

Motion Adopted: 5 Yeas

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

Mr. Moore noted that Mr. Schaeffer is recusing himself from the next item.

M 429 23 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000

West Rehoboth Community Land Trust (\$1,000 from Mr. Hudson's Councilmanic Grant Account) to West Rehoboth Land Trust for their Low-Income Housing Support.

Motion Adopted: 4 Yeas, 1 Recusal

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

Introduction of Proposed Ordinances Mr. Hudson reintroduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I, SECTION 115-4 "DEFINITIONS" OF THE CODE OF SUSSEX COUNTY REGARDING "YARD, FRONT" AND "YARD, REAR" OF THROUGH LOTS, AND CHAPTER 115, SECTION 115-183 "SIDE AND REAR YARDS"

Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AI-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.44 ACRES, MORE OR LESS" filed on behalf of G&M Route 24, LLC

Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 37.04 ACRES, MORE OR LESS" filed on behalf of Consolidated Edison Development, Inc.

Mr. Vincent reintroduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 53.891 ACRES, MORE OR LESS" filed on behalf of Consolidated Edison Development, Inc.

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.614 ACRES, MORE OR LESS" filed on behalf of Oceans Six.

The Proposed Ordinances will be advertised for a Public Hearing.

**Council
Member
Comments**

Mrs. Green commented that at the last meeting, she attempted to clarify on the appointment for Planning and Zoning relating to her district. For the record, her information was that this is the first time in history that a Council Member has appointed for another district. She add that there were other Members that did not receive the 3 votes to be appointed. However, never has a Council Member nominated for another Council District. She stated that the people in her District feel that Mr. Rieley has two nominations on the PZ Commission and that they do not have a voice or vote. She added to Mr. Rieley that when an Oath of Office is taken, you swear to place the public interest above any special or personal interest. Mrs. Green stated that apparently Bob Mitchell being voted down had to do with him being involved in John Rieley's reelection campaign. So, it is a personal vendetta and vindictive towards Mrs. Green and her nominee.

Mr. Rieley commented that he did not appoint anyone to the Planning and Zoning Commission, he made a nomination that Council voted to approve. He added that his no vote for Mr. Mitchell was based on the fact that he had expressed a point of view of development, particularly on the Eastern side of the County that was an extreme variance from his point of view. Mr. Rieley stated that Mr. Mitchell supported a proposition to rezone Route 1 to High Density for one mile on either side from Lewes to Milford which he does not support. He added that he will not vote to support to put someone on Planning and Zoning who supports that point of view.

**M 430 23
Go into
Executive
Session**

At 11:09 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess the Regular Session, and go into Executive Session to discuss matters relating to land acquisition.

Motion Adopted: 4 Yeas, 1 Absent

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

**Executive
Session**

At 11:14 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus for the purpose of discussing matters relating to land acquisition. The Executive Session concluded at 11:51 a.m.

**M 431 23
Reconvene**

At 11:54 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session back into Regular Session.

Motion Adopted: 4 Yeas, 1 Abstain

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

E/S Action	There was no action related to Executive Session matters.
M 432 23 Recess	A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess until 1:30 p.m. Public Hearings. Motion Adopted: 5 Yeas Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea
M 433 23 Reconvene	At 1:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to come out of recess and reconvene the Regular Session. Motion Adopted: 3 Yeas, 2 Absent Vote by Roll Call: Mrs. Green, Absent; Mr. Schaeffer, Absent; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea
Rules	Mr. Moore read the rules and procedures for public hearings.
Public Hearing/ CU2415	A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 37.7482 ACRES MORE OR LESS” (property lying on the west side of Reynolds Road [S.C.R. 233], approximately 0.26 mile north of Zion Church Road [S.C.R. 235]) (911 Address: 12872 Reynolds Road, Milton) (Tax Map Parcel: 235-8.00-2.00) filed on behalf of Delaware Electric Coop (c/o Troy Dickerson) The Planning & Zoning Commission held a Public Hearing on the Proposed Ordinance on July 27, 2023. At the meeting of July 27, 2023, the Planning & Zoning Commission recommended approval of the Application for the 4 reasons and the 5 recommended conditions as outlined. Jamie Whitehouse, Planning and Zoning Director presented the Proposed Ordinance. The Council found that Ms. Dana Dunphy, with Century Engineering, spoke on behalf of the Applicant. Ms. Dunphy stated that the Applicant is proposing a substation to be placed on the property for Delaware Electric Co-op (DEC); that there will be a gravel substation, with access off Reynolds Road with one entrance; that they did have conversations with DelDOT; that they will obtain a utility entrance permit through DelDOT, and that the substation would be at the rear of the property and would be fenced in with landscaping.

