

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 31, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 31, 2021, 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 384 21
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of August 24, 2021 were approved by consent.

**Public
Comments**

Public comments were heard and the following spoke:

William Kinnick, State Advocate for Manufactured Housing and President of the Delaware Manufactured Housing Association, reported on sewer problems in the County and specifically, sewage on the ground in several communities in the County.

**Disposition
of County
Property**

Todd Lawson, County Administrator, presented for Council's consideration the disposition of County owned property that consists of multiple properties in the area of the Delaware Coastal Airport. The disposition is required for the Delaware Department of Transportation's (DelDOT) preferred realignment of Park Avenue around the Airport. There are several properties involved and DelDOT is either acquiring fee simple title or an easement for access. The respective Tax Parcel IDs are: 135-20-31.00, 135-20.00-40.00, 135-20.00-41.00, 135-20.00-51.01, 135-20.00-64.00, 135-20.00-75.00, 135-20.00-75.01, 135-20.00-92.01, and 135-20.00-93.00. The land has been appraised by DelDOT at \$350,000.00 for either the purchase of or access of via easements. Mr. Lawson stated that DelDOT is asking the County to

Disposition of County Property (continued)

donate this land for a minimum price because in Phase 2 of the Park Avenue Project, DelDOT will provide intersection improvements for two entrances to County properties, one at the State Fire Marshal Office's entrance to the Business Park and one at the Baltimore Avenue entrance to the County's Business Park. Mr. Lawson reported that, per the County Property Disposition Policy, County Directors were asked if they had a need for the properties and they do not. The Park Avenue realignment is a joint effort between DelDOT and Sussex County given the mutual benefits each entity will experience from this transportation improvement. The Park Avenue project will improve traffic around Georgetown and will ultimately allow the County to extend Runway 4-22 at the Delaware Coastal Airport. Mr. Lawson noted that, in anticipation of the airport expansion and road realignment, the County began acquiring properties on current Park Avenue as far back as the 1990s.

M 385 21 Approve Disposition of County Property

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council approves the disposition of certain pieces of land located in the area of Park Avenue and the Delaware Coastal Airport identified as Tax Parcel Nos. 135-20-31.00, 135-20.00-40.00, 135-20.00-41.00, 135-20.00-51.01, 135-20.00-64.00, 135-20.00-75.00, 135-20.00-75.01, 135-20.00-92.01, and 135-20.00-93.00; and Be It Further Moved that the Sussex County Council enters into a Purchase Agreement with the State of Delaware Department of Transportation for the acquisition of the same properties for the purpose of constructing Phase 1 of Park Avenue Realignment.

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. American Heart Association Mission Lifeline Gold PLUS Award 2021

Sussex County EMS has been awarded the American Heart Association Mission Lifeline Gold PLUS Award. The award recognizes the commitment and success in implementing a higher standard of prehospital care by ensuring that every STEMI patient receives treatment according to nationally accepted recommendations and standards.

Congratulations to Robbie Murray, Director of EMS, and the EMS staff for their efforts in achieving this award (3rd year in a row).

2. Council Meeting and Holiday Schedule

Council will not meet on September 7th. The next regularly scheduled Council meeting will be held on Tuesday, September 14th. In addition,

Report (continued) County offices will be closed Monday, September 6th, for the Labor Day holiday.

On-Call Planning Services RFP Results Jamie Whitehouse, Director of Planning and Zoning, reported on the results of the Request for Proposals (RFP) for On-Call Planning Services for Sussex County. The purpose of the RFP was to seek multiple firms to provide on-call planning services for various projects for a three-year period. The anticipated scope of the services includes but is not limited to: (1) potential text and map amendments to the 2019 Sussex County Comprehensive Plan, (2) updates to existing Ordinances, and (3) miscellaneous planning reports and advice. Mr. Whitehouse reported that four (4) consultant proposals were received. An Evaluation Committee found that all four (4) applicants meet the minimum qualifications to perform the services; thereafter, the Committee, based on the ranking of the four (4) proposals, selected the three highest ranking firms to interview and interviews were held. The Planning and Zoning Department recommends that three-year contracts be awarded to: AECOM Technical Services, Inc., Century Engineering, Inc., and McCormick Taylor, Inc.

In response to questions, Mr. Whitehouse stated that the three firms have a broad expertise across multiple services/subjects. He also stated that the selection of the three firms gives the County access to the strength and expertise of all three of those firms.

M 386 21 Award Agreements/ On-Call Planning Services A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Planning and Zoning Department, that Sussex County Council awards three-year agreements for On-Call Planning Services to AECOM Technical Services, Inc., Century Engineering, Inc. and McCormick Taylor, Inc.

Motion Adopted: 5 Yeas.

