

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 17, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 17, 2023, at 1:00 p.m., in Council Chambers, with the following present:

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

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| Call to Order | The Invocation and Pledge of Allegiance were led by Mr. Vincent. Mr. Vincent called the meeting to order. |
| M 494 23 Approve Agenda | A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Agenda as presented. 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 |
| Minutes | The minutes from October 10, 2023, were approved by consensus. |
| Correspondence | Mr. Moore reported a letter was received from the American Cancer Society thanking Council for their support for Relay for Life. |
| Public Comments | Public comments were heard. Ms. Adele Jones spoke about overdevelopment and trees being destroyed. Ms. Eul Lee spoke about the amount of time that documents are uploaded on the website and budget increases for certain departments. |
| Administrator's Report | Mr. Lawson read the following information in his Administrator's Report: 1. <u>Project Receiving Substantial Completion</u> Per the attached Engineering Department Fact Sheet, Milos Haven – |

Administrator's Report (continued)

Phase 1B (Construction Record) received Substantial Completion effective September 20th.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for September 2023 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 194 troopers assigned to Sussex County for the month of September.

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

**M 495 23
Approve
Consent
Agenda**

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

Proclamation Request - White Cane Awareness Day

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**

**SC WRF/
CO No. 31**

Mr. Hans Medlarz, County Engineer presented change order no. 31 for South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement program, phase 2 for Council's consideration.

**M 496 23
Approve CO
No. 31/
Project C19-
11**

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 change order no. 31 for contract C19-11, South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 general construction be approved increasing the contract by \$288,663.28.

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**

**Grant
Requests**

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

**M 497 23
The**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,500 (\$2,500 from Mr. Rieley's Councilmanic Grant Account) to The Christian

**Christian
Storehouse**

Storehouse for their feeding the community program.

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 498 23
Marine
Corps
League**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$600 (\$200 from Mr. Rieley's Councilmanic Grant Account and \$100 from Mr. Vincent, Mr. Schaeffer, Mr. Hudson, and Mrs. Green's Councilmanic Grant Accounts) to Marine Corps League for their 248th Marine Corps birthday.

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 499 23
Frankford
Public
Library**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$2,000 (\$2,000 from Mr. Hudson's Councilmanic Grant) to Frankford Public Library for Audio/Visual Equipment.

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 500 23
Family
Promise of
Southern
Delaware**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$2,000 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account and \$1,000 from Mr. Rieley's Councilmanic Grant Account) to Family Promise of Southern Delaware for their eviction prevention program.

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**

**Introduction
of Proposed
Ordinances**

Mr. Vincent introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS" filed on behalf of Elk Development, LLC.

Introduction of Proposed Ordinances (continued) **Mr. Vincent introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 67.72 ACRES, MORE OR LESS” filed on behalf of Elk Development, LLC.**

The Proposed Ordinances will be advertised for a Public Hearing.

Council Member Comments **Mr. Moore commented on White Cane Awareness and shared information about warning signs that show something may be occurring that may affect your vision.**

M 501 23 Go Into Executive Session **At 1:16 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session to discuss matters relating to pending/potential litigation and collective bargaining.**

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**

Executive Session **At 1:18 p.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 collective bargaining. The Executive Session concluded at 1:31 p.m.**

M 502 23 Reconvene **At 1:34 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson 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.**

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

**Public Hearing/
Ord. No.
23-05** **A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE”.**

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Hearing/
Ord. No.
23-05
(continued)**

The Planning & Zoning Commission held a Public Hearing on the Proposed Ordinance on September 14, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended adoption of the Ordinance for the 4 reasons and subject to a series of recommended revisions as outlined.