There were no public comments.

The Public Hearing and public record were closed.

**M 434 23
Adopt
Ordinance
No. 2951/
CU2415**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Ordinance No. 2951 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 37.7482 ACRES MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission as follows:

- 1. The Conditional Use for an electrical substation is of a public nature, and it will promote the health, safety, and welfare of the residents of Sussex County.**
- 2. The Co-op has stated that the substation is necessary to maintain and improve its electrical service to current and future residents of Sussex County.**
- 3. The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways.**
- 4. No parties appeared in opposition to this application.**
- 5. This Conditional Use is subject to the following conditions:**
 - a. The perimeter of the substation shall be fenced.**
 - b. Two signs shall be permitted on the fencing around the property to identify the site and emergency contact information.**
 - c. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties and County Roads.**
 - d. Landscaping shall be provided to screen the facility from adjacent properties and roadways.**
 - e. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CZ1985**

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 M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS” (properties lying on the south side of John J. Williams Highway [Rt. 24], approximately 0.26-mile(s) northeast of Camp Arrowhead Road) (911 Address: 20565 & 20581

**Public
Hearing/
CZ1985**

(continued)

John J. Williams Highway, Lewes) (Tax Map Parcel: 234-7.00-111.00 & 112.00) filed on behalf of Love Creek Acquisition, LLC.

The Planning & Zoning Commission held a Public Hearing on the application on July 27, 2023. At the meeting of August 10, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the Applicant, Love Creek Acquisition, LLC; that also present was Mr. Joseph Calabro, Representative for the Applicant, and Mr. Alan Hill, Professional Engineer with Hillcrest Associates, Inc. Mr. Hutt stated the Application is very unique in some ways; that the Applicant is attempting to find the right zoning designation to accomplish an appropriate zoning designation for the area; that in his career, he had seen few places on the Sussex County Zoning Map designated as Marine District; that the current request is for a Change in Zone from AR-1 (Agricultural Residential) to M (Marine) District; that there are two things pointed to this being the right zoning district for this property; that the first being the zoning of the adjacent property; that the second being the planning tools being afforded to this body when it evaluates zoning changes; that the property is located within a very busy area of Sussex County, both commercially and residentially; that the proposed property, along with the Residences at Rehoboth Bay and the Love Creek Marina are located along Love Creek itself; that there are additional residential uses located on the opposite side of the Love Creek Bridge as well; that the property is located along Rt. 24, being John J. Williams Hwy; that the property located near Camp Arrowhead Road, which runs toward the Rehoboth Bay; that the property is located near Peddler's Village, Dollar General and a Valero gas station; that there are a number of residential uses and manufactured home communities currently existing along the southern side of Rt. 24; that the Application is comprised of two parcels that total 5.1 acres; that historically, the property was used for various boat and marine related storage and maintenance; that the Office of State Planning Coordination Map contains five level designations, being Level 1 going to Level 4 and an Out of Play designation; that the proposed 5.1 acres contain four of the five designations; that approximately half of the property is located within Level 2; that the remaining portion of the property is located within Level 3 and Level 4, with a wetland area being located within the Out of Play area; that the PLUS comments noted that Investment Level 2 areas where State investments and policies should support and encourage a wide range of uses and densities; that investments should encourage departure from the typical single-family dwelling developments and promote a broader mix of housing types; that he requested to emphasize that it stated commercial sites encourage compact mixed use development where applicable; that the Office of State Planning Coordination had no objection to the Change of Zone request; that because the properties are located within Level 2 and

