

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 19, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 19, 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 453 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 September 12, 2023, were approved by consensus.

**Corre-
spondence**

There was no correspondence.

Public comments were heard.

**Public
Comments**

Ms. Eul Lee spoke about subdivisions located in Sussex County.

Ms. Janet Le Digabel spoke about Sussex County's population, farmland, and the ability to comment by telephone for Planning and Zoning meetings.

**M 454 23
Approve
Consent
Agenda**

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

**Use of Existing Sewer Infrastructure Agreement, IUA 961-2
Brentwood (Coral Lakes), Chapel Branch Area**

Motion Adopted: 5 Years

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

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Sycamore Chase – Privy Lane received Substantial Completion effective September 11th.

2. Sussex County Council and Planning & Zoning Commission Workshop

The Sussex County Council will host a workshop with the Planning & Zoning Commission on Thursday, September 21, 2023, at 12:30 p.m. at the Sussex County Emergency Operation Complex (EOC) located at 21911 Rudder Lane in Georgetown. The workshop will continue the County's discussion on the development design initiative. The workshop will be broadcasted on the County's streaming platform, found on the website at <https://sussexcountycle.gov/council-chamber-broadcast>.

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

**Reallocation
of ARPA
funds**

Gina Jennings, Finance Director and Brandy Nauman, Community Development & Housing Director presented a request for reallocation of ARPA funds for low-income housing rehabilitation. Mrs. Jennings reported that back in March, money was put aside for a non-profit program. After those funds have been allocated, there is \$537,610 left that was not used. It is being recommended to put into the Housing Rehabilitation program that has been very successful.

Brandy Nauman, Community Development & Housing Director and Brandon Hamilton, Rehabilitation Specialist shared information and photos of how the ARPA funds have been spent to date.

**Vendor
Agreement/
Beebe
Healthcare**

Jay Shine, EMS Manager of Operations presented a vendor agreement with Beebe Healthcare for Council's consideration. Mr. Shine reported that the agreement is specific for ordering medications to replace those that have been expired or otherwise unused.

M 455 23
Approve Vendor Agreement/ Beebe Healthcare

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved that Sussex County Council approve the Vendor Agreement with Beebe Healthcare allowing Sussex County EMS to order medications, including controlled substances, through Beebe Healthcare Pharmacy.

Motion Adopted: 5 Yeas

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

Permission to Prepare & Post Notices Greenwood Storage Annexation into SCUSSD

John Ashman, Director of Utility Planning and Design Review presented a request to prepare and post notices for Greenwood Storage annexation into the Sussex County Unified Sanitary Sewer District (Western Sussex Area). The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client DEStorage.com Greenwood, LLC, the owners/developers of a project known as Greenwood Storage for parcels 530-10.00-55.00, 56.00 & 56.02. The parcels are zoned HC, Highway Commercial and are within the Greenwood Municipal limits. The project will be responsible for EDU charges based on current rates.

M 456 23
Approve Prepare & Post Notices/ Greenwood Storage

A Motion was made by Mrs. Green, seconded by Mr. Hudson, that be it moved by Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Greenwood Storage Expansion of the Sussex County Unified Sanitary Sewer District to include parcels 530-10.00-55.00, 56.00 & 56.02 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

WSUSD/ Segment C/ Substantial Completion

Hans Medlarz, County Engineer presented granting of substantial completion for Segment C for the Western Sussex Unified Sewer District for Council's consideration.

M 457 23
Approve Substantial Completion

A Motion was made by Mrs. Green, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that contract S19-29, Western Sussex Unified Sewer District, Segment C be granted substantial completion, effective September 15, 2023, with any held retainage released in accordance with the contract documents, contingent upon SRF concurrence.

Motion Adopted: 5 Yeas

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

**Pintail
Pointe/
Award**

Hans Medlarz, County Engineer presented a recommendation to award for Pintail Pointe for Council’s consideration. Mr. Medlarz reminded the Council that after receiving the first bids, they were not accepted due to non-compliance.

**M 458 23
Approve
Pintail
Pointe
Award**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that contract S21-16 for the Pintail Pointe project, be awarded to Zack Excavating, Inc. for their total bid of \$887,031.96, contingent upon DNREC concurrence.