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

The Council found that Mr. Vince Robertson, Assistant County Attorney, spoke on behalf of the Ordinance Application. Mr. Robertson reviewed the procedural history of the Ordinance; that the Ordinance was taken through PLUS; that input was received from all of the state agencies; that there was an overall positive response; that on October 12, 2023, the Planning & Zoning Commission recommended approval of the Ordinance with recommended revisions based on staff and public comments; that the Ordinance had been in the works for quite some time, dating back to the 2018 Comprehensive Plan; that they wanted to look at a way, for those who have larger parcels for development, to have more creativity and flexibility; that it is intended to promote unified, integrated large-scale (200 ac. +) developments where appropriate, rather than multiple, unrelated subdivisions and commercial developments and the separate approval processes associated with each of these; that it is intended to incorporate residential areas, neighborhood commercial areas, professional, medical and financial office areas and civic areas as part of a single unified development plan; that it is intended to promote interconnectivity throughout the development and with existing DelDOT roadways, with primary interconnecting roads dedicated to DelDOT; that it is a 4-step process; that the first step is the pre-application meeting; that the applicant would meet with staff to discuss overall design, floor space and dwellings created; that discussions with DelDOT would occur if within a Transportation Improvement District; that resource buffers would be identified and discussed with staff; that participation with Sussex County Rental Program would be discussed; that the PLUS review would be discussed; that step 2 is where the “general overall master plan” would be submitted; that there is a spatial distribution plan that will be reviewed; that there is a master manual that is submitted; that the design guidelines prevail over Chapter 115 and Chapter 99; that the Master Manual become the Ordinance or Code governing the MPZ; that there must be engagement between the public, developer, P&Z staff and County Council; that public hearings will be advertised for a Change of Zone; that the Planning & Zoning Commission makes a recommendation to the County Council; that public hearings are held for P&Z and County Council; that if approved by County Council, two additional documents are required to be submitted for review and approval; that these include an “Implementation Plan” and an “Implementation Manual”; that this is more specific detail that needs to be consistent with the Master Manual; that it then would go for a site plan review by staff; that the Staff Review would provide the more particular details of the plan; that a sketch of a spatial distribution plan was shown; that it outlined the different densities; that it showed an overall circulation

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and transportation, area locations, open space, different areas and how the uses would be dispersed; that Mr. Robertson reviewed the Planning & Zoning recommendations; that when this was first introduced, it was limited to the growth areas; that it was thought that these are large enough scale so they should not be limited to just the growth area; that if an MPZ is proposed for an area outside of a Growth Area and can and will be served by adequate on or off-site utilities, and that is scaled to be able to accommodate and pay for any infrastructure, services or improvement required by the State and County; that the Ordinance as introduced had a provision stating that at least 20% of all multi-family dwellings shall be set aside for SCRP units; that it was recommended this should not be a requirement until the SCRP program is a proven and workable method of providing affordable housing; that the Commission recommended to modify lines 221-222 of the Ordinance to state *(i) There shall be a substantial affordable housing component of the MPZ that shall be described in detail in the Master Manual. The goal of this affordable housing component shall be to serve the "Intent" of the Sussex County MPHU and SCRP programs as set forth Sections 72-2 and 72-16 of Chapter 72 of the Sussex County Code*; that if the MPZ is not expanded beyond the Growth Areas, then Line 202 (Eligibility Requirements) should be amended to reference the Coastal Area, Developing Area, Town Central Area and Commercial Area to mirror the Whereas Clause listing these four Areas were recommended; that it was recommended at line 192 (Spatial Distribution Plan) to clarify that in addition to higher densities, the commercial areas/intensive uses should be centrally located and/or along main roadways consistent with higher density residential uses; that it was recommended at line 209-210 (Eligibility Requirements) that the reference to "existing or planned arterial or collector road" (which are not defined in the Zoning Code) be changed to "Major Arterial Roadways" or "Collector Street" which are defined in Chapter 99; that at line 223 (Design and Development Principles and Standards) it was recommended to add a new "Item 11" stating that all collector or primary roads (or a similar term) within the MPZ must be constructed to DelDOT standards and State-maintained (or move/copy this requirement from existing language at line 317-322) and also state that all other roads within the MPZ are dedicated to public use and must remain open and accessible to the public at all times; that it was recommended to delete the reference to service alleys at lines 279-283; that it was recommended that at line 304 (Neighborhood Commercial Area), line 352-356 (Professional Office, Medical and Financial Area) and line 386-390 (Civic Area) to allow these areas to have frontage on existing DelDOT right of way and not just an "internal main street"; that at line 304 (Neighborhood Commercial Area, parking design requirements); line 358-362 (Professional Office, Medical and Financial Area parking design requirements); and line 392-396 (Civic Area parking design requirements) it was recommended to reword this section so that it states *"The [Neighborhood Commercial Area, Etc.] shall be designed so that off-street parking is screened from rights of ways and non-commercial uses so that buildings and landscaped areas are more visible than large off-street parking lots. This can be accomplished through landscaping, location of parking areas*