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

EMS 200/ Medic 110 Station/ Change Order and Granting of Final Acceptance Hans Medlarz, County Engineer, presented a Final Balancing Change Order and a request to grant Substantial Completion for the EMS 200/Medic 110 Station, Project C19-08. Mr. Medlarz commented on the encountered difficulties with the generator start-up and the gas feed, and the entrance approval from DelDOT; despite all the encountered difficulties, the Contract did not use all of the contingencies built into the bid. Following a review of the various costs with Whayland, the Engineering Department proposed splitting these expenses and the contingency credit for a net close out Credit Change Order (No. 2) in the amount of (\$6,175.00) bringing the project in under the original contract amount. Additionally, the Engineering Department requests the granting of project final acceptance. Mr. Medlarz noted that everything is finished and an entrance approval has been received and a Certificate of Occupancy has been obtained.

**M 387 21
EMS 200/
Medic 110
Station/
Approve
Change
Order and
Grant
Substantial
Completion**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract C19-08, EMS 200/Medic 110 Station, be approved, decreasing the Contract by \$6,175.00, and that Substantial Completion be granted effective August 17, 2021 with any held retainage released in accordance with the Contract documents.

Motion Adopted: 5 Yeas.

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

**IBRWF
Project
18-19/
Change
Order/
Supple-
mental
Purchase
Order**

Hans Medlarz, County Engineer, discussed the Inland Bays Regional Wastewater Facilities – Biosolids & Septage Facilities Project, Project 18-19. Mr. Medlarz reported that, in early June, the progressive cavity type sludge cake pumps started experiencing operational problems leading to the complete failure of all four units. Investigations revealed foreign matter in the sludge cake had destroyed the stators requiring replacement. In addition, two of the four isolation type pressure sensors were damaged beyond repair. Due to the long lead time, the Engineering and Finance Departments issued an emergency purchase order covering the material purchase as well as the immediate repair of two units using spare parts. In addition, Environmental Services implemented quality control measures to prevent foreign matter from entering the biosolids stream. The Engineering Department is now requesting issuance of a supplemental purchase order to cover the reinstallation of the remaining two pumps and pressure rings in the amount of \$18,222.20.

**M 388 21
Approve
Supple-
mental
Purchase
Order**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves a Supplemental Purchase Order to Bearing Construction, Inc., in the amount of \$18,222.20 for the reinstallation of repaired pumps and pressure sensors.

Motion Adopted: 5 Yeas.

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

**Herring
Creek
Sewer
District
Area/
WRA
Amend-
ment 4**

Hans Medlarz, County Engineer, discussed the Herring Creek Sanitary Sewer District Construction Administration and Project Inspection (Whitman Requardt & Associates [WRA] – Contract Amendment No. 4). Mr. Medlarz reported that the Herring Creek Project has experienced significant delays beyond reasons justified by the ongoing pandemic and that the Engineering Department has officially issued the liquidated damages and invoked the clause in the contract. The contractor will be charged damages and will be paying for the extra contract administration and inspection

(continued) services. Mr. Medlarz explained that this deals with the supplemental funds needed for the pump station component and reimbursement is in place.

M 389 21 A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the
Approve recommendation of the Sussex County Engineering Department, that
Amendment Amendment No. 4 to the EJCDC Base Engineering Contract for the Herring
No. 4 to Creek Sanitary Sewer District with Whitman Requardt and Associates be
the EJCDC approved in the amount not to exceed \$68,852.00 for additional Construction
Base Administration and Inspection Services for Herring Creek Gravity Sewer
Engineering Construction, Contract 1, contingent upon USDA concurrence.
Contract

for the
Herring
Creek
SSD

Motion Adopted: 5 Yeas.

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

Public
Safety
Building
Project/
C/O

Hans Medlarz, County Engineer, presented a Change Orders for the Sussex County Public Safety Building Project (Project No. C19-04). This Change Order is due to structural steel and lightweight steel price increases.

M 390 21 A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon
Approve the recommendation of the Sussex County Engineering Department, that
Change Change Order No. 1 for Contract C19-04, Sussex County Public Safety
Order/ Building, be approved, increasing the Contract by the not to exceed amount
Public of \$40,000.00.
Safety
Building
Project

Motion Adopted: 5 Yeas.

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

M 391 21 A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon
Approve the recommendation of the Sussex County Engineering Department, that
Change Change Order No. 2 for Contract C19-04, Sussex County Public Safety
Order/ Building, be approved, increasing the Contract by \$8,800.00 for material
Public price increases in light gauge steel.
Safety
Building
Project

Motion Adopted: 5 Yeas.

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

Grant
Request

Mrs. Jennings presented a grant request for the Council's consideration.