Motion Adopted: 5 Yeas

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

**FEMA
Grant/
Stinson
Property**

Hans Medlarz, County Engineer presented Stinson home elevation project (FEMA-4566-DR-DE-0002) sponsorship 37430 5th Street for Council’s consideration.

**M 459 23
Approve
FEMA
Grant/
Stinson
Property**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approve sponsorship of the FEMA mitigation grant application FEMA-4566-DR-DE-0002, contingent upon FEMA verification of the 90% federal cost share.

Motion Adopted: 5 Yeas

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

**Introduction
of Proposed
Ordinances**

Mrs. Green introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 35 ACRE PORTION, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDERED, SUSSEX COUNTY, CONTAINING 75.62 ACRES, MORE OR LESS” filed on behalf of TPE DE SU75, LLC.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED AND BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.99 ACRES, MORE OR LESS” filed on behalf of Community Lutheran Church c/o Ed Evans

Introduction of Proposed Ordinances (continued)

Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 64.59 ACRES, MORE OR LESS” filed on behalf of CI Solar DP, LLC.

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 A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS” filed on behalf of Cherner Development Group.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS” filed on behalf of Louis, Janet & William Melton.

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 533-11.00-23.02”.

The Proposed Ordinances will be advertised for a Public Hearing.

Council Member Comments

There were no Council member comments.

**M 460 23
Go into Executive Session**

At 10:37 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 collective bargaining.

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 10:44 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus for the purpose of discussing matters relating to collective bargaining. The Executive Session concluded at 11:02 a.m.

**M 461 23
Reconvene**

At 11:05 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to come out of Executive Session back into Regular Session.

Motion Adopted: 5 Yeas

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

E/S Action There was no action related to Executive Session matters.

**M 462 23 A Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess until
Recess 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 463 23 At 1:30 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley
Reconvene to reconvene.**

Motion Adopted: 5 Yeas

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

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

**Public A Public Hearing was held on a Proposed Ordinance entitled “AN
Hearing/ ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE
Ord. 23-11 COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-
& CU2350 6.00-6.02” (property lying on the west side of Beaver Dam Road [Rt. 23],
approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address:
30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02)**

The Planning & Zoning Commission held a Public Hearing on the Proposed Ordinance on August 10, 2023. At the meeting of September 14, 2023, the Planning & Zoning Commission recommended adoption of the Ordinance for the 10 reasons as outlined.

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 MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS” (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02) filed on behalf of Beaver Dam Enterprises,

**Public
Hearing/
Ord. 23-11
& CU2350
(continued)**

LLC.

The Planning & Zoning Commission held a Public Hearing on the Proposed Ordinance on March 23, 2023. At the meeting of April 20, 2023, the Commission deferred action in order to allow for an Ordinance to be prepared and a recommendation has not yet been made.

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

The Council found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present was Mr. Anton Balakin on behalf of the Applicant and the project engineer, Ken Christenberry. Ms. Peet stated that the Applicant met with Director Whitehouse for a pre-submittal meeting on January 12, 2022 and subsequently submitted a Conditional Use application on February 4, 2022 to pursue a Conditional Use of land in an AR-1 Agricultural Residential District; that the Applicant request to convert the existing pole building into two residential units; that on March 23, 2023, the Applicant appeared before the Planning Commission to present their request; that each unit will be rented on an annual basis; that after the public hearing, the Applicant learned, despite an understanding to the contrary, the Application could not proceed without an amendment to the Future Land Use Map; that since the public hearing on March 23, 2023, the Applicant has worked with the Planning & Zoning office to seek an amendment to the Future Land Use Map that designates the property from Low Density to Coastal Area; that as part of the request, the Application was also put through the PLUS process; that the property is 2.144 acres, being located along Saddle Ridge Way in Lewes; that the property is located on the west side of Beaver Dam Rd., being approximately .5 mile north of Hopkins Rd.; that the property is accessed from Beaver Dam Rd.; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the property is located adjacent to other properties located within AR-1, GR (General Residential) and MR (Medium-Density Residential); that the area is largely developed with residential units in a number of surrounding communities; that the MR and GR zoned properties are the location of Oak Crest Farms and scattered residential developments near the property; that there are many conditional uses in the area; that Exhibit A is a copy of the Conditional Use application submitted by the Applicant; that Exhibit B is a copy of the deed and property information; that Exhibit 4 is a copy of the Conditional Use plan; that Exhibit 5 includes copies of aerial maps; that Exhibit 6 include images of the property and existing building; that Exhibit 7 includes a determination from the Army Corp of Engineers that there are no wetlands on this site; that Exhibit 8 is a copy of proposed conditions of approval; that §115-22 of the Code provides that multifamily dwelling structures may be permitted as Conditional Uses; that the Code requires, in part, that multifamily dwelling units in AR-1, the applicable zoning district are located in designated growth areas, including Town Center, Developing Area, or Coastal Area, as described within the land use element and shown