**Public
Hearing/
CZ1985
(continued)**

Level 3 along Rt. 24, it is an appropriate location for the requested zoning classification; that the subject properties are located adjacent to property currently zoned as M (Marine); that other zoning districts located within the area are AR-1 (Agricultural Residential), B-1 (Neighborhood Business), C-1 (General Commercial), and MR (Medium-Density Residential) District; that the Future Land Use Map, located within the 2018 Comprehensive Plan, shows the properties as having a split designation between the Commercial Area and the Coastal Area, which are both known as two of the County's seven Growth Areas; that he believes there to be a mapping area for the parcel across the street zoned as B-1; that the Comprehensive Plan described the uses within the Commercial Area to include concentrations of retail and services uses, services uses that are mainly located along arterials and highways; that mixed-use buildings may also be appropriate for these areas; that similarly, the Coastal Area, being the rear half of the properties, are also located within a Growth Area according to the Comprehensive Plan; that the Comprehensive Plan states that within the Coastal Area a range of housing types should be permitted, including single-family homes, townhomes, and multi-family units; that retail and offices uses are appropriate and mixed-use development should also be allowed; that the surrounding area is primarily located within the Coastal Area, except for the commercial corridors along Rt. 24; that it is important to note that Rt. 24 designated by DelDOT as a Major Collector road, being appropriate for growth areas and commercial areas; that upon receiving a Change of Zone application, Planning & Zoning staff compare the requested zoning classification to Table 4.5-2 of the Comprehensive Plan, which identifies specific zoning districts that are applicable to Future Land Use Maps categories; that the Marine District does appear in both the Coastal Area and Commercial Area as an appropriate zoning district; that according to the Sussex County's Sewer Tier Map, public utilities are available to the site through Tidewater and Sussex County; that a small area of the site does contain wetlands; that there is a tiny portion, located in the front corner of the property, located within the Well Head Protection Area; that within that area the project would have to comply with the requirements of Chapter 89; that the property is located within Flood Zone X, not being located within the 100 Year Flood plain, and AE Flood Zone; that a Service Level Evaluation request was filed with DelDOT for the application; that because the application was for a Change of Zone, DelDOT reported they did not have enough information to determine whether or not a Traffic Impact Study (TIS) would be required; that DelDOT did note, that it would be appropriate to request a Service Level Evaluation once a use is chosen, with a Site Plan or Subdivision Plan for DelDOT to review; that DelDOT additionally stated, the property is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID will require the Applicant to construct the entrance, but then submit a per unit or per square foot fee, depending on how the site plan was ultimately developed; that although a site plan is not necessarily relevant to a Change of Zone, the Applicant provided a concept of what could occur with a zoning change to Marine; that the Applicant intends to propose a mixed use; that there would be a building constructed with parking

**Public
Hearing/
CZ1985
(continued)**

provided around it; that to the rear of the site there will be a marine shop for repairs, with marine storage around the building; that one of the concerns expressed by the Planning and Zoning Commission was that the Marine District has a broad number of uses; that it is expansive and similar to the old C-1 District; that the planning tools and proximity to the Marine District, those all pointed to the Marine District as being requested; that one of the comments was of the maximum density; that it was noted that currently under AR-1, if you meet all of the qualifications which this property does, this could also have 12 units to the acre; that when you look at the aerial image, the surrounding properties are manufactured homes communities; that they are small in acreage but high in number of units so they have a similar density; that this is a multi-family use that would be appropriate at this location; that in the County Zoning Districts, he could only locate two that allow for a mixed use; that the Marine District is supported by the site's proximity to Love Creek and the Island Bays; that they carefully went through each of the Zoning Districts in the attempt to find a zoning that would allow for mixed-use, along with a bait and tackle store or a marine repair store, with some type of residential component as well; that those districts are few and far between; that the only other district that would permit the proposed use, would be C-4 which is intended for large scale commercial, and would not be an appropriate zoning designation for a 5.1 acre site; that the Marine District allows for a number of marine related uses, along with residential uses; that one complicating factor is the split designation on the Future Land Use Map; that when they began trying to align the various zoning districts with the Future Land Use Map categories, in the attempt to accomplish a project that has mixed-uses; that mixed-use is called out in the Comprehensive Plan and the State Strategies; that for the area, the concern is that anything permitted within the Marine District would be permitted on the property; that a permitted use within Marine would be multi-family dwellings, which would include townhomes, apartments, and any other non-single family dwelling; that the permission for multi-family leads to questions of density; that within the current zoning of AR-1, there can be a maximum of up to 12 units to an acre on the site through the Sussex County Rental program, which would be a multi-family; that when looking at uses that currently exists between the Love Creek Bridge and Camp Arrowhead Road, they are higher density uses; that nearby the property there is a manufactured home park, where there are at least 20 units on a little over two acres, which results in a density of 10 units to the acre; that similar densities carry forward as one continues to look down Rt. 24 towards Camp Arrowhead Road to where Peddler's Village is located; that the basis of the Application is to seek a zoning change to M (Marine) District, that with all the previously mentioned considerations, such as the intended use of the site, trying to carefully maneuver through the Comprehensive Plan and the various Zoning Districts; that he addressed the letters of opposition in the file; that every one of those came from an individuals resides in a newly constructed condominium unit along the Love Creek Marina; that this past Saturday, Mr. Calaboro met with the Condominium Association to discuss this application and plans; that many of the concerns expressed raised site plan