M 392 21 Councilmanic Grant **A Motion was made by Mrs. Green, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 each from Mrs. Green’s and Mr. Vincent’s Councilmanic Grant Accounts) to Pop Warner Little Scholars for the Woodbridge Youth Football Association’s equipment and uniform expenses.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Public Hearing/ Chappell Farm Annexation SCUSSD West Rehoboth Area **A Public Hearing was held to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District to include a property known as Chappell Farm, LLC (Parcel 235-23.00-1.02). The Engineering Department received a request from Becker Morgan Group, Inc. on behalf of their client, Chappell Farm, LLC, the owners/developers of the project. The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates and an Infrastructure Use Agreement will be required.**

There were no public comments.

The Public Hearing and public record were closed.

M 393 21 Adopt R 019 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to Adopt Resolution No. R 019 21 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCEL 235-23.00-1.02 ON THE WEST SIDE OF COASTAL HIGHWAY. THE PARCEL IS LOCATED IN THE BROADKILL HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinances **Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRES, MORE OR LESS” (Conditional Use No. 2264) filed on behalf of Laudan Investments, LLC (Tax I.D. No. 335-8.18-15.00 & 335-8.18-16.00) (911 Addresses: 1302 & 1304 Savannah Road, Lewes).**

**Introduction
of Proposed
Ordinances
(continued)**

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OUTDOOR EQUIPMENT AND MATERIAL STORAGE AND A DUMPSTER RENTAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.53 ACRES, MORE OR LESS” (Conditional Use No. 2266) filed on behalf of MDO Dreamlands, LLC (Tax I.D. No. 234-10.00-1.01) (911 Address: 28751 Reid Lane, Harbeson).

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS” (Conditional Use No. 2267) filed on behalf of Cynthia Gibbs (Tax I.D. No. 230-20.00-9.10) (911 Address: 11420 Hollytree Road, Lincoln).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1920 (ORDINANCE NO. 2240) TO ALLOW FOR OFFICE SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.35 ACRES, MORE OR LESS” (Conditional Use No. 2271) filed on behalf of Chris Brasure (Tax I.D. No. 533-18.00-25.00) (911 Address: 33095 and 33113 Lighthouse Road, Selbyville).

Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS” (Conditional Use No. 2268) filed on behalf of Staci C. and Winfield S. Walls, Jr. (Tax I.D. No. 234-33.00-44.00) (911 Address: 30600 and 30606 Gull Point Road, Millsboro).

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-23.00-270.00”.

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Member
Comments**

Council Member Comments

Mr. Vincent referenced the Buffer and Wetlands Working Group that met several years ago and he stated that an end product was never submitted and

(continued) that he would like to see an overview of those efforts after which Council can discuss how to proceed.

Public Comments It was noted that a member of the public who was present during the entire morning session missed the opportunity to speak under public comments due to a misunderstanding of the County's process.

M 394 21 A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to revert back to Public Comments on the Agenda.

Revert

Back to

Public

Comments

Motion Adopted: 5 Yeas.

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

**Public
Comments**

Public Comments

Claire Noble spoke regarding development, and specifically developers coming to the Planning and Zoning Commission and to the Sussex County Council, and everyone opposes it, and they get approved for a certain number of buildings after which they come back and ask for more.

M 395 21
Go Into
Executive
Session

At 10:38 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and personnel.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 10:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation and personnel. The Executive Session concluded at 12:21 p.m.

M 396 21
Reconvene
Regular
Session

At 12:26 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

E/S Action

There was no action on Executive Session matters.

M 397 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until**
Recess **1:30 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 398 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to reconvene at**
Reconvene **1:30 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

Rules **Mr. Moore read the rules of procedure for Public Hearings.**

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1**
CU 2253 **AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE**
LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES,
MORE OR LESS” (Conditional Use No. 2253) filed on behalf of Chester V.
Townsend IV and Shirley D. Townsend (Tax I.D. No. 134-11.00-2.02 & 134-11.00-
3.00) (911 Address: 32859 & 32805 Vines Creek Road, Dagsboro).

The Planning and Zoning Commission held a Public Hearing on this application on
July 22, 2021 at which time action was deferred. On August 12, 2021, the
Commission recommended approval of the application with conditions.

(See the minutes of the Planning and Zoning Commission dated July 22 and August
12, 2021.)

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

The Council found that Veronica Townsend was present on behalf of the Townsend
family’s application. She stated that they propose to hold very small events on their
property located off of Route 26, including small weddings, bridal and baby
showers, birthday parties, etc.; and that the use will be for “carry in and carry out”
events, i.e. tables and chairs, tents, portable restrooms, etc.; that Fishkiller’s Lobster
Shack was previously located on the property; and that sufficient parking exists.

There were no public comments.

The Public Hearing and public record were closed.