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(continued)**

on the Future Land Use Plan, provided in the Comprehensive Plan, specifically; that the proposed use is of semi-public character; that it proposes less than one unit per acre; that each unit will consist of three bedrooms and two baths; that the use is compatible with surrounding residential uses; that public utilities are available to the site and the use will be served by public water and sewer; that access to the site is off of easement located off Beaver Dam Road; that DelDOT's review of the service evaluation request provided that the use will generate fewer than 50 trips; that parking will be provided with four spaces specifically towards the rear of the site on the gravel area; that the use is not anticipated to adversely impact neighboring properties; that there is an existing vegetative buffer; that one letter of support was submitted with four signatures; that there are a number of more intensive uses in the area; that the Applicant seeks a Future Land Use Map amendment from Low Density to Coastal Area; that the Coastal Area is a designated Growth Area, which will permit the use of the existing pole building as a two unit multifamily dwelling, with the intent of renting each unit on an annual basis; that she believed it was common knowledge that in Sussex County, especially in the Rehoboth and Lewes area, people are seeking rental properties; that the proposed use is only for two units; that there is certainly a demand for the Applicant's proposed use; that the use will otherwise comply with the requirements of the Code; that the request is supported by the Conditional Use Plan that was submitted as Exhibit B, as part of the Future Land Use Map Application submission; that the Conditional Use Plan provides significant vegetative buffers and open space; that the existing pole building makes up a very small portion, being approximately 7% of the site; that the undeveloped and forested area make up 70% of the site; that the remaining areas of the site are comprised of the pervious gravel driveway and parking area, which make up the remaining 23% of the site; that as part of the Conditional Use submission, the Applicant proffered Conditions of Approvals, which proposed to limit the use to two units within the Conditional Use area; that the proposed conditions proposed that the Developer will provide for the perpetual maintenance of the streets, stormwater management, etc.; that the common areas will contain a stormwater management system, that will meet or exceed the requirements of the Code; that all entrances will conform with the DelDOT requirements; that the project will be served by central water and sewer; that any hours of construction improvements be limited; that the Coastal Area permits for a range of housing types, including multifamily units, such as what it is proposed; that the plan confirms that Sussex County's base density of two units per acre is appropriate in the Coastal Area; that the proposed use is less than that of the allowable base density; that the proposed two units would be located on 2.144 acres; that the Applicant is not proposing medium to higher density for the project, however the plan does support medium to higher density development, in the Coastal Area, where central water and sewer are available, sufficient commercial uses and employment centers are located, where the use is in keeping with the character of the area, located along a main road, and/or is located along a major intersection, where there is an adequate level of service, or where other

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(continued)**

considerations exist that are relevant to the requested project and density; that the Comprehensive Plan also encourages the preservation of natural resources or open space in the Coastal Area; that all of which is encouraged by the proposed plan; that PLUS comments were received; that the State raised the issue that the property is located within Level 4 and the property is not immediately adjacent to Coastal Area designated properties; that as noted in a comment at PLUS, this site is in what one would commonly understand to be a growth area within the County; that there is infrastructure present as well as existing and future residential developments in the area; that she does not consider the State's comment to be material in respect to the site; that there are Coastal Area designation near the property; that the comment from the State is inconsistent what is happening on the ground and seems to overlook what the Applicant is proposing; that the State stated that they cannot support this growth because it is in Level 4; that this is less dense than projects in the area; that open space is being preserved; that this request and property is unique; that the request being for a two unit rental within the existing pole building; that the property provides significant open space and vegetative buffers, all of which are in character, not only with the AR-1 Zoning District, but the Coastal Area as well; that in the event the Applicant would ever want to seek a use outside of the scope proposed, and otherwise not permitted within AR-1, the Applicant would be required to make a new Application and appear back before the Planning & Zoning Commission and/or County Council; that a new land use submission would require the Applicant to proceed through the Site Plan process and any other approvals.

