

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 10, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 10, 2024, at 9:00 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	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 603 24
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**

Public interviews were held for Board of Assessment Review candidates.

Minutes

The minutes of the November 19, 2024, meeting were approved by consent.

Correspondence

Mr. Moore reported that letters were received Read Aloud Delaware, Selbyville Historical Society, Down Syndrome Association of Delaware, Shoes That Fit, Southern Delaware Therapeutic Riding and Delaware Foundation of Reaching Citizens thanking Council for their support.

**Public
Comments**

Ms. Monique Jones spoke about support that her sorority can offer the Council.

**M 604 24
Approve
Consent
Agenda**

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

**Use of Existing Wastewater Infrastructure Agreement – IUA 1190
Millville by the Sea (West Villages A-1 & C-1), Millville Area**

**Use of Existing Wastewater Infrastructure Agreement – IUA 1252
Woods at Angola Beach, Angola Neck Area**

M 604 24
Approve
Consent
Agenda
(continued)

Use of Existing Wastewater Infrastructure Agreement
Delaware Electric Cooperative, South Greenwood Area

Motion Adopted: 5 Yeas

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

Recognition

Mr. Lawson recognized staff and contractors who received the Associated Builders & Contractors Award.

**Appoint-
ment**

Mr. Lawson reported that a reappointment was needed for Mr. Scott Edmonston for the Board of Adjustments and Appeals.

M 605 24
Approve
Board of
Adjustments
& Appeal
Board
**Appoint-
ment**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that be it moved that Sussex County reappoints Mr. Scott Edmonston to the Sussex County Board of Adjustments & Appeals effective immediately for a term of four years or until June 2028.

Motion Adopted: 4 Yeas, 1 Absent

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

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: The Highlands of Peppers Creek – Phase 1 (Construction Record) effective November 14th; Welches Pond (FKA Fieldstone – The Grove at Love Creek) Phase - 5 (Construction Record) effective November 19th; Millville by the Sea – Seagull Village (FKA Millville by the Sea Village 2) – Phase 3 effective November 21st; Long Neck Community Bank – effective November 25th; and Newdale Acres – Phase 1 (Construction Record) effective November 25th.

2. Glenn Barrentine, Sr.

It is with great sadness that we inform you that County Pensioner, Glenn Barrentine, Sr., passed away on Saturday, November 16, 2024. Mr. Barrentine began his career with Sussex County in August 1975 where he worked until January 1991 for a total of 16 years of service.

Administrator's Report (continued)

His last position with the County was Delivery Service Driver with the Department of Libraries. We would like to extend our condolences to the Barrentine family.

3. Patricia "Pat" Brown

It is with great sadness that we inform you that County Pensioner, Patricia "Pat" Brown passed away on Sunday, November 17, 2024. Ms. Brown began her career with Sussex County in July 1993 where she worked until November 2014 for a total of 21 years of service. Her last position with the County was Assistant Library Director at the Greenwood Library. We would like to extend our condolences to the Brown family.

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

Piney Neck Recommendation

Mike Harmer, County Engineer presented a recommendation for award and approval of Phase I service costs for Piney Neck Regional wastewater facility for Council's consideration.

**M 606 24
Approve
Piney Neck
Phase 1
Service
Costs**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved upon the recommendation of the Engineering recommendation committee that Sussex County Council approves the selection of Garney Companies, Inc. and GHD, Inc. to provide engineering and construction services for project S20-31, Piney Neck Regional Wastewater Facility Diversion Transmission System and to approve a design build agreement along with a phase 1 proposal based on hourly pricing not to exceed \$2,000,000.00.

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/ Estuary Phase 6

John Ashman, Director of Utility Planning & Review presented a permission to prepare and post notices for Estuary Phase 6 (Showell Farm). Mr. Ashman reported that the engineering department received a request from GMB, LLC on behalf of their client, CB Land, LLC owners/developers of parcels 134-19.00-112.00, 112.01 & 112.04, adjacent to the existing Miller Creek Area of the Sussex County Unified Sanitary Sewer District. Parcels are located along Camp Barnes Road, the project is proposed for 45 single family lots. The project will be responsible for system connection charges per EDU based on current rates.

M 607 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved by**
Approve **Sussex County Council that the Sussex County Engineering Department is**
Permission **authorized to prepare and post notices for the Estuary Phase 6 expansion of**
to Prepare & **the Sussex County Unified Sanitary Sewer District to include parcels 134-**
Post Notices/ **19.00-112.00, 112.01 & 112.04 as presented.**
Estuary

Phase 6 **Motion Adopted: 5 Yeas**

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

Permission **John Ashman, Director of Utility Planning & Review presented a permission**
to Prepare & **to prepare and post notices for Delmarva Land Company. The Engineering**
Post Notices/ **Department received a request from Delmarva Land Company**
Delmarva **owners/developers of parcels 433-11.00-17.00 & 17.01, adjacent to the**
Land **existing Dagsboro/Frankford area of the Sussex County Unified Sanitary**
Company **Sewer District. Parcels are located along Delaware Avenue and Dupont**
 Boulevard, and the request is to allow them to extend central sewer service
 to the existing facilities on the parcel. The project will be responsible for
 system connection charges per EDU based on current rates.

M 608 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved by**
Approve **Sussex County Council that the Sussex County Engineering Department is**
Permission **authorized to prepare and post notices for the Delmarva Land expansion of**
to Prepare & **the Sussex County Unified Sanitary Sewer District to include parcels 433-**
Post Notices/ **11.00-17.00 & 17.01 as presented.**
Delmarva

Land **Motion Adopted: 5 Yeas**

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

Permission **John Ashman, Director of Utility Planning & Design Review presented a**
to Prepare & **permission to prepare and post notices for Bay Oak Community. This**
Post Notices/ **includes all parcels within the Bay Oak Subdivision except parcels 234-12.00-**
Bay Oak **210.00, 211.00, 212.00 & 213.00 which have been previously annexed and**
Community **served with a service connection. The Engineering Department has received**
 a request from the Board of Directors of the Bay Oaks Homeowners
 Association requesting to have their development put on the County's list for
 central sewer service.

M 609 24 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved by**
Approve **Sussex County Council that the Sussex County Engineering Department is**
Permission **authorized to prepare and post notices for the Bay Oak expansion of the**
to Prepare & **Sussex County Unified Sanitary Sewer District no already in the sewer**
Post Notices/ **district as presented.**

Bay Oak Community **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 CO **Hans Medlarz, Project Engineer presented change order no. 1 for Pintail Pointe for Council’s consideration.**

M 610 24 Approve CO No. 1/Pintail Pointe **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 1 for contract S21-16, Pintail Pointe, be approved, increasing the contract amount by \$81,010.00 and increasing the contract time by 126 calendar days, 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**

Artesian WW Agreement **Hans Medlarz, Project Engineer presented a request for approval for a consolidated wastewater services agreement with Artesian for Council’s consideration.**

M 611 24 Approve Artesian WW Agreement **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved upon the recommendation of the Sussex County Engineering and Finance Departments, that County Council approve the Artesian consolidated bulk wastewater agreement, 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**

SC WRF Change Orders **Hans Medlarz, Project Engineer presented change order no. 35 and change orders nos. 36.1 and 36.2 for South Coastal WRF treatment process upgrade and Rehoboth Beach WTP capital improvement project for Council’s consideration.**

M 612 24 Approve CO No. 36.1 & 36.2 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that balancing change order nos. 36.1 and 36.2 for contract C19-11, South Coastal RWF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program – general construction, be approved, increasing the contract by \$1,048,615.73 and \$190,933.32 respectively.**

Motion Adopted: 5 Yeas

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

M 613 24 A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved
Approve CO based upon the recommendation of the Sussex County Engineering
IB-001 Department, that change order no. IB-001 for the Inland Bays phase 2
project, be approved in the amount of \$3,471,541.57, including previously
approved change order no. 35.

Motion Adopted: 5 Yeas

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

M 614 24 A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved
Approve based upon the recommendation of the Sussex County Engineering
Substantial Department, that contract C19-11, South Coastal RWF treatment process
Completion upgrade no. 3 & Rehoboth Beach WTP capital improvement program –
general construction, be granted substantial completion as of December 31,
2024.

Motion Adopted: 5 Yeas

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

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

M 615 24 A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,100
Southern (\$1,100 from Mrs. Green's Councilmanic Grant Account) to Southern
Delaware Delaware Therapeutic and Recreational Horseback Riding Inc. for their
Equine project for Veterans.