**M 399 21
Adopt
Ordinance
No. 2795/
CU 2253**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2795 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES, MORE OR LESS” (Conditional Use No. 2253) filed on behalf of Chester V. Townsend IV and Shirley D. Townsend, with the following conditions:

- a. Food and beverage service and music or similar entertainment is permitted. As stated by the Applicant, food and beverage service shall be provided by catering services, as there will not be any kitchen facilities on-site.**
- b. All parking areas shall be shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- c. All entrance locations shall be subject to the review and approval of DelDOT.**
- d. All events shall conclude prior to 10:00 at night.**
- e. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing
CU 2256**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS” (Conditional Use No. 2256) filed on behalf of Jerry Meiklejohn, LLC (Tax I.D. No. 533-5.00-86.00) (911 Address: 32252 Frankford School Road, Frankford).

The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2021 at which time action was deferred. On August 12, 2021, the Commission recommended approval of the application with conditions.

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

The Council found that Mackenzie Peet, Esq., was present with Jerry Meiklejohn, member and owner of Jerry Meiklejohn, LLC. Ms. Peet stated that the Applicant is requesting a Conditional Use to allow him to operate his hardscaping and outdoor living construction business; that his business has been in operation for the past nine years in Sussex County; that when the

**Public
Hearing
CU 2256
(continued)**

application was made, the property was advertised as being 6.6 acres, more or less as a result of a subdivision of land on the other side of the ditch that runs across the property; that the proposed use will occupy 1.5 acres of the remaining 5 acre parcel; however, there was a portion of that property that was subdivided off making it an approximate 5 acre parcel; that the Applicant has received three (3) notices of violation related to the operation of this business – one for running his business from the site, one for the installation of a fence without a building permit, and one for having vehicles stored on unimproved property; that the Applicant applied for and received a permit for the fence; and that the Applicant agrees to the conditions recommended by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 400 21
Adopt
Ordinance
No. 2796/
CU 2256**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2796 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS” (Conditional Use No. 2256) filed on behalf of Jerry Meiklejohn, LLC, with the following conditions:

- a. The use shall be limited to the hardscaping and outdoor living construction business proposed by the Applicant, and the storage of equipment and materials associated with that use.
- b. No manufacturing shall occur on the site. This prohibition includes the shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.
- c. As stated by the Applicant, there shall not be any retail sales occurring from the site.
- d. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited situations such as snow removal, storm damage clean-up, and similar events.
- e. The on-site storage of stone, dirt, pavers, and similar materials associated with the use shall be in bins or enclosures. The location of these storage areas shall be shown on the Final Site Plan.
- f. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- g. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- h. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site

**M 400 21
Adopt
Ordinance
No. 2796/
CU 2256
(continued)**

- itself. There shall not be any parking or storage within the property's setbacks.
- i. One lighted sign shall be permitted. It shall be no larger than 32 square feet on each side.
 - j. The dumpster location shall be shown on the Final Site Plan.
 - k. Before Final Site Plan approval occurs, the Applicant shall clean up the property and remove any inoperable trucks, trailers, or vehicles. No junked, unregistered, or permanently inoperable vehicles, trucks, or trailers shall be stored on the site.
 - l. The Applicant shall install a privacy fence around the 1.5 acre portion of the property. The location and type of fencing shall be shown on the Final Site Plan.
 - m. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
 - n. The Final Site Plan shall depict the 1.5 acre area of this approved Conditional Use. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Years.

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

**Public
Hearing/
CU 2248**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (19 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS" (Conditional Use No. 2248) filed on behalf of Gulfstream Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on the 22nd day of July 2021 at which time action was deferred. On August 12, 2021, the Commission recommended that the application be approved with the following conditions:

- a. The maximum number of residential units shall be 19.
- b. The Developer and then the condominium association shall be responsible for the perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
- c. All entrance, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.
- d. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.

**Public
Hearing/
CU 2248
(continued)**

- e. **The project shall be served by central water to provide drinking water and fire protection.**
- f. **There shall be a vegetated or forested buffer of at least 20 feet in width along the perimeter of this development. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.**
- g. **As stated by the Applicant, the clearing, disturbance or altering of existing vegetation shall be limited as needed to accommodate proposed construction and for the removal of dead and dying trees which pose a threat to public safety on adjacent private property. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas and the forested areas that will be preserved. This landscape plan shall further identify all “Limits of Disturbance” within the site.**
- h. **Construction activities, including site work and deliveries, shall only occur between 7:30 a.m. and 7:00 p.m. Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. **Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.**
- j. **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.**
- k. **Any streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- l. **The interior street design shall meet or exceed Sussex County’s street design requirements.**
- m. **If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.**
- n. **The Final Site Plan shall include a grading plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**
- o. **Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- p. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Public
Hearing/
CU 2248
(continued)**

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

Mr. Whitehouse reported that 13 letters have been received in support of the application and 11 letters have been received in opposition to the application.