There were no public comments.

The public hearing was closed, and the public record was held open to receive a recommendation from the Planning and Zoning Commission for Conditional Use No. 2350. Once a recommendation is received, it will be announced, and the public will have five days to comment in writing.

**M 464 23
Defer
Action/
Ord. 23-11
& CU2350**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on Proposed Ordinances entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02" & "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS".

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/
CZ1973**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS” (property lying on the southwest side of Old Landing Road [S.C.R. 274], within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road [S.C.R. 274]) (911 Address: N/A) (Tax Parcels: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00) filed on behalf of Osprey Point Preserve, LLC

The Planning & Zoning Commission held a Public Hearing on the Proposed Ordinance on August 11, 2022. At the meeting of June 22, 2023, the Planning & Zoning Commission recommended a partial approval of the Application for the 7 reasons and subject to the 6 recommended conditions as outlined.

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

The Council found that Mr. David Hutt, Esq., with Morris James, spoke on behalf of the Application C/Z 1973 Osprey Point Preserve, LLC; that also present were Mr. Mike Horsey and Mrs. Kathy Horsey, the Principals of Osprey Point Preserve, LLC, Mr. Vince Luciani, Professional Engineer with GMB, Ms. Cheri Hochstedler, Senior Designer with GMB, Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc.; that the Application was designed as a Change of Zone; that no one was requesting to Change the Zone to the property of Osprey Point; that the Application request is to amend the RPC, which was approved as part of the Osprey Point community; that Osprey Point is located between Old Landing Rd and Arnell Creek; that an RPC can be an additional overlay to an existing zoning district; that Chapter 16 of the Zoning Code described the permitted uses within the RPC District; that Section 115-19 states that permitted uses include, within subsection B, commercial uses of convenience and necessity to the development as a whole; that such uses and accessory off-street parking and loading spaces, incident to such commercial uses, not to exceed one acre for each 100 dwelling units within the planned development; that there is a ratio of commercial uses set forth in the Code provision, being one acre to every 200 units; that within Ordinance 2475 it states there are 217 approved single-family units; that under the RPC Code, Osprey Point is permitted to have 2.17 acres of commercial use; that the current proposal was for 1.85 acres of commercial use; that the current proposal is 3/10 acre less than the permitted ratio; that there is no Change of Zone request to the underlining

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(continued)

MR (Medium-Density Residential) Zoning District, with an RPC overlay; that if the current Application request were to be approved and adopted, the current zoning designation would stay the same; that the only change being proposed is to add conditions to the RPC related to the proposed commercial style use of a minor marina, with a café, restaurant, with a bar and beach area, with leasing of non-motorized watercraft; that these watercrafts would include paddleboards, kayaks and canoes; that an example of a similar situation would be Americana Bayside, being another MR-RPC (Medium-Density Residential-Planned Community) which has a number of commercial uses, such as restaurants; that an example being 38 Degrees restaurant within Americana Bayside; that another example is the Village of Five Points just outside of Lewes; that it involves boats, residential and commercial uses; that a smaller RPC example is Painters Mill; that it is another location that is a MR RPC that involves a commercial area at the front; that with the RPC Section of the Zoning Code, commercial uses of convenience and necessity are allowed at a specified ratio; that this convenience and necessity is not only for the residents of Osprey Point, but also the surrounding communities; that the proposed use would also be of convenience to the communities, subdivisions and homes along Old Landing Rd; that surrounding communities include, Old Landing Community, Rehoboth Bay Community, Saw Grass North, Saw Grass South, the Woods at Arnell Creek, Cedar Valley and many more; that across from R&L Creek from the marina is the Love Creek fishing access; that it is operated by the State of Delaware and provides a boat ramp and parking; that Mr. Horsey met with two adjacent communities within a community outreach which was performed; the community outreach meetings occurred in April of 2022; that it was explained what the purpose was and how access would be achieved through the proposed facility located on Old Landing Rd.; that the proposed facility would not require residents of Old Landing Rd. to rely on Rt. 1 to access the water or to grab a meal; that each of the community outreach meetings there was more than 50 people in attendance at both meetings; that generally at these two meetings there was support for the proposed concept; that the property was split-zoned; that there had been a small portion zoned MR (Medium-Density Residential); that the majority of the property was zoned as AR-1 (Agricultural Residential); that the original Osprey Point application, being C/Z 1759, sought to change all of the AR-1 zoned portion of the property to MR; that in addition to the Change of Zone request, the original Osprey Point application sought the RPC (Residential Planned Community) overlay to allow for a mixture of homes, that included single-family homes and townhomes; that the original Osprey Point application was filed July 2014, which sought approval for 350 units; that these units consisted of 170 single-family homes, with 180 townhomes; that the application was approved under Ordinance No. 2475, as it was adopted by County Council on November 15, 2016; that after receiving approval in 2016, the Applicant went through Site Plan approval process; that the Final Site Plan was approved in 2017; that on the approved Final Site Plan the two piers with 24 boat slips are shown; that the ownership of the project did change over time; that revisions were made to the Final Site Plan and a