Motion Adopted: 5 Yeas

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

M 616 24 A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$4,000
Tether (\$1,500 from Countywide Youth Grant Account, \$500 from Mr. Hudson's
Foundation Councilmanic Grant Account, \$500 from Mr. Vincent's Councilmanic Grant

Account and \$1,500 from Mr. Rieley's Councilmanic Grant Account) to Tether Foundation for their camp abilities Delaware project.

Motion Adopted: 5 Yeas

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

M 617 24 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$5,000
Sussex (\$5,000 from Mr. Schaeffer's Councilmanic Grant Account) to Sussex
County County Rotary Can-Do Playground, Inc. for their can-do playground at
Rotary Can- Hudson Park.
Do

Playground, Motion Adopted: 5 Yeas
Inc.

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

M 618 24 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$5,000
Children's (\$2,000 from Mr. Schaeffer's Councilmanic Grant Account, \$1,000 from Mr.
Beach House Hudson's Councilmanic Grant Account, \$1,000 from Mrs. Green's
Councilmanic Grant Account and \$1,000 from Mr. Rieley's Councilmanic
Grant Account) to Children's Beach House, Inc. for out of school time
support.

Motion Adopted: 5 Yeas

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

M 619 24 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$5,000
Greater (\$2,000 from Mr. Schaeffer's Councilmanic Grant Account, \$1,000 from Mr.
Lewes Hudson's Councilmanic Grant Account, \$500 from Mr. Vincent's
Foundation Councilmanic Grant Account, \$500 from Mrs. Green's Councilmanic Grant
Account and \$1,000 from Mr. Rieley's Councilmanic Grant Account) to
Greater Lewes Foundation for their 4th annual rally for our first responder's
event.

Motion Adopted: 5 Yeas

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

M 620 24 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$5,000**
CAMP **(\$5,000 from Mr. Schaeffer’s Councilmanic Grant Account) to CAMP**
Rehoboth **Rehoboth for their health and wellness in the community effort.**

Motion Adopted: 5 Yeas

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

M 621 24 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$4,000**
Sussex **(\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account, \$1,000 from Mr.**
County **Rieley’s Councilmanic Grant Account, \$1,000 from Mrs. Green’s**
Land **Councilmanic Grant Account, \$500 from Mr. Vincent’s Councilmanic Grant**
Foundation, **Account and \$500 from Mr. Hudson’s Councilmanic Grant Account) to**
Inc. **Sussex County Land Foundation, Inc. for their dogfish dash sponsorship.**

Motion Adopted: 5 Yeas

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

M 622 24 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$2,000**
Town of **(\$2,000 from Mr. Vincent’s Councilmanic Grant Account) to the Town of**
Laurel **Laurel for their 4th of July fireworks display.**

Motion Adopted: 5 Yeas

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

M 623 24 **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$2,000**
Slaughter **(\$2,000 from Mrs. Green’s Councilmanic Grant Account) to Slaughter Neck**
Neck **Community Action Organization for their senior center.**
Community

Action
Organiza-
tion

Motion Adopted: 5 Yeas

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

M 624 24 **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,100**
New **(\$1,100 from Mrs. Green’s Councilmanic Grant Account) to New Coverdale**
Coverdale **Outreach Mission, Inc. for their thanksgiving project.**
Outreach

Mission, Inc.

Motion Adopted: 5 Yeas

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

M 625 24 **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$500**
Kim and **(\$500 from Mr. Vincent’s Councilmanic Grant Account) to Kim and Evans**
Evans **Foundation, Inc. for their paint the town red celebration and dance event.**
Foundation

Motion Adopted: 5 Yeas

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

M 626 24 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$4,000**
Community **(\$4,000 from Mr. Schaeffer’s Councilmanic Grant Account) to Community**
Resource **Resource Center, Inc. for their safe harbor day shelter.**
Center

Motion Adopted: 5 Yeas

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

M 627 24 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$750.00**
Eastern **(\$750.00 from Mr. Vincent’s Councilmanic Grant Account) to Eastern**
AFRAM **AFRAM Festival and Dr. King celebration.**
festival

Motion Adopted: 5 Yeas

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

M 628 24 **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$2,000**
Seaford **(\$2,000 from Mr. Vincent’s Councilmanic Grant Account) to Seaford**
Historical **Historical Society for their milestone & grinding stones signage.**
Society

Motion Adopted: 5 Yeas

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

Public **A Public Hearing was held on a Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$4,631,363 OF**
GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN

**Briarwood
Estates**

CONNECTION WITH BRIARWOOD ESTATES PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Paul Mauser, Assistant County Engineer provided a brief background of the project.

There were no public comments.

The Public Hearing and public record were closed.

**M 629 24
Adopt
Ordinance
No. 3059/
Briarwood
Estates**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3059 entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$4,631,363 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN CONNECTION WITH BRIARWOOD ESTATES PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Winding
Creek
Village**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,413,059 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE WINDING CREEK VILLAGE WATER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Paul Mauser, Assistant County Engineer provided a brief background of the project.

There were no public comments.

The Public Hearing and public record were closed.

**M 630 24
Adopt
Ordinance
No. 3060/
Winding
Creek
Village**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 3060 entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,413,059 OF GENERAL OBLIGATION BOND OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE WINDING CREEK VILLAGE WATER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Proposed
Ordinance/
Lodging Tax**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 103, ARTICLE VI (“LODGING TAX”) OF THE CODE OF SUSSEX COUNTY TO INCLUDE THE IMPOSITION OF A LODGING TAX OF THREE PERCENT (3%) OF THE RENT FOR SHORT-TERM RENTALS IN THE UNINCORPORATED AREAS OF SUSSEX COUNTY IN ACCORDANCE WITH 9 DEL. C. § 8112(c) AND 30 DEL. C. § 6201”.

Gina Jennings, Finance Director provided background information of the action taken by the State.

Mr. Moore read a letter into the record that was received from the Sussex County Association of Realtors.

Public comments were heard.

Mr. Tim Abbott and Mrs. Myrna Abbott spoke about the Proposed Ordinance. Mrs. Abbott stated that they have a seasonal rental in Fenwick Island, DE. Most of their rentals are done through them and they are only charge for the rent and the cleaning. In the past, they have benefited from having a rental in Delaware rather than Maryland. They have tried to keep their rates low so that middle class for their vacation. They have many tenants that return year to year. The people that use these rentals do not put an added burden on our schools and communities as those who live in the development being created.

Mr. Joe Sterner spoke about the Proposed Ordinance. He is a business owner and is subject to the County’s three percent rental tax. He requested that the Council vote yes for the lodging tax on short term rentals.

Mr. Carl Frampton spoke about the Proposed Ordinance. He is a full-time realtor and manages his family rentals. He believes that adding another three percent will affect the people that will come to the area. He believes that this will affect other small local businesses.

Mr. John Yost spoke about the Proposed Ordinance. He has a three-bedroom house on the bay and many people come back each year. Within the last year to 18-months, he has seen a decrease in rentals due to the economy. He would like to see Milton continue to grow and requested that the Council vote no.

Ms. Rodriguez spoke about the Proposed Ordinance via telephone. She has a rental that she rents in the summertime. She asked that the impact of the Proposed Ordinance be considered.

Mrs. Jennings showed a slide outlining what other municipalities are charging, the state's rate and the total that will be charged.

The Public Hearing and public record were closed.

M 631 24 A Motion was made by Mr. Schaeffer to defer action on a Proposed
Defer Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 103,
Action/ ARTICLE VI ("LODGING TAX") OF THE CODE OF SUSSEX COUNTY
Lodging Tax TO INCLUDE THE IMPOSITION OF A LODGING TAX OF THREE
Ordinance/ PERCENT (3%) OF THE RENT FOR SHORT-TERM RENTALS IN THE
NO UNINCORPORATED AREAS OF SUSSEX COUNTY IN ACCORDANCE
SECOND WITH 9 DEL. C. § 8112(c) AND 30 DEL. C. § 6201".

The Motion did not move forward due to no second.

The gavel was given to Mr. Rieley.

M 632 24 A Motion was made by Mr. Vincent, seconded by Mr. Hudson to approve a
Approve Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER
Lodging Tax 103, ARTICLE VI ("LODGING TAX") OF THE CODE OF SUSSEX
Ordinance/ COUNTY TO INCLUDE THE IMPOSITION OF A LODGING TAX OF
DENIED THREE PERCENT (3%) OF THE RENT FOR SHORT-TERM RENTALS
IN THE UNINCORPORATED AREAS OF SUSSEX COUNTY IN
ACCORDANCE WITH 9 DEL. C. § 8112(c) AND 30 DEL. C. § 6201".