The Council found that Jeff Clark of Land Tech Land Planning was present on behalf of the Applicant, Gulfstream Development, LLC; that also present was Robert Harris, the Applicant and Developer, and Ronald Sutton, Professional Engineer. They stated that the project site is the location of a previous application in October 2019, known as Kent Apartments (Change of Zone No. 1895 and Conditional Use No. 2195); that both the Change of Zone and Conditional Use applications were approved; that this application (Conditional Use No. 2248) introduces a totally different land use; that at the prior public hearings, the neighbors made it clear they prefer single family homes to be constructed on this property; that the site, as surveyed, is 3.93 acres and is located at the intersection of Parker House Road and Muddy Neck Road; that the project site is located just outside the municipal limits of the Town of Ocean View; that the entire project site is currently owned by Gulfstream Development, LLC; that the area surrounding the site is a mixture of residential development, including a manufactured home subdivision, a multi-family townhouse community, and neighborhood business uses; that this is an in-fill project; that they propose 19 separate detached single family homes; that the homes would be arranged in groups of 2 and 3 with a 15 foot separation between individual homes; that groups of homes would be separated by the Code required distance of 40 feet; that each home will have four (4) parking spaces plus additional guest parking; that there are no jurisdictional wetlands on the site; that a small ephemeral ditch was identified on the western portion of the site and the ditch is no longer jurisdictional; that an existing 8-inch Sussex County sewer lateral has been extended into the property from Mimosa Street within the adjoining Shady Dell Park Subdivision; that sewer service would be provided by Sussex County; that water would be provided by Tidewater; that there is a single commercial entrance plan off of Muddy Neck Road to align with an existing subdivision street called Butler Blvd. per DelDOT's recommendation; that DelDOT has stated that the proposed plan will generate fewer than 50 vehicle trips in any hour, fewer than 500 trips daily; that DelDOT did not require a Traffic Impact Study; that DelDOT characterized the traffic impact as negligible; that DelDOT will require the Developer to improve both Muddy Neck Road and Parker House Road along the entire site frontage; that the project is located in Investment Levels 3 and 4 according to the Strategies for State Policies and Spending; that no streetlighting is proposed and all exterior lighting will be on the homes themselves and will be directed downward; that the property is located in the Coastal Area; that drainage flow is from west to east ending in the Assawoman Canal; that a new ditch system is proposed to be installed on the edge of the site between Providence and this project; that the new ditch will most likely pool into the project's stormwater management

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CU 2248
(continued)**

system; that the stormwater management system will meet or exceed DNREC's requirements; that they propose to put in a pipe that will run Shady Dell's drainage through this project's site and out to Muddy Neck Road, where it is supposed to go and this should correct stormwater management issues in the Shady Dell Subdivision; that in regards to Providence, the project site does not have any stormwater going towards Providence and there is no stormwater from Providence coming to this project. Mr. Clark stated that they have submitted a revised site plan that addresses the recommendations from the Planning and Zoning Commission, showing the storm pipe, showing the 20 foot buffer, showing a 20 foot drainage easement allowing the storm pipe to direct Shady Dell's water out to be intercepted at a culvert that passes water along Muddy Neck Road and sends it to the drainage ditch and to the Assawoman Canal; that the ditch system and the inlet need to be cleaned out, correcting years of neglect and maintenance that has not taken place; that in comparison to the original site plan, they had to show a 20 foot buffer, eliminated the center pond and made one larger wet pond along Muddy Neck and Parker House Road; that it will be a standard wet pond discharging into the DelDOT drainage system which will require Sussex Conservation District approval as well as DelDOT approval; that the ditch is not a tax ditch and the property will drain into DelDOT's right-of-way; that the ditch is a private ditch; that this project does not discharge to tidal waters; that in regards to work required by DelDOT, both roads will need to be upgraded (12 foot lanes with 8 foot shoulders – their side of the road only); that they have to put a shared use path all along the frontage; that the revised plan does not propose to remove any vegetation that exists in the buffer areas; that the project site is located in a Town Center according to the Comprehensive Plan; and that the proposed project is in accordance with the Comprehensive Plan and the Future Land Use Map.

Mr. Clark stated that the Applicant is in agreement with all of the conditions recommended by the Planning and Zoning Commission with the exception of of Condition 8-1; that they request that Condition 8-1 be stricken since the proposed project is not a subdivision and therefore the stated condition does not really apply.

In reference to Condition 8-o, Mr. Schaeffer noted that the word "shall" was included and that, in a previous conversations on a different application, the word "shall" was amended. Mr. Moore noted that the word "shall" in Condition 8-o is appropriate in the way the condition is worded.