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in relation to roads and buildings, etc.”; that at line 330 (Neighborhood Commercial Area Service Drives); line 364 (Professional Office, Medical, and Financial Area Service Drives); and line 398 (Civic Area Services Drives) it was recommended to revise these lines so that they state “*Whenever possible, service drives shall be designed and utilized for loading and trash collection*”; that it was recommended to delete the drive-through prohibition at line 336-339 (Neighborhood Commercial Area); that at line 448 (Regarding the Master Manual), it was recommended to delete the reference to “Master Transportation Plan approved by DelDOT” and replace it with “*Traffic Impact Study for the MPZ approved by DelDOT*”; that it was recommended to delete the reference to specific architectural details at lines 469-470, since they are likely to change throughout the multi-year build-out of a MPZ; that it was recommended to delete the reference to “and design of the lighting fixtures, globes”, since those will change over time; that they did look for a model to use, because it is fairly complex; that the City of Dover has a Master Plan Ordinance; that the Eden Hill development in Dover used it; that they took the City of Dover’s Master Plan Ordinance, deconstructed it, and then reconstructed it to hopefully work for Sussex County; that it was questioned how the project would be governed; that there would be one governing organization with its documents; that Village of Five Points is an example; that this would be governed on their own; that many of these types of companies hire a management company to make sure everything is kept in order; that in the Master Manual, Item 15, there is the application and administrative; that it discusses that you have to set out the roles and responsibilities of the developer, builders and the homeowners and/or homeowners association; that a suggestion from the P&Z Commission is that once the road is turned over to DelDOT, be sure that DelDOT is not going to come back to make an applicant or a developer want to do individual entrance approvals of a new road that didn’t exist; that there is an opportunity to bond with DelDOT once; that there is currently a cap that the civic area can’t be more than 10% of the overall area of the MPZ; that it was stated that 10% may not be enough; that it was recommended to increase or come up with a different number; that pictures were shown of Eden Hill; that this allows for flexibility; that there is higher density and you get to build commercial; that it would allow for just one public hearing to be held rather than multiple.

Public comments were heard.

Ms. Eul Lee spoke about the Proposed Ordinance; that the MPZ is a big concept; that she believes that the purpose and intent is the skeleton; that this should be the backbone; that it was about the superior design and the walkable and mixed use community; that she discussed environmental concerns and it has the landscape; that she looked at the models that were discussed such as Eden Hill; that when she saw Eden Hill, it was called traditional neighborhood design in Dover; that there was a PLUS review in 2004; that it was initiated in 2005; that it was in Investment Level 1 and the Office of State Planning supported it as a mixed-use and infill project; that in 2008, the largest medical center of that date opened in Eden Hill; that in