**Public
Hearing/
CZ1985
(continued)**

concerns regarding wetlands, impact of stormwater management at the site and road improvements; that any development of this site would be an enhancement of all of those features; that stormwater is not regulated for this site presently; that if any development were to occur, stormwater would be regulated; that DelDOT would require road improvements to occur when development happens; that another concern mentioned was about the easement that starts at the Love Creek Marina; that the easement was shown; that the concern was that the nearby residents were buying into a gated community and they did not want people outside of the community to drive through; that the easement does not allow for people to have access to the Residences at Rehoboth; that they come in off of Route 24 to access the property; that this access easement would be for the Love Creek Marina between the two parcels; that boat owners hopes to put their boat in once in the Spring and once out in the Fall; that this is not a public boat ramp; that the letter in support was submitted by the Freedom Boat Club, who encapsulated well the vision and concept for the property; that the applicants requests that the Council adopt the Planning Commission recommendation for the rezoning of these parcels to the Marine District.

Mr. Calaboro stated that the boat storage and repair facility will only be large enough to support the 59 existing tenants at the marina.

Mr. Hudson questioned how many buildable acres are on the property; that Alan Hill stated there it is known that there are wetlands in the rear of the property; that the site plan was shown to show where the wetlands were located on the property.

It was discussed why a Change of Zone request was applied for rather than a Conditional Use.

Public comments were heard.

Mr. Dave Lyons spoke regarding the proposed application; that he urged the Council to defer if not, deny the application; that this is a precedent setting decision to go from AR-1 to Marine; that Marine is extremely wide in terms of what it allows; that there was a lack of notice to the residents of Rehoboth Bay; that the homeowners association is still controlled by the developer at this point; that he believes that approval of this without any regard to the sewer, environment, traffic and roads has not been mentioned; that it was not shared that the developer had any plans to develop the property; that there is no knowledge of what the marine maintenance facility looks like.

The Public Hearing and public record were closed.

**M 435 23
Defer
Action/
CZ1985**

A Motion was made by Mr. Schaeffer, 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 M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN

INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 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/
CZ1987**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CHANGE OF ZONE NO. 1557 (ORDINANCE NO. 1763) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 63.71 ACRES, MORE OR LESS” (property lying on the southeast side of Double Bridges Road [S.C.R. 363], approximately 0.32 mile southwest of Muddy Neck Road [S.C.R. 361]) (911 Address: N/A) (Tax Map Parcel: 134-17.00-39.00)

The Planning & Zoning Commission held a Public Hearing on the application on July 27, 2023. At the meeting of July 27, 2023, the Planning & Zoning Commission recommended approval of the application for the 2 reasons as outlined.

Mr. Whitehouse noted that when the Planning and Zoning Commission made a recommendation, one was the reason and the second was a condition that staff review the record which has been completed.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Gregory Dressel, President of the Jefferson Creek Community Association, spoke on behalf of the Association; that they petitioned, the developer for the removal of the fence because that is what the residents of the community want; that there are 123 homes in Jefferson Creek of which 45 being single-family, 14 being twin homes and the balance of 64 being townhomes; that there are about 22 houses that area affected by this fence; that it was also an unanimous vote that was polled among the community that they wish to not have the fence due to the expense of maintaining it that it would increase the dues; that they desire to have the open space.

There were no public comments.

The Public Hearing and public hearing were closed.

**M 436 23
Adopt
Ordinance
No. 2952
/CZ1987**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2952 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CHANGE OF ZONE NO. 1557 (ORDINANCE NO. 1763) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 63.71 ACRES, MORE OR LESS” for the reason given by the Planning and Zoning Commission as follows:

- 1. The fence no longer serves any purpose, and installation of a fence would be detrimental to the existing, fully-grown vegetation, and wildlife in the area.**

Motion Adopted: 5 Yeas

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

**M 437 23
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn at 2:31 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.}