In regard to the Applicant's request to strike Condition 1, Mr. Rieley questioned Mr. Whitehouse. Mr. Whitehouse stated that the purpose of the proposed condition is to address appropriate street width to permit two travel lanes, and that a preliminary design has been submitted and the Condition could be stricken without significantly impairing what the County is trying to achieve. Mr. Whitehouse noted that the Site Plan will still require approval by the Planning and Zoning Commission, so that if the condition is removed it does not prevent the Commission from having that control later on. Mr. Whitehouse suggested that Condition 1 could be amended to read that "The

**Public
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CU 2248
(continued)**

driveway design shall include a cross-section drawing to be included in the Preliminary and Final Site Plan.”

Public comments were heard.

There were no public comments in support of the application.

The following spoke in opposition to the application: Ted Schonbrunner, Diana Emlet, and Patrick Emlet. Ted Schonbrunner, resident of Shady Dell, expressed concerns about the quality of the soils; that the quality of the soil is poor for drainage purposes; that it is not going to perk; that the original proposal had two stormwater ponds; that the amended proposal has one stormwater pond; that he questions the capacity of the stormwater ponds, especially the capacity of the pond during a 100-year storm; that the eleven letters received came from Salt Air and they do not live “here”; and that drainage is a major concern. Diana Emlet, resident of Providence, commented on the Applicant’s reference to an ephemeral ditch and stated that she supports the moving and improving of the ditch, as proposed; that the site is very vegetated and wooded which has helped with stormwater; that she questions the density of the parcel and stated a prior application came before the Council two years ago and the Council determined by a 5-0 vote that the maximum number of units on this property would be 16 for the entire property; that she asks the Council to go back to the 16 units instead of the 19 proposed; that flooding and standing water in the area are a concern; that she questions if the 20 foot buffer is to be all around the property or only along Providence; that she questions if the 19 homes will still fit with a 20 foot buffer; that she questions if there will be a 20 foot buffer and a 10 foot setback for the yards; that the Applicant stated they would fence the entire inner perimeter of this property along Shady Dell and Providence; that she questions what type of fence is proposed; that the fence should shadow car lights from shining into everyone’s back yards; and that she questions the proposed easement on Lot 6 and Shady Dell does not want it; and that on the new plan, it does not appear that the 13 extra parking spots are included; and that, if the ditch is going to go to Muddy Neck, there is a ditch that goes all along the Neck, and she questions if that will affect that ditch at all. Patrick Emlet of Providence referenced a 20 foot buffer area and the fence along the property line shared with Providence (It was noted that this was not in the minutes. Mr. Clark stated a silt fence was referenced on the project side of the 20 foot buffer.) Mr. Emlet stated that it was noted that this project would look exactly like the Salt Air project; however, Salt Air has an eight to ten foot fence along two of the back property boundaries, so he questions how the Applicant states it will look like Salt Air; and that he wants the buffer and the fence.

In response to questions, the Applicant stated that there are fewer parking spaces on the revised site plan; that there will be 6 overflow parking spots instead of 16; that 6 parking spots will fit in the driveway and underneath of the houses; and that there is more than ample parking when considering Code requirements.

**Public
Hearing
(continued)**

There were no additional public comments.

The Public Hearing and public record were closed.

**M 401 21
Defer
Action on
CU 2248**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Conditional Use No. 2248 filed on behalf of Gulfstream Development, LLC.

Motion Adopted: 5 Years.

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

**Public
Hearing/
CZ 1931**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY AND TO AMEND THE CONDITIONS OF APPROVAL OF CZ 1768 (ORDINANCE 2411) TO INCREASE THE GROSS SITE AREA BY 5.253 ACRES AND TO INCREASE THE NUMBER OF PERMITTED UNITS WITHIN THE RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.372 ACRES, MORE OR LESS” (Change of Zone No. 1931) filed on behalf of Lighthipe, LLC (Tax I.D. No. 134-17.00-12.02) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2021 at which time action was deferred. On August 12, 2021, the Commission recommended approval with the following conditions:

- a. This 5.253 acre parcel shall only be developed with single family lots. No townhomes or multi-family homes shall be permitted in this location.**
- b. Condition A of Ordinance No. 2411 is hereby removed and the new Condition A shall be inserted in its place, as follows: “The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units, plus the single family lots permitted under Change of Zone No. 1931 on the 5.253 acre parcel that is added to the Residential Planned Community.”**
- c. The Site Plan for this additional 5.253 acres shall be designed so that there is a twenty (20) foot forested buffer set back an additional twenty feet from the perimeter of the site along the common boundary with Ocean Way Estates.**
- d. All roads providing access to the new single family lots shall be designed and oriented to minimize headlights shining into properties within Ocean Way Estates. If necessary, additional landscaping shall be added and**

**Public
Hearing/
CZ 1931
(continued)**

- shown on the RPC Master Plan to screen headlights from the Ocean Way Estates subdivision.
- e. The lots within this additional 5.253 acres shall have access from Muddy Neck Road via the existing streets and roads within the Ocean View Beach Club community.
 - f. All other conditions of the RPC approved as Ordinance No. 2411 and Change of Zone No. 1768 shall remain in effect, and the 5.253 acre parcel that is the subject of this Change of Zone No. 1931 shall be bound by those existing conditions of approval.
 - g. The Developer shall submit a revised Master Plan for the entire RPC, including the single family lots within the additional 5.253 acres, for review and approval by the Sussex County Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

Mr. Whitehouse reported that 55 letters of opposition have been received.