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2017, the Townhome construction started consisting of 83 units; that the skilled nursing facility opened in 2017; that the google map showed an animal hospital; that she heard there are now single-family homes there as well; that she questioned if anyone was walking there; that it appears that the medical centers and rehab center contribute to more traffic coming in from the outside; that today the walkable concept is different than before; that any subdivision approved today should be walkable inside the community; that when permitted uses are selected, the purpose and intent of walkable communities need to be kept in mind; that commercial or professional entities have to be something to enhance or promote the walkability for the community residents; that the traffic magnets should be avoided that bring outside traffic in; that she discussed the traffic magnets such as gas stations, gyms and specialty stores; that in the Zoning District, there are three uses; that these include permitted use, conditional use and special exception use; that she questioned if that meant that the conditional use or special exception for these districts are permitted in this MPZ; that to satisfy the intent the MPZ, the permitted uses must be selected carefully; that she questioned if the size of the MPZ is large enough to have the stores and services; that many stores need shoppers from outside the community to support them; that if the community is too large, then it becomes too big to walk; that she shared a comparison between Eden Hill and the Raley Farm that was just approved recently; that there are many items that impact people's needs over time; that parking can be a problem; that public transportation is needed; that she believes that anything major should trigger PLUS review and public hearings; that she just received the PZ recommendations yesterday; that she believes that Level 4 is still a problem because of the road infrastructure; that they bring in heavy equipment; that we need to make sure the roads are able to handle the equipment; that DNREC had a lot of comments about the environmental impact; that she discussed some of the comments received from DNREC; that she discussed premature bond release.

Ms. Jill Hicks spoke about the Proposed Ordinance; that she was speaking on behalf of the Sussex Preservation Coalition, its Board, its Allied Organization, and its membership; that SCP is not opposed to Master Plan Zoning; that if done right, it could help Sussex County resolve some of its current issues; that in the current form, without proper vetting and review, it would limit and reduce the future positive impact this plan could have; that this copy of Ordinance 23-05 for today's hearing was only made available online sometime yesterday morning; that the late publication and last minute changes made has become too common place in County proceedings; that she discussed the timing of the Ordinance; that during the September 21st workshop, some standardizations and a standard location of code would be helpful was discussed; that she questioned if the minimum side yard for a cluster subdivision was 5' or 10' because she has seen both; that Mr. Robertson responded "this is why we need to standardize and have things in one location"; that on October 12th, at the end of the P&Z meeting, the Commission had a long overdue discussion about the workload of the P&Z staff; that the timing of this Ordinance if approved in its current state,

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is going to cause more work for everyone several times over; that she questioned why the taxpayers should shell out money to pay the legal fees to have the MPZ code written, heard, revised, rewritten, and possibly have it cycled through several times; that then they will have to go through the training and learning curve for the staff to internalize it; that then it would need to come back and redo again when the Five Workshop incentives are framed out and completed; that on page 5, 115-132 Purpose and Intent, Line 155: “neighborhood that is superior in design to a standard residential subdivision ...”, we already know that language is a problem; that is why “superior design” on its own is one of the Five Incentives; that if approved in the current state, proceeding the Five Initiatives, would mean an added challenge to change something that was already executed; that it would set a precedent; that to proceed in this way is counterintuitive and counterproductive and not a good use of time or money; that MPZ should be in everyone’s minds as we start down the path of prioritizing incentives; that at the very least, buffers – perimeter, and interior buffers in this case, as well as open space, forest preservation, and superior design should be taken care of first; that the words “consistent” or consistency” were mentioned numerous times in this ordinance presentation to PZ; that the misuse of language is one of the things that Council has rightfully and decidedly set out to correct; that she questioned if any progress made on Forest Preservation, Open Space, Perimeter Buffers, Superior Design, and Site Work would be considered for future MPZ applications; that she questioned how many MPZ approvals would be granted before the five incentives are resolved and made part of the MPZ code; that these projects can take 20 years or more; that changes will be needed at some point; that if this Ordinance is approved in its current form, then amendments are made, she questioned how they will be applied to the future necessitated changes; that she reviewed some specifics located on page 7, line 207, page 7, 115-135 B-1, page 8, 115-135 B-3 and 115-135 B-5; that she finds it contradictory that this Ordinance will not include stronger mandates around workforce housing; that incentives and mandates should be built into the ordinance; that another concern, for the purpose of fiscal responsibility is that PZ should be limited to SIL 1 and 2; that because of added density per acre, and the extra burden on schools, emergency services and roads, MPZ should only be considered where State funds will support it; that Eden Hill in Dover was used as an example during the PZ meeting; that if you zoomed out, you would see underdeveloped, graded land set aside for non-residential use; that its commercial value is lost; that there are better models that need to be studied; that MPZ is too important to rush through its vetting process, the wordsmithing, and the hearings it deserves; that at the very least, the five incentives and the Future Land Use Map and MOU with the State need to be further along before taking this Ordinance any closer to the line.