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Revised Site Plan was submitted; that the Commission reviewed the Final Amenities Plan in November 2021; that on the Amenities Plan the marina is shown on the plan; that after receiving final approval for the Amenities, the focus turned to develop a formal plan for the marina; that when looking at the site and the history of the property, the concept of a marina and restaurant began to take shape; that the property is zoned MR; that access to the marina would be through Osprey Point Community; that there would be signage to state that the second entrance is the correct entrance; that the one pier will create a U-shape pier which will hold the 25 boat slips; that there is a 3,259 sq. ft. building with a restaurant; that there is a proposed pool with a bar; that there are two beaches shown on the plan; that located to the left is a community beach; that this beach would be exclusive to the residents of Osprey Point; that there would be a locked access to this beach; that on the opposite side there is a beach which will be accessed by the restaurant customers; that there is a proposal for a launch for non-motorized watercrafts; that these watercrafts would be along the line of kayaks and paddleboards; that there are 82 parking spaces proposed; that these parking spaces exceeds the parking requirements by the Zoning Code; that a slide was shown to show the site plan with coloring and rendering; that there has been a concern that the beach areas are being constructed in wetlands; that is not the case; that a bulkhead would be installed and an area would be filled with sand; that there is no disturbances to the wetland; that the only impact that exists to the federal wetlands is the piers that extend from the uplands side out to the marina area and an area that is crossing to get to the non-motorized launch; that this Application requires approval by various State agencies, such as Fire Marshal's Office, Sussex Conservation District, and DeIDOT; that the proposed Application will have additional agency requirements; that DNREC approval is required in relation to the easement into the area of subaqueous lands; that for a restaurant to have a liquor license, there are certain requirements which must be met before the Office of Alcoholic Beverage Control Commission (DABCC) will grant approval, which may also involve a public hearing; that if this Application is successful, it will have been well vetted by numerous agencies; that Mr. Launay and his firm at Environmental Resources, Inc. was in charge of the required permitting process involved with the proposed project; that there is a written summary submitted in the project booklet of what the permit process looks like; that the application submissions to DNREC and the U.S. Army Corp of Engineers were also included into the project booklet; that Mr. Launay noted the desire to minimize the impact to vegetative wetlands; that the other important feature is where there is navigable water and where it came meet DNREC standards; that DNREC states that what is necessary to have a marina is 1 ½ feet a med-low water; that there was a study that was done showing that this site meets that minimum depth; that Ms. Voigt's submitted letter was referenced; that there are many processes that this application will involve; that there would be no dredging involved; that the property, as well as surrounding properties, are located within the Coastal Area based on the 2045 Future Land Use Map; that the Coastal Area is designated a Growth Area; that a common theme throughout the Comprehensive Plan is the