Mr. Whitehouse reported that a revised Exhibit Book was submitted by the Applicant and copies have been distributed to the Council members.

The Council found that David Hutt, Esq., was present with Zac Crouch of Davis Bowen & Friedel, Inc. and Spencer Van Schaack, a representative of Lighthipe, LLC.

Mr. Hutt stated that the application is for the expansion of the Ocean View Beach Club North community; that Lighthipe, LLC is the Applicant and the owner of the property; that this application is for a parcel of land that is just over 5.25 acres located along Muddy Neck Road; that the parcel can best be described as a flag-shaped parcel located between Ocean View Beach Club North and Ocean View Beach Club South; that the “pole” of the flag shape is a narrow strip of land that extends out all the way to Muddy Neck Road; and that the narrow strip of land does not get used for any type of exit or entrance. Mr. Hutt reviewed a brief history of the property and the ownership of the properties by Mary Lighthipe. He stated that Ocean View Beach Club South was annexed into the Town of Ocean View and the project was approved by the Town of Ocean View; that Ocean View Beach Club North was approved by Sussex County Council by Ordinance No. 2411 in 2015; that during the public hearings in 2015, it was indicated that the 5 acres would be retained with the intention of a church location in the future; that no church was placed and the land was sold to Lighthipe, LLC; that the current application is similar to the approval of Ordinance No. 2411; that the 5 acres is zoned AR-1 and the request is to change the zoning to MR and to modify the boundaries of the existing RPC so that the 5 acres are included within that RPC; that with respect to the amendment to the RPC, the request

**Public
Hearing/
CZ 1931
(continued)**

is to adjust the number of units so that there would be a total of 173 units with 132 single family homes and 41 townhome units; that this is different than what was presented to the Planning and Zoning Commission; that what was presented to the Planning and Zoning Commission was for 184 total units; that the Applicant had submitted for 21 townhomes for the 5 acre site and the Planning and Zoning's recommendation was that there not be townhome units there and that there be single family homes instead; and that the proposal for this site consists of 10 single family homes rather than the 21 townhome units that were proposed. Mr. Hutt stated that the property is presently unimproved and is used as a staging area for ongoing construction of the Ocean View Beach Club community; that the site is located in the Investment Level 2 Area according to the Strategies for State Policies and Spending; that the site is located in the Coastal Area which is a growth area; that DelDOT did not require a Traffic Impact Study; and that DelDOT considers the traffic impact to be negligible. Mr. Hutt reviewed the surrounding area and noted that the project is consistent with the surrounding area.

Mr. Hutt explained that, in comparison to the plan presented to the Planning and Zoning Commission, there is a single family home that is eliminated which becomes the entrance into the 5 acres; that a proposal for 21 townhomes was presented to the Planning and Zoning Commission and the Applicant; that after listening to the comments of the residents and neighbors and the discussion of the Commission, a new plan was prepared showing 10 single family homes.

Zac Crouch reviewed the site plan, including the changes made to the site plan in response to concerns and issues raised by the Town of Ocean View and concerns and issues raised by the Planning and Zoning Commission. The changes include the removal of the 21 townhouses and substituting 10 single family lots; sidewalks on both sides; additional buffering in two areas; and additional landscaping. He noted that a cul-de-sac was not provided and that their proposal meets Fire Marshal requirements. Mr. Crouch noted that the new plan has been submitted to the Council and is now a part of the record.

Mr. Hutt stated that the MR zoning classification permits 4 dwelling units per acre as its base density where public water and sewer are available to the site; and that the new plan results in a gross density of just under 2 units per acre. He stated that the 5 acres would be integrated into and become a part of the Ocean View Beach Club community, and become part of the property owners association and also be able to utilize the amenities in the Ocean View Beach Club community. That another reason for using the RPC tool was to increase the open space for the overall project; that the proposed site plan contains approximately 60 percent open space which would be added to the entirety of the Ocean View Beach Club community.

**Public
Hearing/
CZ 1931
(continued)**

Mr. Hutt responded to comments made at the Planning and Zoning Commission's public hearing and correspondence received. He stated that numerous allegations were made that the Applicant misled the individuals who were future purchasers of property in Ocean View Beach Club regarding the future use of this specific 5 acres. He stated that this is incorrect and he provided supporting comments for his statement.

Public comments were heard.

There were no comments in support of the application.

