

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 14, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 14, 2021, 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, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 534 21
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent.

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

**Appeal of
Denial of
Subdivision
Application
No. 2020-08**

The Council considered an Appeal on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. 2020-08 (Lockhaven).

Mr. Vincent introduced The Honorable Charles Toliver IV, Superior Court Judge Retired, who presided over the appeal hearing and ruled on matters of procedure.

Mr. Moore noted that Mr. Schaeffer was not in attendance due to the fact that he has a conflict in this matter; therefore, Mr. Schaeffer would not be participating in the appeal hearing nor will he be participating in any of the deliberations or in the vote on the matter.

Additionally, Mr. Moore noted a potential conflict for Mrs. Green; however, after a review of the matter, both Counsels made a determination that they did not have a problem with Mrs. Green's participation in the appeal hearing and action on the matter. Judge Tolliver noted that he did not have a problem with Mrs. Green's participation.

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Judge Toliver reviewed the basic matters of procedure for the appeal hearing. He advised that subdivision appeals are totally based on the record and that no new evidence would be allowed.

Fred Townsend, Attorney at Hudson, Jones, Jaywork & Fisher, was in attendance to present the Appeal. Also in attendance with him was his client, Don Lockwood of Lockwood Farms, LLC, and Carlton Savage, Engineer. Mr. Townsend commented on the responsibilities in an appeal as an appellant body. He noted that this subdivision denial may be the first denial of a subdivision plan by the Planning and Zoning Commission in the history of Sussex County and that is a relevant consideration because that makes this decision important. Mr. Townsend stated that the denial of this application results in very serious consequences felt by the Applicant including the value of the property, the degree in which it is suitable for development is questioned, and the market and carrying costs. Mr. Townsend stated that what is proposed on this 126 acre parcel is a 25 lot subdivision; that if it is the Planning and Zoning Commission's intention not to permit standard subdivisions of this type or to favor cluster subdivisions, then another owner of this property will potentially have three to four times the number of units. Mr. Townsend stated that the standard of review for Council is to consider whether the Commission misapplied the law and Mr. Townsend stated that he asserts that they have in a significant way and that the findings and conclusions that the Commission reached are not the result of an orderly and logical review of the evidence; and that the denial is not based on substantive evidence.

Mr. Townsend stated that the law in this case very heavily favors the Applicant. Mr. Townsend referenced Supreme Court law, case law from the Superior Court, and decisions that have been reached. Mr. Townsend specifically referenced a Kent County case, a City of Dover case, and a City of Elsmere case.

He noted that in the Kent County case, the Supreme Court of Delaware held that the Planning Commission lacked the power to deny a subdivision plan that complied with all of the applicable zoning and subdivision requirements. In this case, the Supreme Court reversed the denial of the subdivision because the subdivision denial was based on PLUS Review considerations offered by State agencies, not specific Code criteria.

He noted that in the City of Dover case, the Judge discussed the nature of health, safety, and welfare concerns and labeled them impact concerns and the Judge stated that impact concerns do not provide a basis for denial of a Code compliant plan because doing so would completely deny a use permitted under the Zoning Code. Mr. Townsend stated that this is what has happened here; that impact concerns have formed the basis of the Planning and Zoning Commission's denial, not Code considerations, and not whether the property is suitable for a subdivision.

He noted that the Elsmere case held that landowners are entitled to rely on

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zoning to implement a permitted use, and that to hold otherwise subjects a purchaser of land to the future whim and caprice of the Commission.

Mr. Townsend stated that if you apply these impact concerns to deny applications outright, then you are on the path to arbitrary and ad-hoc results.