**Public
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population growth and the impact the population growth will have on Sussex County; that the population growth of Sussex County raises concerns regarding traffic; that a Service Level Evaluation Request was submitted to DelDOT; that DelDOT's response indicated that the traffic impact for the proposed project to be negligible; that there are four levels to DelDOT's traffic study; that the impact is at the lower end; that another theme throughout the Comprehensive Plan is improving access to Delaware's waterways; that in some of the opposition, there are comparisons to Paradise Grill; that Paradise Grill is significantly larger than the proposed project in land mass and structure size; that Paradise Grill is not subject to a RPC with conditions of approval; that the Council can opposed conditions of operation for this use; that it was brought up that this would have a negative impact on property values; that there is something proposed that is similar to this known as 38 degrees; that the homes near 38 degrees have increased in property value; that it is expected to increase the value of the homes in the area of the proposed project; that the petition that was referenced has four points within it; that there is a zoning code argument; that the proposed use does not align with the zoning codes description of a RPC as a commercial use of convenience and necessity to the development as a whole; that Sussex County has never interpreted that provision as narrowly as the opposition is asking to be done; that the next item was traffic and the condition of Old Landing Road; that a service level evaluation request was sent to DelDOT; that there response was that traffic impact would be negotiable; that the third item related to music being loud until 9:00 p.m.; that the opposition notes that Sussex County does not have a noise ordinance; that DNREC does have a sound ordinance; that the developer is developing the property to be successful; that the goal is to be a good neighbor; that the fourth item in the petition is the impact on creeks and wetlands; that as shown earlier, the only two impacts as far as construction are the piers and a narrow crossing; that when this was presented to the Planning Commission, there was a proposed set of Findings of Fact and conditions; that they were distributed to the Council; that there was a partial denial and a partial approval of the Application; that within the proposed conditions, Condition C it now states that the restaurant shall now close by 9:00 p.m. Sunday through Thursday and shall close by 10:00 p.m. on Friday and Saturday; that this is a reduction in time by an hour than what was presented to the Planning Commission; that in addition, it states that there shall be no outdoor music after 9:00 p.m.; that there are multiple influences and agencies that have a say of when there can be sound at a restaurant; that there is a condition about supplementing the buffer that exists between the parking area and homes; that there are conditions about prohibiting the repair of boats at the marina and fueling of boats at the marina; that there would be no pump out station on the docks; that the conditions include DNREC approval for the marina, DABCC approval for the liquor license; that the alternate option takes the Planning Commission recommendation and redlines it; that the changes to the recommendation include items A and F; that the recommendation limited the slip and ownership to only residents of Osprey Point; that it limits the market ability; that what was added back in is the

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area for non-motorized watercraft rental; that the changes to F mirror the changes to A to make sure those conditions remain consistent; that one concern when dealing with a change to a site plan is what people have been told about the site; that the lots in this community are currently being constructed; that within the project book materials and letters that are out there; that MBR confirmed that they are in full support of this application; that there was a petition in opposition; that a petition in support was given to Mr. Moore; that this application is for the convenience for those that live along Old Landing Road without having to go onto to Route 1; that it promotes the orderly growth, welfare, prosperity, convenience and order of Sussex County.

The Council found that Mr. Michael Horsey came forward on behalf of the Application; that when he started this process, the site plan was changed; that the houses were pulled off of Old Landing Road; that he was asked what was going to be done with the existing clubhouse; that it mostly sits on lot 12, partial on lot 11 and lot 17; that he was told the residents liked to go get something to eat and watch the sunset; that he wants something low key; that he wants something to add value to houses; that he wants to be a good neighbor; that he visited people to get their input; that he wants to keep people off of Route 1.

Mr. Rieley asked about the stormwater pond being defined as open space.

Mr. Schaeffer asked if Mr. Hutt believed that this was a public necessity that is not available for this community in any surrounding communities.

Mr. Rieley commented that 38 degrees which used to be apart of his district ended up consuming a lot more of the wetland area than what was originally shared. He added that his concern that is if there is foot traffic walking along the buffer area in the beach area, it will degrade over time.

Mr. Hudson questioned the height of the bulkhead. Mr. Horsey commented on the layout.

Public comments were heard.

Mr. Phil Latroa spoke in favor of the Application; that he recently relocated to the area and lives in Osprey Point; that after reviewing previous meetings in regard to the application, it is clear that there are concerns regarding the traffic on Old Landing Road; that he would suggest that there is no debate about the traffic on Route 1; that there is no parking in the Coastal Areas; that this would offer an option for people to avoid the traffic on Route 1 for people to dine in a restaurant; that this will alleviate parking on Route 1 and help with parking issues; that all of the opposite has come from individuals who do not reside in Osprey Point; that Osprey Point is the community that is most effective; that majority of Osprey Point residents that he has spoken to support this provided proper conditions and protection in place; that a letter to the Cape Gazette stated that the

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wetlands will never be returned to the way that God created them; that this is convenient to say now that you have your house and dock on Arnell Creek; that environmental concerns are important; that the impact seems minimal; that it has been expressed the neighborhood will be used as a short cut on the way home; that this concern many endorse the idea of a fob controlled gate in the entrance that mostly leads into the neighborhood; that there are concerns about kayaks being struck and knocking on houses; that if the kayak area is exclusive to Osprey Point residents, they could get out and walk to their houses; that denying this application will not reduce the number of people, traffic, parking challenges; that it would take it to another place in Sussex County; that this project aims for a lower key Coastal theme to reduce traffic and congestion.