Motion DENIED: 3 Nays, 2 Yeas

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

The gavel was given back to Mr. Vincent.

Public A Public Hearing was held on a Proposed Ordinance entitled "AN
Hearing/ ORDINANCE TO AMEND CHAPTER 99, ARTICLE II, SECTIONS 99-9,
Ordinance "PUBLIC HEARING ON PRELIMINARY PLAT APPROVAL OR
No. 24-05/ DISAPPROVAL" OF THE CODE OF SUSSEX COUNTY REGARDING
Subdivision DESIGN CRITERIA FOR ALL SUBDIVISIONS".
Criteria

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the Ordinance at its meeting of November 13, 2024. At the meeting of December 4, 2024, the Planning & Zoning Commission recommended the adoption of the Ordinance, for the six reasons as outlined.

Vince Robertson, Assistant County Attorney spoke on the Ordinance; that the word "considered" was something that was looked at; that it was not clear

**Public
Hearing/
Ordinance
No. 24-05/
Subdivision
Criteria
(continued)**

of the meaning and no guidance; that there are a lot of word smithing; that the first change is located in the first paragraph; that it was changed to read “an applicant for approval of a preliminary plat shall provide the following criteria are satisfied and the manner in which each one is satisfied through the design of the preliminary plat”; that several of the changes are editorial; that in number two, it was referenced to be sure that compliance was done with the Resource Buffer Ordinance requirements; that in number three, text was added for clarification; that Planning & Zoning recommended deletion of the fifth item and sixth item; that they were duplication and there is other language relating to them in the Code; that eleven discussed groundwater levels and was made specific to groundwater; that with the other language, it will have to be shown how the runoff is being managed; that number 14 was changed to include that the local school district is notified of the proposed subdivision and where it will be located; that number 16 was updated to include language from the MOU that the County has with DelDOT.

Public comments were heard.

The Council found that Mr. Jon Horner, Esq. on behalf of the Homebuilders Association of Delaware stated that they are in support; that a goal of any zoning Ordinance should be to set clear guidelines so that compliance can be easily obtained; that if it is not clear, it has a risk of being overturned in court; that he questioned item no. 3 and what it meant; that he questioned how attorneys and engineers would design a site plan; that there are DNREC rules and questioned why they were set rules for the County to review when those are in place; that there are set standard in pollution of surface and groundwater; that it should be a primary goal to set this Ordinance to be able to be complied with; that he believes this is a step in the right direction to add some clarity; that these factors need to be more objective; that there needs to be a degree of satisfaction.

The Council found that Mr. Rich Borasso spoke on behalf of the Sussex Preservation Coalition; that he discussed Chapter 99 and the purpose; that there are references to the Comprehensive Plan which he explained; that Section 99-9C is too vague to give clear direction; that the 17 items speak to the what; that the entire Chapter 99 speaks to the how; that the proposed amendments fall short of addressing vague and nonspecific language in the subchapters of 99; that he questioned the rush to pass something that he believes is insufficient in addressing the real issue; that many of the proposed changes were word flipping; that he provided a handout of their recommendations; that a list of definitions was given to support the needed changes in the appropriate subchapters.

The Council found that Mr. Steve Sinclair spoke about the Proposed Ordinance; that some word changes have been provided by the Sussex Preservation Coalition; that he presented recommended language which was presented during the Planning & Zoning Commission public hearing; that

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Subdivision
Criteria
(continued)**

they believe that demonstrate is a better word to use rather than satisfied; that he believes that better landscaping needs to be done in developments.

The Council found that Mr. Rich Borasso stated that he believes that it is time with the growth that has taken place in Sussex County to take a look at how schools, institutions and public buildings are considered as it relates to the impact that a subdivision will make; that the impact on the schools should be considered; that he discussed the current MOU and the Henlopen Transportation agreement; that they recommend to defer action.

The Council found that Ms. Jill Hicks spoke about the Proposed Ordinance; that she believes that this should be deferred; that she believes that the public should have access and be able to comment.

The Council found that Mr. Jeff Semmons spoke about the Proposed Ordinance; that he has been following the items discussed in the Council's workshop; that this affects every residential subdivision greater than 5 lots and commercial development; that this will amend will shall be requirement on every plat; that he discussed items that this will affect; that he questioned the rush; that some of the proposed changes are too vague; that he requested that the pause button be hit and to allow more time.

The Council found that Michelle Koenig, Director of Conservation and Watershed from the Inland Bays spoke about the Proposed Ordinance; that they applaud for the work on the Ordinances; that she believes that this is not clearing things up; that the timeline is not working; that this is too important to rush; that she has three recommendations to provide; that she requested that sea level rise and flood risks be taken into consideration.

The Public Hearing and public record were closed.

**M 633 24
Approve PZ
Amend-
ments**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve the amendments that were made by Planning & Zoning Commission as follows:

- a. At Line 47 and 48, replace the word "satisfied" with "incorporated and addressed in the plat" in the first instance, and "incorporated and addressed" in the second instance. There were concerns stated that some of the items in Section 99-9C are too general to be clearly "satisfied", so a requirement showing where and how they are addressed in a plat more clearly achieves the intended purpose of this ordinance amendment.**
- b. At Line 60, insert "and vegetation and soil removal" after the words "forest fragmentation". This adds the need to address the minimization of vegetation and soil removal in an appropriate location with other similar criteria. In this same Item at Line 61, replace the term "included" with "shall be provided with" regarding the forest assessment, since the forest assessment is a separate document from the preliminary plat.**

M 633 24
Approve PZ
Amend-
ments
(continued)

- c. At Lines 68 through 70, delete this Item #5 in its entirety since it is incorporated into #3 with the changes referenced above in Item B of this motion. Renumber the rest of the items in Section 99-9C accordingly.
- d. At Lines 72 through 74, delete this Item #6 in its entirety since the screening of objectionable features is already addressed through the County's recent update to the perimeter buffer requirements. Renumber the rest of the items in Section 99-9C accordingly.
- e. At Line 93, insert the word "anticipated" so that it states that the anticipated methods of dealing with groundwater levels and recharge are provided. This eliminates the requirement that these measures must be fully designed prior to the approval of a subdivision, which is not feasible in every instance.
- f. At Lines 93 and 94, again regarding groundwater and stormwater, delete the words "there will not be increased rates of runoff or increased risk of flooding onto adjoining properties" and replace it with "adjacent properties will not be adversely affected by flooding or runoff". This more accurately reflects the legal requirements for handling stormwater.
- g. At Line 104, add the phrase "or tree farming" so that tree farming is clearly included in the reference to active farmland.
- h. At Line 109, replace the phrase "consulted with" with the word "notified".
- i. At Lines 125 through 126, delete this Item 18 in its entirety regarding the effect of the subdivision on area waterways since this is already addressed through the recently enacted Resource and Resource Buffer requirements. Renumber the rest of the items in Section 99-9C accordingly.
- j. At Line 129, insert the phrase "where appropriate" after the phrase "with interconnectivity" so that interconnectivity is always considered as part of a subdivision's design and possible approval.

Motion Adopted: 5 Yeas

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

M 634 24
Amend Item
No. 10

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, for Item No. 10 at line 88-89 to delete "That erosion and sedimentation is minimized, and the methods of minimization are adequately identified" and replace that with "That the anticipated method of minimization of erosion and sedimentation are adequately identified".

Motion Adopted: 4 Yeas, 1 Nay

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

Mr. Vincent, Yea

M 635 24
Adopt
Ordinance
No. 3061/
Subdivision
Design

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3061 entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE II, SECTIONS 99-9, “PUBLIC HEARING ON PRELIMINARY PLAT APPROVAL OR DISAPPROVAL” OF THE CODE OF SUSSEX COUNTY REGARDING DESIGN CRITERIA FOR ALL SUBDIVISIONS” as amended by this Council.

Motion Adopted: 5 Yeas

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

Public
Hearing/
Ord. No. 24-
06/
Open Space

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV, SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND CHAPTER 115, ARTICLES I & XXVIII, SECTION 115-4 “DEFINITIONS AND WORD USAGE” AND §115-220 “PRELIMINARY SITE PLAN REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING OPEN SPACE”.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the Ordinance at its meeting of November 13, 2024. At the meeting of December 4, 2024, the Planning & Zoning Commission recommended the adoption of the Ordinance, for the five reasons as outlined.