Public comments were heard in opposition to the application.

Kaan Ekiner, Esq., stated that he was speaking on behalf of a group of concerned homeowners in Ocean View Beach Club Homeowners LLC in opposition to the application. He commented on representations made from the builder/developer to his clients in regard to misrepresentations to people buying land; that people paid a premium for lots that are adjacent to the project site; that in Ordinance No. 2411, there is reference made as to what would happen to the property and how it was deeded at the time; that there was a representation made that the land would not be developed; that in regards to the amended plan, the amendment was not reflected on the website and his clients ask that action be deferred on the application so that all parties can look at the amended plan; that in regards to the site plan, the surrounding communities do not have a dead end street and that a cul-de-sac could be provided which would cut back on light pollution.

Elaine Cziraky of Ocean Way Estates spoke in opposition to the application and expressed concerns about property values, the new plan that was submitted for this public hearing and the short notice of the new plan, and the non-jurisdictional property ditch that is vital and needs to be properly maintained. She stated that the ditch is on the County side and is owned by the Developer; that in the original conditions of approval of Ordinance No. 2411, it states that all existing ditches will remain and be cleaned out; that there has been no cleaning of the ditch; that the ditch has been filled in near 3 1/2 homes; that there is standing water in back yards as a result of that ditch being filled in; that she sees vehicles, including construction vehicles, using the "flag pole" portion of the property; that she wants the ditch protected; that she is concerned about the size of the buffer along the ditch, stating that there should be a 50 foot buffer; and that in regard to street orientation, a cul-de-sac would be better than a straight street. She stated that other concerns include lighting, especially with a straight street; that the Planning and Zoning Commission asked the Developer to address lighting concerns and she does not see that the new site plan does that; that trees will not address lighting concerns; that seeing the amended plan for the first time on this date is inadequate and wrong; that traffic and traffic patterns in surrounding communities should be considered; that although they are cutting the plan down to 10 homes, there are some errors: the final site plan for Ordinance No. 2411 for Ocean View Beach Club North has traffic data

**Public
Hearing/
CZ 1931
(continued)**

which indicates that the speed limit on Muddy Neck Road is 45 mph and that plan is incorrect, the speed limit was reduced to 35 mph due to safety concerns, and the speed limit was incorrectly assessed and it was an incorrect assumption on the plan. She stated that their roads are over-burdened now; that they are unable to control traffic through the community, where a cut-through exists; that she asks Council to please review the traffic; that the project will impact existing neighborhoods; that DelDOT has made recommendations and none of that is reflected in the plans; that once the rezoning happens, the public process ends; and that what really happened is that the Developer bought the entire 54 acres all at the same time and in the original ordinance of approval it stated that the Developer had no intention to build on the 5 acres for the reason that it was going to be used by the church; that there is an important distinction on whether that was a separate transaction and a separate sale or whether it all happened up front – and it happened up front, and it was an assumption when he got the original approval that he owned all the land and it was a single purchase and the Developer stated his intention in his original request for approval.

Frankie Schiefer stated her opposition to the application and stated that she paid a premium for her lot.

Jeff Ondo stated that when he purchased his house, paperwork stated that the lot will not be built on and that it would be a church; that he is opposed to the dead-end street; that he has concerns about the buffers, ditches, noise and light pollution; and that this application needs to go back to planning. Mr. Ondo referenced the 55 letters of opposition.

There were no additional public comments.

Mr. Ekiner stated a misrepresentation/correction – that it was not a May 2015 meeting, it was an October 2020 HOA meeting when his clients asked representatives of the Developer whether plans would be submitted to develop that property and the response from the Developer's representative was "no", but about a month before, plans had already been submitted.

Mr. Hutt stated that this is not the forum if someone has a complaint (regarding the dispute of fact) and that he does not think there is a misrepresentation. Mr. Hutt stated that the plans went through the PLUS process; that the application was pending at the County; that the Final Site Plan approval by the Sussex County Planning and Zoning Commission was in 2017; that when the owner of this property closed on the property, they did close on the entire property at one time, but they did not have permission to seek approval of all of the acreage at one time because the church anticipated at that time having a church on the 5 acres; that when the application went through, his client did not have the authority to zone that 5 acres because the church had an intention for it; that there is an easement agreement for the church to drive through Ocean View Beach Club; that this is what was intended when the application was processed in 2015; that when they closed on the property three to four years later, the church had decided

**Public Hearing/
CZ 1931
(continued)** **not to do that and his client ended up having to purchase the entire property at once with 49.5 acres zoned one way and 5.5 acres zoned another way.**

The Public Hearing and public record were closed.

**M 402 21
Defer
Action on
CZ 1931** **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Change of Zone No. 1931 filed on behalf of Lighthipe, LLC.**

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 21
Adjourn** **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 4:46 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,

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

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