Mr. Schaeffer commented on the design of Eden Hill.

Mr. Jeff Seemans spoke about the Proposed Ordinance; that he supports the concept of the Master Plan Ordinance; that he has concern regarding

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two features; that page 16 states that “detailed plans of existing natural features showing topography, soils, drainage and vegetation shall be included as elements of the implementation plan”; that page 7 states “the design for the entire zone shall follow environmentally sustainable approach to development to accomplish this, the design shall take advantage of natural drainage patterns onsite and minimize unnecessary earth moving, erosion, tree clearance and other disruption of the natural environment, existing vegetation and habitats shall be preserved wherever possible”; that he predicts that future developers and their engineers will say that they “minimized” necessary tree clearance regarding how many acres of forest are removed on the Master Plan; that this concern is also mentioned in the PLUS review; that with the gift of 12 units per acre, there can be more restrictive language from the government side about preserving existing forest especially with this being one of the five important topics discussed at the recent September workshop; that his second concern is the lack of language concerning whether or not these two hundred acre plus projects with 12 units acre will end up in Level Service Area 3 and 4; that if they are, it will create more traffic stress; that on the first page of the PLUS comments, it says the State supports the use of this Ordinance and Coastal Development Commercial and Town center Land Use categories only; that the County should consider if this Ordinance is restricted to specific zoning categories within the future land use area noted above; that it is recommended that this Ordinance is not supported in the AR-1 areas or in the Strategies for State Polices Level 4 areas; that he requested that Council hit the pause button on this Ordinance until these issues have been addressed.

Mr. Jeff Stone spoke about the Proposed Ordinance; that he was representing SARG; that a document was submitted for the record; that they support everything that was said by the previous speakers; that the complexity of this proposal and the length of time that it will impact the County are the critical factors of why SARG is calling on the County to hit the pause button; that they strongly support the concept; that the process should not be hurried; that long term issues in drafting legislation in Sussex County is where far too much is left up to interpretation, usually by the representatives of developers; that the legislation says it must be located on an existing or planned arterial or collector; that the existing may not be adequate; that a current road could be overused or inadequate; that he questioned how coordination would be done with DelDOT; that plans can take many years; that it is not known why it is a requirement of at least 20% of multi-family dwellings should be set aside for SCRP or otherwise; that it is their opinion that requirement that it be limited to multi-family units but can lead to the creation of buildings or neighborhoods of just moderate low-income families; that it is their opinion that in return for the scale, density and other benefits that 20% of all housing should be SCRP or some form of affordable workforce type housing should be in these developments; that he emphasized that this is a document that will be around for a long time so we need to make sure we make our best effort to make it best it can be.

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Ms. Cheryl Siskin spoke about the Proposed Ordinance; that we have to be able to adapt to change; that there will be other types of vehicles that we need to plan for and accommodate; that it needs to be considered of how a new community will fit with an existing community; that the PLUS comments need to be taken seriously; that she thinks that we need to more to make bike and pedestrian paths a top priority so that we can get more traffic off the roads; that she supports the comments that were made about superior design; that we need to think more regionally; that if you want a successful business, you have to attract outsiders; that she believes 200 acres is too small; that you can't have density on a collector road; that these should be on an arterial road; that the future needs to be thought about as well as transportation; that there are terms that are too vague that developers can find their way around; that she is not sure why fire separation is included; that EV ready charging stations should be required; that the PLUS comments included a walk up suggestion which she supports; that she believes that the open space requirement should be greater.