Mr. Whitehouse reported that it is a 8-page ordinance, open space is actually defined in two places, and much of the length of the current ordinance is to address that in both places; that what the ordinance seeks to do, primarily, is to change the definition of open space; that he highlighted to summarize Lines 55-83 some of the main changes; that the first section lists the uses that are included in the definition of open space; that play areas still continue to be included in the definition of open space, but playgrounds and tot lots are not included in the definition of open space, and that specifically because the difference between play areas and playgrounds and tot lots is that they're improved, they have buildings and structures which reduces their openness; that its contrary to the very goal of what open space is; that this section also seeks to do is change references, previous references or existing references to tidal and non-tidal wetlands and renames them to resources, which aligns with the resource buffer ordinances and the changes in definitions in code that have already been adopted by County Council; that it removes sidewalks from the definition and removes spray irrigation areas; that the next section lines 86 to 105 lists the uses that are not included

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Ord. No. 24-
06/
Open Space
(continued)**

in the definition of open space; that it expands the list of uses that are not included and now explicitly excluded will be clubhouses, community buildings, recreational facilities including swimming pools, game courts, tot lots, playgrounds, pavilions and other similar facilities such as patios and impervious recreational community facilities that are now specifically excluded; that with the previous definition that the focus and intent is on physical man-made improvements and structures that by definition are not open; that also excluded final lines 104 to 105 in the proposed revisions are medians, boulevards, parking islands and other often narrow and unusable strips of land that are being excluded; that we've seen cases and examples where large areas of thin, narrow strips of land are included in the open space definition, and cumulatively that can be a large area of land that's not significantly usable; that there are 99 subdivisions that have been through the Planning and Zoning Commission and various states have approval of implementation and we have Brentwood and we have a states of Bridgewater and Tower Hill and North Star and that is an application that is currently pending, but it has a subdivision element that we wanted to look at due to its size; that if you look at the table, we plotted the open space in acres and then we looked at the percentage of the overall site that open space acreage reflects; then what we calculated, went into the drawings and measured the amenity area within those subdivisions and we subtracted it from the total amount; that if you look at Brentwood the total number of acres, there's over 100 acres of open space in that development representing approximately 60.1% of open space of the overall site; that the amenity came up as 2.17 acres which we subtracted, down to 98.45 acres and it reduced the overall percentage from 69% to 67.7%; that we wanted to replicate this across other subdivisions because there's a drop in open space associated with the changing the definition but, it was not mathematically significant; that another example was a development on Robinsonville Road formally known as Coal Lakes, chosen because of its size; that it has 77.90 acres of open space representing 50% of the site, we looked at the amenities and calculated all the area and amenities, including sports courts, a dog park, a trail system, amenities, clubhouse, and pool, and totaled all of it, as 3.302 acres, which would, if that was not counted in the definition of open space, that would reduce it down to 74.618 acres, which overall reduced the open space percentage from 50% down to 48.98%, which we wanted to show was not significant mathematically and it wouldn't put the development below the minimum requirement as outlined in the subdivision code; that the ordinance in Lines 220 to 221 for multifamily and townhouse developments, the ordinance adds greater precision as to how open space is to be calculated, and historically, the Council has seen site plans where the footprint of a multifamily building is shown and then for the purposes of open space, then for calculation of open space, it's as if you step out of the back door of a townhouse and then you're in open space, which is not how open space is practically experienced by those living in the dwellings; that the ordinance seeks to do is add greater precision and it removes the land area, within an area that's 40 feet from the front, 10 feet from the side and 10

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06/
Open Space
(continued)**

feet from the rear of any multifamily or townhouse, it specifies that there is a rectangular area around that.

Mr. Robertson stated that the Commission made an exception where the Proposed Ordinance includes an exception for moderately priced housing units and affordably priced rental units under Chapter 72; that they worked with the County's Housing Department to include any other affordable housing program.

Public comments were heard.

The Council found that Mr. Steve Sinclair spoke on behalf of the Proposed Ordinance; that open space is filled with all sorts of things; that in the past, open space has been primarily set aside for people to enjoy and recreation; that he believes that there is an opportunity to protect natural resources; that the Sussex Preservation Coalition believes that this is a step in the right direction; that the Coalition has provided recommendations for the Proposed Ordinance that he discussed and reviewed.

The Council found that Ms. Jill Hicks spoke about the Proposed Ordinance; that she reviewed developments in Sussex County and the open space in those developments; that she believes that contiguous needs to be better defined.

The Council found that Mr. Jon Horner, Esq. spoke on behalf of the Homebuilders Association; that they want to have a clear definition of open space; that we are in the middle of a housing crisis; that everything being proposed has the effect of reducing density; that we need to look at bulk standards and lot sizes; that his recommendation is to keep that in mind as we go forward; that these changes are impactful on small projects; that he believes that there is a place for these amenities in these communities.

The Council found that Mr. Jason Dean spoke about the Proposed Ordinance; that he did some quick calculations; that there are 15,000 acres of open space in Sussex County just in the state parks; that we have a choice to buy into this development or not.

The Council found that Ms. Michelle Koenig, Director of Conservation and Watershed from the Inland Bays spoke about the Proposed Ordinance; that they applaud the Ordinance; that they have a few recommended of changes which she discussed.

The Council found that Ms. Eul Lee spoke about the Proposed Ordinance; that she send one comment about this Ordinance; that it was about contiguous open space; that she discussed her reasons for her comments that were submitted.

The Public Hearing and public record were closed.

M 636 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley to accept the**
Approve PZ **amendments by the P&Z Commission as follows:**
Amend-
ments

- a. At Lines 50 and 51 and Lines 180 and 181 for both Chapter 99 and Chapter 115, the words “and undisturbed” should be inserted after the word “natural” so that this phrase in the definition of “Open Space” now states that it is intended to “maintain land in a predominantly undeveloped or natural and undisturbed state....”
- b. At Lines 66 and 67 and Lines 196 and 197, return the language to what currently exists regarding Resource Buffers and perimeter buffers since this was just recently updated through the Perimeter Buffer Ordinance and not reflected in the introduced Ordinance.
- c. At Lines 104 and 105 and at Lines 237 and 238 for both Chapter 99 and Chapter 115 regarding the exclusion of medians, boulevards, parking islands and similar structures, add “unless these areas are planted with trees no further than 30 feet from one another that have a minimum height of six feet above ground when planted and will obtain a minimum height of ten feet when fully grown.”
- d. Based upon testimony during the hearing that areas of land smaller than 21,780 can have an open space benefit for active or passive recreation, at Line 144 and 244, decrease the minimum open space area from 21,780 square feet to 10,000 square feet.
- e. Finally, to maximize the ability to construct affordable housing through the County’s codified programs, developments including Moderately Priced Housing Units and Affordably Priced Rental Units under Chapter 72 of the Sussex County Code should be excluded from certain open space calculations for multifamily dwellings in Chapter 115. Therefore, insert the phrase “With the exception of Moderately Priced Housing Units and Affordably Priced Rental Units under Chapter 72 herein or projects that will be truly “affordable” as part of an official HUD, DSHA, USDA or similarly recognized housing program,” at the beginning of Line 220 regarding the exclusion of the area around a multifamily dwelling from the open space calculation. Also, and for the same reason, insert “(with the exception of Moderately Priced Housing Units and Affordably Priced Rental Units under Chapter 72 herein or projects that will be truly “affordable” as part of an official HUD, DSHA, USDA or similarly recognized housing program)” at Line 240 after the phrase “residential land development”.

Motion Adopted: 5 Yeas

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

M 637 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley that the**
Ordinance shall become effective six months from the date of adoption.

**Approve
Effective
Date**

Motion Adopted: 5 Yeas
**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 638 24
Adopt
Ordinance
No. 3062/
Ord. No. 24-
06**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3062 entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV, SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND CHAPTER 115, ARTICLES I & XXVIII, SECTION 115-4 “DEFINITIONS AND WORD USAGE” AND §115-220 “PRELIMINARY SITE PLAN REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING OPEN SPACE” for the reasons given by Planning & Zoning and the amendments by this Council.

Motion Adopted: 5 Yeas
**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Intro. of
Proposed
Ordinances**

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A BOAT REPAIR FACILITY WITH OUTDOOR BOAT AND RV STORAGE, A LANDSCAPE BUSINESS, AND A CONSTRUCTION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.371 ACRES, MORE OR LESS” filed on behalf of Dick Ennis.

Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECREATIONAL VEHICLE AND TENTING AREA TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.24 ACRES, MORE OR LESS” filed on behalf of Aron and Pamela Osterlund.