Ms. Vicki Jones spoke in favor of the Application; that she lives in Osprey Point; that she hopes that this can be deferred; that she believes that there is a lot of Osprey Point residents that are in favor of this; that it would provide a safe place to come, eat and enjoy the beautiful area; that it would allow recreational activities; that this would allow people to not have to go on Route 1.

Mr. Robert Nadig spoke in opposition to the Application; that he is a resident of Old Landing Woods; the he was speaking on behalf of the Old Landing Woods Homeowners Association; that they are opposed to the Application; that Old Landing Woods Development was the first development to be created off of the Old Landing Golf Course; that he distributed the official opposition and two letters that went into the Cape Gazette; that all of the communities on Old Landing Road are quiet residential communities; that they do not see the need for commercial development; that a major private commercial development is being requested; that about three acres of the 200 unit development is being commercialized; that three acres would equal 50% of the project, being more than is permitted for the proposed use; that the access is not there; that they want to attract people there for rental of the slips; that this is not a necessity for the area; that they feel the proposed use will be taking over Arnell Creek; that the proposed use will discourage the boating that typically would be found in that area of Arnell Creek; that he is not aware that Five Points has amplified music; that Five Points went through major planning and is on a major route; that Painters Mill is different; that he believes this is name dropping; that this project is not comparable to the other places mentioned; that the other projects went through planning prior to people buying there; that this is being squeezed into someone's background; that it is in area that is all residential; that there are other places in Sussex County where this can be done; that it is felt that this is not something that should be done.

Ms. Lia Koyner spoke in opposition of the Application; that she agrees that 25 boats is too much for the neighborhood; that there are many restaurants, gas station, grocery store and Walmart that she can access without going out to Route 1; that she asked that conditions are opposed; that she has a

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house across the street from her that is now in bankruptcy; that the Old Landing Golf resort did not have dinner or alcohol; that there was only breakfast and lunch; that the other places referenced are located on the Bay; that the noise will affect residents in the area; that traffic will be affected; that she shared a flyer that was sent to her; that the meeting that Mr. Horsey held was attended by her son; that he reported that the people were angry and he left; that nobody knocked on her door or the person who has the parking lot next to her home; that she agrees with the previous speaker and the Planning Commission stating no restaurant or boat access; that 25 slips is too much for this development; that she is asking for help to regulate this major change; that DNREC is only going to access the depth of the water and the extension of the dock; that it is being asked to help with the land and community concerns; that the information presented to the public is misleading; that they are crossing over state and federal wetlands; that they met guidelines to forego the federal Army Corps review and only go through DNREC; that if they moved to a smaller wetland space, it would allow a better parking solution; that they are requesting a boardwalk to go from their parking lot; that there are many cars that come through the neighborhood already; that she shared pictures of the proposed project; that she believes what was presented to the Planning Commission is inaccurate; that they have asked for the maximum footage for the marina; that she submitted the environmental impact in the record; that a million fish died in that body of water; that the noise will impact the neighborhood; that she asked that the noise be regulated; that she requested that a fence be installed; that she shared pictures of what is being requested by the Applicant; that she had a solution page for consideration; that she has concerns about the dock; that she presented solutions for consideration.

Mr. Bill Dunn spoke in opposition of the proposed Application; that he lives in Sawgrass South; that this is an area that no commercial activity exists; that this will negatively impact the peaceful area; that the safety of the residents will be impacted as well as the environment; that the Planning and Zoning Commission recommended denial of the request and making the marina private to Osprey Point residents; that the proposed restaurant and marina is not necessary; that there are many restaurants to go to without going onto Route 1 that serve alcohol; that this is not for the convenience and necessity; that this would create public safety issues, environmental concerns, increased traffic and noise; that this should be opened in a commercial area; that the noise is a concern; that truck deliveries and alcohol would be needed; that there would be a need for more trash trucks in the area; that noise from the outdoor music will travel significantly; that the traffic safety is a concern; that there have been numerous accidents that have taken place; that adding the sale of alcohol adds more concern; that the wetlands maintain a significant part; that the marina will bring excessive boat traffic; that no area in that creek is deeper than 1.9 feet; that kayak and paddleboards will impact the creek with people falling off their boards; that this creates a hazard for leaking fuel, oil and waste that will destroy wildlife; that he requested that the application be denied; that a destination waterfront restaurant will be more intensive than anything else

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in the area of Old Landing Road per the Planning Commission; that if the marina is approved, it is requested that the same conditions be given as recommended by the Planning Commission.