Mr. David Hutt spoke about the Proposed Ordinance; that the County has seen this problem with the C-4 (General Commercial) Ordinance; that he believe people believed it would be a Commercial RPC ordinance; that the Ordinance has not been proven to be successful, partly due to the requirements found in it; that he has a concern that there are many areas in the County that have public utilities and infrastructure available that may not be in one of the discussed designations; that a project of this size, would create infrastructure concerns; that they are only four growth areas acknowledged; that the Coastal Area does not exist in Western Sussex County so you are down to three; that if you look at the Future Land Use Map, you will see that you are limited further to those options; that if someone had a large scale project in Western Sussex County, you would want this available to them to allow for better planning and use; that the affordable housing is a difficult issue; that he supports that the amendment that was in the Planning Commission's recommendation; that on lines 204-206, the basis eligibility requirements, at least 20% of the land has to be used for a non-residential use; that he does not believe that it is optional; that he has a concern of the minimum of 20%; that if someone were to have the bare minimum of 200 acres, that would mean that 40 acres of it would need to have a non-residential use; that as noted in the September 25, 2023 memo from Ring Lardner, a rule of thumb would be that you can get 10,000 square feet of non-residential use on 1 acre of land; that on a 200-acre parcel would be required to provide 40 acres of non-residential use that would equate to approximately 400,000 square feet of non-residential use; that he believes the 10% for the maximum for the civic area should be deleted; that he believes that the 20% minimum amount of non-residential use should be modified or removed; that this is a Change of Zone that Council has the decision to adopt or deny; that with a Change of Zone, there are no conditions that are allowed; that this is a Change of Zone that the Council will have a hand in how that rezoning occurs and the conditions for it; that you get to craft this to how you want the vision to be moving

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forward.

Mr. Robertson stated that all of the state agency comments were taken seriously; that he and Mr. Whitehouse attended a PLUS meeting; that comments were received back; that a lot of the comments apply if you were dealing with a straight subdivision; that there is more discretion on a Conditional Use that allows conditions; that this application would have the most discretion that County has ever had on a development; that the expectation is that there is engagement with staff, PLUS, Commission and then the Council.

Ms. Judy Rose Siebert spoke about the Proposed Ordinance; that she is in favor of these Master Plan Zones; that she has some concerns; that these will prevail over Chapter 115 and Chapter 99; that if changes are made as discussed during the September 21 meeting and they are incorporated in 115, they won't apply to this Master Plan; that she requested that the Ordinance be amended so that superior design and buffers be addressed in this Master Plan Zone before it goes forward; that she would like there to be an addition of some percentage of forest retention particularly mature forest; that she would like to see there be a percentage of native plant species be added to it; that many plants are being removed; that she believes that the minimum of 10% open space is way too small; that she requested that a different diagram be presented that shows what 10% open space looks like; that the diagram shown was 25% or 20% open space that provides a different view of what it would be like; that this should only be allowed in Level 1 and 2 and not in Level 4 because of the impact on the roads; that the stormwater management ponds shown on the diagram seem way too small; that she requested that down lighting be added to this Ordinance and throughout the MPZ.

The Public Hearing was closed.

**M 503 23
Defer
Action/
Ord. No. 23-05**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE" and to allow for public comments to be submitted in writing only for the next ten business days (October 31, 2023) until 4:30 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**

Public Hearing/

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I, SECTION 115-4

**Ord. No.
23-06**

“DEFINITIONS” OF THE CODE OF SUSSEX COUNTY REGARDING “YARD, FRONT” AND “YARD, REAR” OF THROUGH LOTS, AND CHAPTER 115, SECTION 115-183 “SIDE AND REAR YARDS”.

The Planning & Zoning Commission held a Public Hearing on the application on September 14, 2023. At the meeting of September 28, 2023, the Planning & Zoning Commission recommended adoption of the Ordinance for the reasons outlined and subject to recommended revisions as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

Mr. Whitehouse shared an example of a standard lot within in a subdivision that fronts onto an internal subdivision street; that when you have an existing parcel that is located between two perpendicular roads, the Code states that the parcel shall have two front yard setbacks; that what staff had noticed was that residents were building a dwelling on the parcel, but subsequently discover they cannot have a pool or fencing; that staff sees a lot of variance applications being submitted for the Board of Adjustment; that most of these applications are approved; that staff wanted to amend the Code to allow some relief, but without removing Through Lot protection entirely; that the Ordinance defines what a rear yard is on a lot that is a Through Lot; that the Ordinance creates a mechanism that if a property owner wants a pool or an accessory structure, it would be permitted; that is must be fifteen feet away from the street line in all cases.