The Proposed Ordinances will be advertised for a public hearing.

**CM
Comments**

There were no Council Member comments.

**M 639 24
Go Into
Executive
Session**

At 1:14 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to go into Executive Session to discuss matters relating to personnel, land acquisition and pending & potential litigation.

Motion Adopted: 5 Yeas

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

Executive Session At 1:22 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to personnel, land acquisition and pending & potential litigation. The Executive Session concluded at 1:49 p.m.

M 640 24 Reconvene At 1:53 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of Executive Session back into Regular Session.

Motion Adopted: 5 Yeas

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

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

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

**Public Hearing/
CU2457** 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 A SMALL BUSINESS TO SERVICE GAS STATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS” (property lying on the northeast side of Clendaniel Pond Road [Rt. 38] approximately 0.50 mile southeast of Greentop Road [S.C.R. 225]) (911 Address: 8913 Clendaniel Road, Lincoln) (Tax Parcel: 230-6.00-20.02) filed on behalf of JBM Petroleum Service, LLC.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 13, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons stated and subject to the 10 recommended conditions as outlined.

Mr. Dean Vincent, President of JBM Petroleum Service, LLC, spoke on behalf of himself that they have been in business for 12 years and have about 10 employees that build and service gas stations and fuel tanks, fuel pumps, and generators; that at their current property they store parts for the employees to come pick up before heading out for the day; that there is no fuel stored on the property and their employees take the vehicles home so

**Public
Hearing/
CU2457
(continued)**

there isn't any vehicle storage being done; that their hours of operation are 7:30 a.m. - 4:00 p.m., but have 24hr service calls also; that they would like to have sign; that they live on the property and have the storage in the pole building next door to their home.

There were no public comments.

The Public Hearing and public record were closed.

**M 641 24
Adopt
Ordinance
No. 3063/
CU2457**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to Adopt Ordinance No. 3063 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL BUSINESS TO SERVICE GAS STATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning & Zoning Commission as follows:

1. The property is located on a parcel of land that is also occupied by the owner of the Applicant company. The Applicant proposes a small business that constructs and services other businesses that use petroleum products. Most of this activity occurs off-site at the location where the construction or servicing happens. This will basically be the office for this business, with some limited on-site, inside storage.
2. The site is located within the Low Density Area according to the Sussex County Comprehensive Plan. This low-impact type of use is appropriate within this Area.
3. The property is zoned AR-1 Agricultural Residential. The use of the property for this limited, low-intensity business is generally consistent with the underlying agricultural zoning of the property.
4. The use will not adversely affect area roadways or neighboring properties.
5. This company provides a service to a wide variety of current and future Sussex County businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County.
6. There was no opposition to this application.
7. This recommendation is subject to the following conditions:
 - a. This use shall be limited to a business that performs off-site service work for gas stations and other businesses that use petroleum. It shall occur within the existing dwelling and the pole building that is located on the site.
 - b. No manufacturing shall occur on the site.
 - c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - d. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday. There shall not be any Sunday

**M 641 24
Adopt
Ordinance
No. 3063/
CU2457
(continued)**

- hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited emergency situations.
- e. The applicant shall comply with all DeIDOT requirements, including any entrance or roadway improvements.
 - f. There shall not be any outside storage of materials.
 - g. Since this property also includes the Applicant's residence, the Final Site Plan shall clearly show the area where this business will be located on the property.
 - h. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking within the property's setbacks.
 - i. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2490**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTIFAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.45 ACRES, MORE OR LESS" (property lying on the northeast side of Lincoln Street, and the south side of Jefferson Street [Rt. 1B], at the intersection of Lincoln Street and Jefferson Street within the Rehoboth Manor subdivision) (911 Address: 20455 Lincoln Street, Rehoboth Beach) (Tax Map No. 334-19.08-164.00) filed on behalf of Mason Hayes.

The Planning & Zoning Commission held a Public Hearing on the application on October 23, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the 12 reasons stated and subject to the 14 recommended conditions as outlined.

Mr. Hal Dukes, Esq., of Tunnel & Raysor, spoke on behalf of the applicant that this was an application to get a Conditional Use to allow for a 5-unit townhouse development; that the site is located across the street from the Rehoboth Beach construction and utility yard; that the request meets the Comprehensive Plan and neighborhood character for this area.

Ms. Anne Lynam, the applicant spoke on behalf of the application that there is a strong family history within the ownership; that her family has owned

**Public
Hearing/
CU2490
(continued)**

multiple properties and businesses in Rehoboth Beach for close to 100 years and they are just trying to complete this project as her family has done in the past.

Mr. Mason Hayes, spoke on behalf of the application that they will be constructing the townhomes; that it is a family business; that they care about this area; that they have worked with the Planning & Zoning office; that they are building two-story, 5-unit townhomes; that parking has been taken into consideration; that they are 2.5 parking spots over the required limit; that all of the setbacks will be taken into consideration; that there are many projects like this in the area; that they have been in business for 44 years and never had any issues; that DelDOT report stated this would be minor related to traffic.

Public comments were heard.

Ms. Ester Lebegern spoke in opposition to the application; that the street have been quiet; that the neighbors look out for each other; that it is a lovely neighborhood to live in; that she has concerns with multiple homes being built that there will be constant noise; that she has concerns about the traffic.

Ms. Liza Hodskins spoke in opposition to the application; that the area is zoned for only 2 houses; that she has concerns about the people who signed the petition; that she believes that this does not fit the neighborhood character; that they are only single-family homes.

Mr. Shawn Dockery spoke remotely about the application; that he submitted a letter online with his concerns; that he believes that this will create a precedent for this type of development in their neighborhood; that stormwater management plan needs to be completed; that he believes that additional conditions needs to be given which he discussed.

The Public Hearing and public record were closed.

**M 642 24
Adopt
Ordinance
No. 3064/
CU2490**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 3064 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTIFAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.45 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The purpose of the GR zone is to provide for medium-density residential use, the property is contained within the Coastal area, with close proximity to Route 1 and several similar developments that have been approved and built in recent years.**

**M 642 24
Adopt
Ordinance
No. 3064/
CU2490
(continued)**

- 2. The property is in an area with a more urban character, including a variety of single, multi-family, small and mid-sized businesses, commercial and office uses and higher-density residential development near Route 1 and close to this proposed development. This conditional use is consistent with other zoning and land uses in the area. Multi-family development is appropriate for this property.**
- 3. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses and multifamily units.**
- 4. In this case the purpose of the development is to provide 5 Townhome style residences which is similar to developments in the area.**
- 5. The development is consistent with the Goals set forth in Chapter 8 of the Sussex County Comprehensive Plan regarding Housing.**
- 6. This project is located in an area where the use is consistent with the existing and planned infrastructure.**
- 7. There are no wetlands located on the property.**
- 8. DelDOT has stated that the proposed multi-family conditional use will have a "minor" impact upon local area roadways.**
- 9. As part of the Final Site Plan approval process, the stormwater management design will be reviewed and approved by the Sussex Conservation District, ensuring that the drainage system will be adequately designed and constructed to protect adjoining developments.**
- 10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.**
- 11. There is no evidence that this project will adversely affect the neighboring properties, area roadways or community facilities.**
- 12. This recommendation is subject to the following conditions:**
 - a. There shall be no more than 5 units in the development.**
 - b. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.**
 - c. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.**

**M 642 24
Adopt
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CU2490
(continued)**

- d. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- e. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- f. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.**
- g. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Friday and between 7:00 am and 2:00 pm on Saturdays from September 15 until May 15 of each year. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**
- h. A 10-foot-wide forested buffer shall be installed along the eastern and southern sides of the development. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.**
- i. Balconies and outdoor patios shall be designed such that they do not overlook neighboring residences.**
- j. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall include the “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself.**
- k. All lighting on the site shall not exceed 18 feet in height and it shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- l. The trash receptacles shall be standard residential roll-out containers for each of the 5 units. They shall be stored in enclosed areas on the site.**
- m. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**

**M 642 24
Adopt
Ordinance
No. 3064/
CU2490
(continued)**

- n. The developer and then the condominium association or similar type of unified control shall be responsible for the perpetual maintenance of the project's stormwater management facilities, erosion and sedimentation control facilities, roadways and other common areas.
- o. The Final Site Plan shall depict or note these conditions of approval, and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion Adopted: 5 Years

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

**Public
Hearing/
CU2545**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS" (property lying on the east side of Kings Highway [Rt. 9] and the south side of Gills Neck Road [S.C.R. 267] at the intersection of Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267]) (911 Address: 16673 Kings Highway, Lewes) (Tax Parcel: 335-12.00-3.00 [p/o]) filed on behalf of J.G. Townsend Jr. & Co.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 13, 2024. At the meeting of December 4, 2024, the Planning & Zoning Commission recommended deferred action on the application for further consideration. The Planning & Zoning Commission's recommendation will be reported to the County Council at a future meeting.