Mr. Joseph E. Rieley, Jr. spoke on the Application; that he understands construction and zoning boards; that it seems like the developer left; that it appears that they just transferred a deed; that he discussed issues in the development where he resides.

Mr. Steve Cramer spoke in opposition of the Application; that information is sparse on this project; that there is no written information other than verbal plans and rendering; that there is a lot of inconsistency when questions are asked; that he has concerns about roadways for traffic to the restaurant; that the HOA maintains those roads; that there will be issues that arise; that he does not want truck traffic in the area; that there is still over 200 homes in Osprey Point that still need to be built; that he would like current and accurate information.

Mr. Alexander Bradley spoke in opposition of the Application; that he believes it is not a good idea to have a restaurant and a bar open until 10:00 p.m.; that it is a dead end street; that Route 1 is a couple miles away that has many restaurants; that people would come to the restaurant to party; that this is not for this area; that he questions if the dredging will occur; that this does not make any sense for the communities that are there; that live music, fast cars and outside entertainment is not needed.

Ms. Donna Voigt spoke in opposition of the Application; that she agrees with the other opposition members; that she submitted a PowerPoint for the record; that she lives in the south part of Sawgrass; that it is large change and now she questions what would be next; that they are planning on having a shared entrance; that has been designated and approved by DelDOT for 117 homes not for commercial use; that this will add a lot of traffic; that adding more traffic is disruptive and dangerous; that she shared data of accident history for Old Landing Road; that there have been many accidents that have occurred with property damage; that 38 degrees is a seasonal, outdoor venue that was planned; that there is no indoor restaurants as what is being proposed; that it is only open seasonally; that the amplified music is limited to two days per week for three hours; that it is not close to other residential communities; that she discussed the hours of Paradise Grill; that her community is split in support and opposition of the application; that the southern end residents are more impacted; that she believes that the Planning Commission made the right recommendation on this application; that the entrance is under construction; that she hopes that the Council follows the recommendation that the Planning Commission made.

Ms. Sue Ball-Joseph spoke in opposition of the Application; that she had deep ruts across her property one morning; that her neighbor saw what happened; that it was a truck from Giant Foods that attempted to turn

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around in the cul de sac; that Giant Foods did pay for it; that she can see this happening if commercial trucks are coming into the neighborhood; that it will increase the traffic and danger; that she is in opposition.

Ms. Lista Delaney spoke in opposition of the Application; that she asked that the work that the Planning Commission has already done be appreciated; that she agrees with the recommendation of the Planning Commission; that the information keeps changing.

Ms. Anita Broccolino spoke in opposition of the Application; that she agrees of what everyone in opposition has said; that she has a concern about how the developer is really not caring about the community around them; that she submitted a picture of the home that will be right up against the parking lot for the restaurant; that they are told one thing and another thing happens; that she asked for wildlife to be supported; that she asks that motorized boats to not be allowed; that there is going to be light pollution; that there will be trash brought in and rodents from the restaurant.

Dr. Paula Nadig spoke in opposition of the Application; that the 11 communities that surround Osprey Point are filled with people that serve Sussex County; that she questions why the Council decides what time they go to sleep and what type of music is going to keep them awake; that they are asking for good, responsible neighbors.

Ms. Nancy Fulton spoke in opposition of the Application; that she is a bicycle rider; that she has a concern of riding a bicycle safely down Old Landing Road; that it is currently a residential area; that if a commercial area is added, the whole area will change; that she does not see this making it better; that she requested that everything be denied.

The Public Hearing and public record were closed.

**M 465 23
Defer
Action/
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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 A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS" for the reasons given by Planning & Zoning which were partially in denial 1-7 with conditions A-F.

**M 466 23
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to adjourn at 4:56 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.}