There were no public comments.

The Public Hearing and public record were closed.

**M 504 23
Adopt
Ordinance
No. 2956/
Ord No.
23-06**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2956 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I, SECTION 115-4 “DEFINITIONS” OF THE CODE OF SUSSEX COUNTY REGARDING “YARD, FRONT” AND “YARD, REAR” OF THROUGH LOTS, AND CHAPTER 115, SECTION 115-183 “SIDE AND REAR YARDS” for the reasons given by the Planning and Zoning Commission as follows and as amended by Planning & Zoning:

1. This Ordinance will update the Zoning Code to reduce the need for variances where a lot has a primary frontage on one street but is also adjacent to a street or road along its rear boundary. The way the Code is currently written, even though it can be clear how a lot is oriented and what are considered its “front” and “rear”, the fact that it actually has frontage on two streets technically means that it must have two front yards and therefore two front yard setback calculations. This adversely impacts many lots, making it difficult to construct improvements upon them without a variance from the Board of Adjustment. Historically, these variances are routinely granted by the Board of Adjustment. For this reason, this Code update is appropriate to eliminate unnecessary variances.

**M 504 23
Adopt
Ordinance
No. 2956
(continued)**

2. **When originally introduced, the ordinance stated that the commonly accepted rear yard of a through lot was treated as a rear yard for setback purposes under the Zoning Code. A revised ordinance was subsequently introduced to limit the application of the rear yard treatment for certain types of structures and in “small lot” situations governed by Section 115-115-183(d). Upon further review, those situations are very limited throughout the County and undermine the overall applicability and usefulness of the ordinance as originally introduced. For that reason, it is recommended that Section 2, Lines 49-61 be deleted, so that Section 115-183E “Side and Rear Yards” now states as follows: “E. On all Through Lots, the yard opposite from the street serving as the street address of the lot shall function as the rear yard. Except for fences, walls or other similar means of enclosure not more than 7 feet in height, no buildings or structures shall be located within a distance of 15 feet from the street line of the rear yard of a through lot”**

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**

**Public
Hearing/
CZ2015**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.44 ACRES, MORE OR LESS” (property lying on the south side of Turquoise Lane, and the east side of Healthy Way; approximately 900 feet southeast from the intersection of John J. Williams Hwy. [Route 24] and Lexus Lane) (911 Address: N/A) (Tax Map Parcel: 334-12.00-57.11) filed on behalf of G&M Route 24, LLC – A Delaware Limited Liability Company and/or Its Assigns.

The Planning & Zoning Commission held a Public Hearing on the application on September 14, 2023. At the meeting of September 28, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Ms. Mackenzie Peet, Esq., with Saul Ewing, LLP, spoke on behalf of the Applicant, G&M Route 24, LLC; that also present were Mr. Michael Glick, representative of the Developer, Mr. Bruce Leshme, General Counsel for Beebe Medical, Mr. Chad Warren, Professional Engineer with Davis, Bowen & Friedel, Inc., and Ms. Lauren Townsend, Landscape

**Public
Hearing/
CZ2015
(continued)**

Designer for the Developer. Ms. Peet stated that Beebe Medical Center, Inc. is the record owner for the property; that the Applicant submitted the application on June 8, 2023, accompanied by a request to expedite; that the Application intended to deliver much-needed medical and office space to accommodate an ambulatory surgical center; that to allow this intended use, the Applicant seeks to rezone the 12.44-acre parcel from AR-1 (Agricultural Residential) to I-1 (Institutional); that Exhibit E contains the concept plan for the proposed development; that the plan reflects the proposed development of two approximately 60,000 sq. ft. medical and professional office buildings to be laid out as a medical office complex; that the plan notes the availability of public water and sewer; that Exhibit F is a color rendering; that the conceptual plans reflect the two proposed office buildings, with ample and Code compliant parking, contemplated plantings and landscape buffer proposed to the adjacent residential uses; that the intention is to develop the project in two phases; that the first phase is to include the development of the first building, which will accommodate space for the anticipated Lewes Surgery Center; that thereafter, the second phase will develop a similar professional medical office; that ambulatory surgery centers (ASC's), offer more cost-effective healthcare solutions than traditional hospital systems; that this results in reduced medical expenses for patients, shorter wait times, and increased accessibility for patients in need of specialized medical procedures; that Lewes Surgery Center (LSC) provided a letter of support, as did Beebe Medical Center, both of which in part emphasized Lewes Surgery Center's need for more space, because of its average utilization of 93% to 99%; that the request is consistent with the Comprehensive Plan being in the Commercial Area and Designated Growth Area; that the use will be consistent with the purpose of the I-1 District and other Institutional and Commercial uses in the immediate area of this site; that there was four letters of support submitted; that two are from property owners in a nearby residential community.