Mr. David Hutt, Esq., of Morris & James, spoke on behalf of the owner, J.G. Townsend Jr., & Co., and the applicant, Jack Lingo Asset Management, that this application is in relation to two specific conditions of Conditional Use #2359, Ordinance #2964; that the original application was heard on May 25, 2023, for a Conditional Use to put multifamily dwellings of 102 units on about 25 1/2 acres of land and on December 5, 2023 County Council adopted Ordinance #2964; that 2 conditions are the reason for this case, Condition

**Public
Hearing/
CU2545
(continued)**

“H” and Condition “R”; that Condition "H" regarding interconnectivity is the part of the original application, which references to portions of the Sussex County Comprehensive Plan and the importance of interconnectivity between parcels of land within subdivisions and this is consistent with Comprehensive Plan, Section 12.2.3, which directly encourages interconnectivity between parcels; that it's also consistent with strategies. 12.1.4.2 and 12.1.4.3, which states that the County should encourage interconnectivity between parcels and create multiple alternative methods for automobiles and pedestrians to reach a property; that the master plan reflected sound land use principles which puts the most intense activity, such as commercial or business activities and higher densities for residential uses closer to main roads; that the property is located within an Investment Level 1; that this property is MR (Medium Residential); that there are a number of zoning classifications in this area; that last June when the CU and CZ were presented, a slide was shown with the proposed community; that the interconnection with Governor's in the middle of an island; that the main roads that Sussex County and DelDOT refer to as arterials, major arterials and collector roads, and then the more distant one gets from those areas, the intensity and the density will generally speaking decrease; that when you have that type of sound land use planning and a singular owner it's an opportunity for the County to have master planning so that there can be things like shared stormwater management, pedestrian and vehicular interconnectivity; that when the master planning was done, the working assumption was that the intersection of Clay Rd. and Stokely Blvd., the road that extends from Kings Highway past the village center commercial and the village center cottages to the Governor's community, it was thought that that would be a signalized intersection; that DelDOT has decided that this would be a roundabout since the plan was developed, however it was always part of the plan to have that connection there; that at the May 2023 hearing, there was a rendering of the future village center commercial along that faces King's Highway, right behind that is the village center cottages, then behind that you can see an aerial image that includes the Governors Community; that this afternoon's application will be create a four way intersection on Kings Highway with Stokley Blvd. coming off directly across from Clay Rd., going past the future village Center commercial area, past the cottages and immediately to the entrance of the Governor's Community off of the future Stokely Blvd.; that Stokely Blvd. is intended to be a Blvd. with islands in the middle and the travel lanes on either side; that those travel lanes extend right to the property line and bisect the island and the travel ways; that the interconnectivity is the exact same interconnectivity that was shown on the Governor's site plan when that was presented in 2008 to the Planning Commission and County Council; that the same bisected road with an island in the middle extending to the property line and then ultimately out to an intersection with Clay Rd. is what has been shown on all site plans, record plans, and condominium declaration plans since this was laid out prior to 2008; that the discussions that occurred during the public hearings before the Planning Commission and County Council, the applicant asked Mr. Mumford at Davis, Bowen and

**Public
Hearing/
CU2545
(continued)**

Friedel to redesign that point of interconnection to address traffic calming measures; that in order to address the concern that people would travel off of Stokely Blvd. and accelerate through Stokely Blvd. past the village center commercial and cottages area and then into the Governor's Community; that Davis, Bowen and Friedel came up with a plan to have the connection point at the Governors Community townhomes and then to the village center cottages; that Stokely Blvd. would have the islands and the sides of the road on either side and pinch the roadway to be narrower and then the second addition to was to put in elevated crosswalks to calm traffic; that the community adjacent to this property is the Governor's community; that it consists of 432 single-family and townhome units; that in the documents provided, it included CU1722 which allowed for the creation of the Governor's community; that when a CU is approved, there are often conditions; that in 2008 when it was approved, the 7th condition states "the interior street design shall be in accordance with or exceeds Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street and street lighting. There shall also be interconnectivity with the adjoining properties."; that all approvals were approved and were recorded; that Governor's has a condominium declaration plan was also recorded; that for reference, there are 323 recorded plots that relate to the Governor's Community, either record plans or condominium declarations, and 320 of them included the interconnectivity; that this shows the future plans of interconnectivity for the property; that there is a public offering statement for communities that are being sold; that the document refers all of the recorded documents that were discussed; that when the community was marketed, it showed the points of interconnection; that pursuant to Chapter 25 of Title 6 of the Delaware Code, whenever a residential property is being sold, there is a seller's disclosure; that an example was shown and discussed; that the box for no. 24 was checked yes and it was described as "per the approved site plan, future roads will be constructed to adjoining properties via Stokley Blvd (next to townhome lot T-97 and JG Townsend Blvd) (between single-family lots S-73 and S-74); that this same disclosure identified the interconnection points; that everyone that purchased a unit would have signed this document; that this interconnection because it is located on the property physically; that in 2018, a request was denied by the Commission during their May 24, 2018 meeting; that in 2023, the Commission considered a request from the Showfield for a gate; that the Commission denied the request for a gate; that a concern was raised about the traffic circle; that the size was questioned as being unsafe; that it was shown how traffic would navigate the circle; that another concern that these are private roads; that they are not exclusive roads; that another concern was Stokley Blvd was poorly designed and did not anticipate the interconnectivity or a short cut; that the amenities center is the fourth leg of the traffic circle and has it only designated leg that goes off the traffic circle; that this is the master planning concept; that a traffic circle is a traffic calming measure; that Condition 9 R was added by County Council and is a landscape plan for the subdivisions frontage along Kings Highway and being consistent with the goals of the Lewes Scenic and Historic Byway Corridor

**Public
Hearing/
CU2545
(continued)**

Management Plan; that the only connection point that this application has with Kings Highway is the intersection of Clay Road and Stokely Blvd., and there wouldn't be any landscaping at that intersection to maintain consistent with the Lewes Scenic and Historic Byway Corridor Management Plan; that Mr. Mumford and the applicant met with The Byways Committee, the chairwoman Mary Roth, and she suggested that rather than delete the condition that the condition be modified so that it relates to the portion of the property that is on Gills Neck Rd. which is a part of the scenic byway around the City of Lewes; that that's the change to the conditions that are different than the requested changes that were filed with the initial application, that the references to Kings Highway are deleted and in their place Gills Neck Rd. has been inserted; that with respect to Section 9H, directly addressed in the Planning Commission's recommendation on this application it stated this interconnectivity has been part of the developer's master plan for this entire area and has been shown and approved by Sussex County at each stage of development; that along Gills Neck, Rd. the indication and evidence that once construction is completed, this interconnectivity must remain open to all vehicular traffic at all times without obstruction; that County Council adds obstructions to that condition as they ask for there to be a gate installed; that the applicants request to strike the language that County Council added to Condition "H" and then add language that states while the interconnection must remain open, to address the concerns about this becoming a shortcut where people will speed through these connected communities, the applicant shall install an elevated crosswalk as a traffic calming measure at the boundary line between the Governors Community and the cottage community.

A discussion was held about maintenance of the roads and if they were built to state standards. In addition, it was discussed who will pay for the maintenance of the roads in the community. A discussed was held about access for emergency vehicles and how they would gain entrance to the community with the gate.

Mr. Hutt discussed the Showfield application for a gate was being considered and then denied; that he referenced language in the motion for denial given by Commissioner Kim Hoey Stevenson.

Public comments were heard.

Mr. Bob Valihura, Esq. spoke on behalf of Governor's Condominium Association, spoke in opposition to the application; that they are in opposition of the deletion of Condition H; that they are here to fix a mistake by the developer; that they need to keep control of the road; that they when the last unit sold, the land them belonged to the unit owners; that in this County, and they understand private property rights which are important; that this was not built to be a part of the public road system; that the road could have been built to the standards by DelDOT; that a development near this property was

**Public
Hearing/
CU2545
(continued)**

not disclosed to anybody; that safety is critical to keep the traffic and speeding off of this road; that they will have to pay for this due to the failure of the developer; that the cost has not been discussed and it will be dumped on his clients; that they ask to uphold the gate.

Mr. Rick Hansen, of Collins Rd., spoke in opposition to the application that he was the former President of the HOA for Governor's during the transfer of the development from JLAM to Governor's; that the gates critical for the safety of Governors residents; that people use the roads to go to the pool; that stop signs were added and painting; that there is a concern of safety; that there is a bus stop with 20-30 children and cars stacked up waiting for the bus; that during the winter, there will be many children waiting for the bus and cars coming through; that this becomes a bypass; that if a truck turns into the narrow road and has to turn around; that the road cutting through the Village Center is not wide enough for two cars in his opinion; that he questioned how a truck would turn around; that he believes that the street design should go back to the beginning; that in his sales agreement, it states private street; that another document which are the bylaws and declaration; that it states they have rights as homeowners; that it never states that he has to let other people into the community; that his deed states the roads are private and not to be maintained by the State of Delaware; that they had Wayland Industries do a reserve study twice on their neighborhood; that it stated that they will need to have \$4.3 million to maintain their roads; that Hawkseye didn't want a gate to be connected to Senators, Governors doesn't want to be connected to the village center; that interconnectivity makes senses at only certain times; that the break away gate has been looked into and is acceptable; that the traffic problem needs to be looked into and how it can be fixed; that it needs to be questioned as to why the developer wants this interconnectivity.

Mr. Scott Beagle spoke in opposition of the application; that it was approved earlier in the year; that most of the traffic will be due to the commercial; that he believes the other references to interconnectivity to other communities should be compared to this development.

Mr. Michael Wolfe, President of Governor's Condominium Association, spoke in opposition to the application; that he thanked the Council for putting safety first and voting for this gate; that nothing has changed; that this design is still unsafe; that without a gate, the traffic will backup into their community; that a petition has been submitted opposing the gate; that there are safety concerns if the gate is eliminated; that the developer is requesting that the gate be eliminated; that the gate was approved after the hearing and listening to their community concerns; that providing card access to Governors residents would place a burden on the village center cottages, Property Owners Association, and property manager; that the Master Plan is a plan; that it is a road map for where or how the County wants to develop; that the plan needs to be modified when issues arise; that the Council responded to a safety concern with the gate.

**Public
Hearing/
CU2545
(continued)**

Mr. Lee Thompson spoke in opposition to the application; that he is a local security expert; that they put up hundreds of gates; that as emergency vehicles approach, it can be set up to for the gate to open; that this community is across the street from the High School; that there are many young drivers going to and from the school.

The Public Hearing was closed, and the public record was left open for comments in writing only and for Planning & Zoning’s recommendation.

**M 643 24
Defer
Action/
CU2545**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2543**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS” (property lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road [Rt. 5]) (911 Address: 32404 Hersel Davis Road, Millsboro) (Tax Map Parcel: 234-29.00-274.02) filed on behalf of Toney Floyd & Charletta Speaks-Floyd.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on October 23, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended denial of the application for the 9 reasons stated.

**Public
Hearing/
CU2543
(continued)**

Ms. Mackenzie Peet, Esq., of Saul Ewing, spoke on behalf of the applicants that they are seeking a conditional use of land in a GR, General Residential district for commercial hauling of goods and material services and driveway installation business known as Tony Floyd Trucking LLC, together with storage of vehicles, equipment and materials to be located on a 1.08 acre portion of an approximately 2.31 acre lot; that Tony Floyd Trucking, LLC has been operating in the county since 1998 and Mr. Floyd runs the front of the house operations and Mrs. Speaks-Floyd handles all of the administrative aspects of the business remotely; that Mrs. Speaks-Floyd also has two hair styling businesses; that the items submitted into the record were discussed; that comments from DNREC have been received; that the DNREC report notes that progress has been made; that Ms. Pete reviewed the report that was received from DNREC; that an updated concept was submitted showing additional screening; that recent photographs were also submitted into the record; that the decision from the PZ Commission to deny lacks reasons; that a denial must be based on legitimate reasons grounded in the actual application and actual evidence; that the decision was insufficient; that the Floyd's previously applied for conditional use on this property in 2021, having Pole Buildings Unlimited construct a 46 by 60 by 16 foot pole building at a cost of approximately \$60,272; that they applied for a building permit and permit number 202103547 was issued on April 1, 2021 by the county allowing the construction of the pole building; that following the completion of inspections, Sussex County issued a certificate of occupancy and compliance on January 13, 2022 and the Floyd's began operating their business on site under the assumption that no further approvals were needed; that the certificate stated, "This certifies that the structure premise described in application number 202103547 conforms to and complies with the requirements of Chapter 52, building code and Chapter 115 zoning code for Sussex County, Delaware, and may be occupied as of the date"; that the certificate confirms compliance with Chapter 115, the county zoning code, which is obviously not the case because the conditional use was also required, which is not clear whatsoever from their certificate issued; that after the pole building was completed, the Floyd's operated without issue until a violation was issued in 2023, following a public complaint and to address this violation, they filed an application on March 30, 2023 without legal counsel and worked with Planning & Zoning staff to complete that application; that the application only referenced storage of work equipment and trucks failing to mention that it also involves stockpiling materials; that the applicants attended the Planning and Zoning Commission hearing on January 3, 2024, and soon after they engaged our firm for representation; that upon reviewing the application and its history, it was determined that they needed to withdraw the application to correct the noted deficiencies and address public concerns consequently; that on March 29, 2024, her office submitted a letter to Planning and Zoning requesting to withdraw CU2436 and notifying them of the Floyd's intent to revise and reapply for the conditional use once plans were prepared by Vista Design and the DelDOT SLER was received, both essential for filing the amended application, the Floyd's submitted their current proposal on July

**Public
Hearing/
CU2543
(continued)**

29, 2024; that according to the new application the plan is to subdivide this 2.3 acre piece into two lots, so one area will be designated for the conditional use area and the other area is earmarked for the development of the Floyd's future home; that the conditional use area is approximately 1.08 acres and has included provisions for screening along the Reynolds property and to plant additional vegetation along the wetlands boundary; that there are additional screenings and buffer that were shown and discussed; that the conditional use is now set to be located between 478.75 feet and 581.97 feet away from nearby residents of Peninsula Lakes community; that the revised proposal eliminates any stockpiling activities altogether, there has been cleanup of this site and they've been removing the stockpiles that were on the site as part of the DNREC compliance; that if the new conditions were approved that there would be no more tailgate related noise, as there would be no more dumping on site which means no slamming of tailgates and backup alarms which were a concern of the neighbors; that there may be situation where backup alarms may be necessary; that the ongoing stockpile has been eliminated; that is not a dirt storage business; that there are two reports and we also received another report from DNREC today confirming that the applicant has continued to bring the property into compliance and stabilize the area; that removal of the stockpiles did cause noise for the residents; that the noise was temporary and once completed, there will be no additional noise; that this holds historical significance, having been in the Davis family for generations, it specifically operated historically as a farm, then it was taken out of production and has been surrounded by residential developments; that creates challenges, but the Floyds are committed to coexisting harmoniously with their neighbors and are focused on minimizing any negative impacts their business may have on their surrounding residential community; that there are numerous small businesses coexisting with neighboring residential communities; that the GR is not solely for residential uses; that there have been 22 conditional uses near the property since 2011; that 17 of those approved, 13 withdrawn and 2 denied; that it is located within the Coastal Area; that the proposed use aligns with the vision by supporting both residential and commercial growth within Sussex County, specifically, the business will facilitate the transportation of materials that are critical for construction and development projects in the area, while also offering services such as driveway installation for residents and commercial property owners; that public water and sewer are available to the site and the property is located in Tier 1 and connections available nearby are Tidewater Utility and the provider access to the site will be from Hersel Davis Rd. which connects to Oak Orchard Road; that DelDOT reviewed the SLER and concluded that the proposed use would have a diminutive impact on the local roads; that Mr. Floyd employs only three to five workers at any given time, and most of them typically depart for job sites directly from their homes, meaning that trucks are not frequently coming and going from the site throughout the day; that on an average day, there would be only a few trips in the morning as trucks head out to job sites and then returning later in the evening.