The Council found that Mr. Bruce Leshme, General Counsel & Chief Legal Officer for Beebe Healthcare, spoke on behalf of the Application. Mr. Leshme stated that he had been with Beebe Healthcare for 10 years, and currently resides in Lewes; that the site is the remaining parcel from land purchased in 1998 and 2000; that at the time the parcel consists of approximately 34 acres; that the proposed project would be the third and final phase of the site's development; that the land currently hosts their Bookhammer Outpatient Center, which is the one-story building, facing Rt. 24; that this is the location of the Beebe Outpatient Surgery Center, laboratory services, imaging services, and recently opened, Breast Health Center; that in addition, the land also hosts the Rehoboth Medical Arts Building, which sits between the Bookhammer building and Healthy Way; that the Tunnell Cancer Center occupies the entire first floor; that the second and third floors are occupied by various physician offices, and medical offices; that some of the office are for Beebe practices and others are for independent practices; that Beebe purchased a third parcel consisting of approximately 20 acres along Warrington Road in 2007; that on this parcel, Beebe's specialty surgical hospital that opened in 2022; that the three parcels totaling 54 acres comprises

**Public
Hearing/
CZ2015
(continued)**

Beebe's Rehoboth Health Campus.

There were no public comments.

The Public Hearing and public record were closed.

**M 505 23
Adopt
Ordinance
No. 2957/
CZ2015**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2957 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.44 ACRES, MORE OR LESS" for the reasons given by the Planning and Zoning Commission as follows:

- 1. This is a change of zone for the I-1 Zoning District. The I-1 Zoning District has permitted uses that focus on healthcare and institutional uses.**
- 2. The rezoning is consistent with the stated purpose of the I-1 District, which is to allow public, quasi-public, and institutional uses to occur on properties that are compatible with surrounding districts and uses. There are properties nearby that are zoned AR-1, GR, CR-1, and other I-1 zoned land. This property is also located along the Route 24 corridor in the vicinity of Route One. The purpose of the I-1 zoning and the permitted uses within the I-1 district are consistent with this area.**
- 3. There was testimony in the record that there is currently a need for additional healthcare facilities in this area of Sussex County, and particularly a surgery center of the type planned for this location.**
- 4. The rezoning will not adversely affect neighboring properties, public facilities, traffic, or area roadways. In fact, it is the continuation of the development of the existing Beebe Healthcare campus where this property is located. This is the third and final phase of this healthcare campus. The expansion of medical services at this location in an area where residential growth is occurring will reduce the need for the public to travel further afield for medical care on the County's road network.**
- 5. The site is located within the Beebe Healthcare campus with multiple points of access including Route 24 and Warrington Road as well as the rear of Rehoboth Mall. This location will provide convenient access to the public uses permitted under the I-1 zone.**
- 6. The property is served by central water and sewer.**
- 7. The rezoning to I-1 promotes the health, safety, and general welfare of Sussex County and its present and future residents by providing a convenient location for needed medical office space.**
- 8. Any further development of this site will require site plan review and approval of the Sussex County Planning and Zoning Commission.**

**M 505 23
Adopt
Ordinance
No. 2957/
CZ2015**

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 506 23
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to adjourn at
4:23 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**

Respectfully submitted,

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

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