**Public
Hearing/
CU2543
(continued)**

Mr. Edward Launay, a professional wetland scientist, of Environmental Resource Insights, spoke on behalf of the application that he was retained by the Floyds to assist them with the DNREC drainage section and the soil erosion control section; that Mr. Floyd was stockpiling and moving gravel material back and forth, so there were some piles on the site; that the easterly boundary of the site there's a small intermittent stream that has seasonal flow and adjacent to that stream, there's a band of wooded wetlands; that he along with DNREC had the same opinion that number one was to implement a plan to: #1, consolidate and remove the piles, #2, regrade the land, #3, install a soil erosion set of control measures to prevent any erosion, and #4, stabilize the land that was really going to be inactive on the wetland side of where the soil erosion and control fencing was installed; that he did an analysis and determined that there was small encroachment well under a 10th of an acre of material that had clearing had been done and there was material that was in the wetlands; that he worked with Mr. Floyd to supervise that removal, which was consistently coordinated and inspected with DNREC, any encroachment in the wetlands; that there was super silt fence measures installed and all while Mr. Floyd was working to get the piles of material consolidated and removed; that then he came in and stabilized that area of disturbance with grassy vegetation and including a seed mix within the wetland area; that Vista Design came in and located the boundary of the entire wetland area and showed that the area in which is up for the Conditional Use is now well elevated with good soils; that the intention is to put the Floyd home on that area of land if this was to be approved.

Mr. Bruce Howell, P.E., of Vista Design, spoke on behalf of the application that he was the engineer working on the sediment and stormwater management for this project; that they were brought on to handle the DNREC Stormwater Management Plan; that the site is 2.31 acres and of that .34 acres are impervious; that the goal is to catch all of the impervious runoff in the two grass areas to prevent any downstream flood issues on the Emily's Gut.

Ms. Mackenzie Peet, Esq., stated that the applicant submitted specific conditions as outlined in a memo included in the packet; that the applicant met with the nearby residents, specifically the Peninsula Lakes Board, to present the offered conditions and receive any feedback, but none have been received as of yet; that the applicant remains open to the work with the community; that the proposed use meets the purpose of the conditional use as outlined in the code given its public and semipublic character which serves the general convenience and welfare of the community; that the conditions set forth for the proposed use, reflect careful consideration of potential impacts on neighboring properties and the broader community; that the business will focus on commercial hauling goods and material delivery services and driveway installation on a 1.08 acre portion of the property, operating hours are limited to minimize disturbances with deliveries restricted to specific times during the week and no operations on Sunday; that measures will be implemented to manage materials and maintain

**Public
Hearing/
CU2543
(continued)**

cleanliness on site, including prohibitions on stockpiling and designated vehicle, trailer and equipment, and material storage areas; that the proposed parking and vehicle management plan adheres to the county's standards, ensuring efficient use of space while minimizing noise and safety concerns associated with vehicle operations; that there will be limitations on vehicle idling, maintenance activities and the handling of hazardous materials such as oil and to safeguard the environment and neighboring properties, security measures, including a well-designed lighting plan and visual screening through landscaping, further enhance the compatibility of the use with its surroundings; that by addressing these considerations through specific conditions, the proposed use aligns with the intent of the conditional use regulations; that the conditions proposed by the applicant were discussed; that she urged the Council to recognize that many of the reasons for denial are flawed; that several of the reasons represent misunderstanding; that the Commission claimed that it was the same application which is not true; that this is for a different site area; that the previous site included all of the property including another parcel; that the prior application only included Mr. Floyd and this application include him and his wife; that upon reviewing evidence, she found no claims of odor or dust; that the DNREC reports state no evidence of dust on site; that there was an audio recording mentioning noise but there is no way to prove when it was taken; that there is construction going on around this site; that she is not sure how you photograph noise; that the application is not for dirt storage; that there is legal access to the site; that there was nothing that she found that restricted use of this road for commercial purposes; that this plan was approved by the County; that an application cannot be denied solely off of public opposition; that this is does not provide meaningful insight based on public opposition; that they are aware of no expert information provided; that the Commission overlooked wetlands issues that were shown to be in compliance; that she is unclear of the environmental impacts that the Commission mentions; that she believes that there are none; that there are no prohibitions to tree clearing; that there were trees where Peninsula Lakes is; that there will be more natural screening as proposed; that applicants have taken the concerns into consideration; that the applicant has made significant investments in order to bring the property into compliance and wishes to work with all neighboring homeowners to coexist with each other.

Public comments were heard.

Representative Jeff Hilovsky spoke in opposition to the application; that there are about 800-900 homes in this area; that the impact of this business is real and ongoing; that he supports the residents in this area; that he is asking for support to restore the peace and quiet that the residents deserve; that he requested denial of the application.

Mr. Bob Valihura, Esq. on behalf of Captains Grant and Peninsula Lakes Community spoke in opposition of the application; that this is affecting the quality of life for the residents in this area; that this is not a brownfield site;

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Hearing/
CU2543
(continued)**

that they came in and cleared cut and didn't care about the property; that the application is about hauling business and material on this site; that this is a business that has been put in a residential neighborhood; that this should not be in a residential area; that the use of the roadway is an unpaved, dirt road that they are using to access their business; that Hersel Davis Road is a right given by indivial homeowners along that strip to access that lot in the back; that it is not publicly dedicated to anybody; that he believes that every property owner needs to be given permission to use that road; that he believes that they are abusing the easement; that he believes the application is defective.

Mr. Bob Verdugo, a resident of Peninsula Lakes, who represented over 700 Sussex County residents and residents in Peninsula Lakes that are all in opposition to this application; that the main concern is that this business is better fit for a Light Industrial District not an Agricultural Residential District or General Residential; that there's insufficient distance with regard to the noise and mitigation strategies between neighboring properties; that there is concern with wildlife preservation being negated and diminished as a result of the activity taking place on this property; that many of the residents did research prior to purchasing their homes and being it is a General Residential zoning there should be no light commercial business in their backyards; that based on photos taken a couple of months ago the business is operating with a skip loader, a bobcat, multiple trailers, seven dump trucks, a roller and a large container holding some type of liquid; that the concern is that the homes that border this property only have a small berm separating them now that the vegetation is dying off for the winter season and with that the amount of noise from the movement of materials is in abundance.

Mr. David Charles a resident of Peninsula Lakes, spoke in opposition to the application; that the applicants have indicated they will reduce the footprint of the area they intend to use, but that does not change the nature of their business; that in meeting with the Peninsula's Board of Directors, the applicant has indicated his wish to grow and expand his business by adding additional trucks; that if approved, this would set a precedent and the applicants could then submit additional applications to expand their business as it grows, on acreage that they own or adjacent; that the residents of Peninsula Lakes have invested significantly in our properties and recognized that the undeveloped contingent properties could be built on in the future, but that the zoning was for undeveloped land is general residential, not commercial.

Mr. Gary Weeks, a resident of Peninsula Lakes, spoke in opposition to the application; that a front-end loader has to go in and back up; that the alarm sounds each time; that is asking for peace and quiet; that the first application was recommended for denial; that at that time, they didn't stop working; that the second conditional use was recommended for denial; that they have had ash rain down on their home; that their pets have been affected; that they are

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Hearing/
CU2543
(continued)**

not able to enjoy their outdoor space; that they shouldn't have to defend their properties; that he believes that this will affect the values of homes in the area; that he questioned how a property that is zoned residential can be used for a commercial use; that the precedent will be set if this is approved; that he requested that the application be denied; that this business does not belong at this location.

Mr. Tony Morgan, of Herschel Davis Rd., spoke in opposition to the application; that he owns the three-acre parcel that's on Herschel Davis Rd; that Herschel Davis Rd. is actually not in the right place, it's half on Captain's Grant, and half on his property, so it ends up coming out to be a one lane road out onto Oak Orchard Rd.; that the road is not meant for large trucks as its currently only one lane and in order to correct the width of the road he would have to take part of his land in order to make two lanes; that having eight dump trucks ride down the dirt road with the dust, is going to adversely affect his four properties that he's going to build; that it makes it difficult because he is putting all this money out to sell a piece of property after he builds a house they will have dump trucks riding on the dirt road; that he has to maintain that road and he's in legal issues with people; that there's three lots and people here use his route, but they want me to put two lanes in and the two lanes is going to be off of my property; that nobody wants to help maintain the road so he have to go after them; that he needs some assistance with that and he has not even got that far yet.

Ms. Donna Jakubowski spoke in opposition to the application; that on August 27th, Sussex County did a press release about a newly adopted Ordinance; that she discussed quotes that were included in that press release; that she requested that they deny the application.

The Public Hearing and public record were closed.

**M 644 24
Defer
Action/
CU2543**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS".

Motion Adopted: 5 Yeas

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

Mr. Moore discussed the J.G. Townsend application and the time frame for written comments.

**M 645 24
Adjourn**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to adjourn at 6:26 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.}