Mr. Townsend stated that the Kent County case has a very applicable holding within it that has a direct bearing on the Code; the Court said that the very statute upon which the Commission relied on to deny the application provides only that the Commission consider State agency comments. The Court said that the statute does not expressly or by implication give the Commission unfettered discretion to deny an otherwise legally conforming subdivision. Mr. Townsend stated that the County Code 99-9C language begins with the exact same phrase that “the approval of a subdivision shall include consideration of the following...”, and then there are seventeen (17) considerations; it doesn’t say that approval or denial of a subdivision will take into consideration the seventeen (17) considerations; it says approval will involve “consideration of the following”. This statute has been interpreted by the Supreme Court to say that you cannot imply from that language that an unfettered denial of an application can be based on those seventeen (17) considerations (which are impact concerns). Mr. Townsend stated that the Planning and Zoning Commission is limited; it is not a legislative body; the Council is the legislative body. The Commission cannot approve a subdivision without considering seventeen (17) factors in 99-9C of the County Code; but the Commission cannot use those factors to deny a Code compliant application; that nothing in the body of the Ordinance speaks to denials; that the seventeen (17) considerations are the basis of applying appropriate and reasonable conditions to a plan that is Code compliant. Mr. Townsend stated that this is the first time the Planning and Zoning Commission has relied on 99-9C to deny an application and he questioned if this 25-lot subdivision is the most objectionable subdivision in the history of the County. He stated that it certainly is not the most objectionable and not the most worthy of denial in the Commission’s history.

Mr. Townsend stated that Section 16-A of Chapter 99 discusses circumstances under which a subdivision is not appropriate and it refers to subdivision denials as a product of a finding that the land (not the development plan) is unsuitable for subdivision due to flooding, improper drainage, adverse earth formations, utility easements, etc. that pose a danger to health, safety and welfare. This would justify a determination that land is unsuitable for subdivision, not that the plan is sub-optimal and this was not a finding of the Commission; the Commission does not say that the land is unsuitable. Mr. Townsend stated that the Commission has exceeded its authority in relying on these impact concerns in denying the application; the Commission cannot deny the application, they can only try to address the impact concerns through appropriate conditions and that is not what happened.

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Mr. Townsend reviewed the specifics of the Lockhaven development: it consists of 126 acres, it is proposing 25 oversized lots, the minimum lot size is 1.6 acres and the average lot size is 2.5 acres; the site does have 28.7 acres of wetlands and 38.44 acres of woodlands. He stated that a standard subdivision is proposed, not a cluster subdivision; that cluster subdivisions allow for greater density but the Applicant is not interested in maximizing the density on this property and the Applicant is considering making one of the lots his own homestead. He stated that the subdivision of wetlands is not prohibited in a standard subdivision. Mr. Townsend also commented on the availability of onsite septic and stated that the record shows that a feasibility study was performed on the land and the test revealed that the location could support 25 proposed lots. The soil tests were confirmed in an email from DNREC dated September 3, 2021 and that the test results in that feasibility study are currently valid. The Commission stated that the age of the feasibility study is a justification for reliance on the question whether onsite septic is available and found it is not. The substantial evidence in the record doesn't support that conclusion; DNREC has spoken. Mr. Townsend noted that this is just a preliminary approval that is being sought and that subdivision plans remain subject to being changed both during the preliminary approval process and prior to the final approval process. Therefore, the argument the Commission is making is that the feasibility study was done on a development that varies somewhat from what is currently proposed is not valid, and it is not substantive and it is not orderly and logical. Additionally, there is a reference in the Commission's decision to the potential for the need of mound systems on certain lots; mound systems are lot illegal. Final site evaluations are done on each lot prior to a lot being sold, so the risk to the public is nil. Another concern raised by the Commission is limited disturbance of woodlands and wetlands. The Code does not say that trees cannot be removed. This introduces an incredible amount of arbitrary and ad-hoc results into the application process because preservation of woodlands cannot be measured. Mr. Townsend stated that the protection of the wetlands is a 99-9C consideration and he questioned how that test can be passed or failed. The Applicant has proposed a wetlands buffer of 50 feet so the wetlands are protected and so is the next 50 feet from disturbance. The Commission stated that the wetlands are not protected and that is not supported by substantial evidence. DelDOT concerns were also raised; DelDOT's issued a Letter of No Objection; in the Letter it was found that this proposed subdivision will have a minor impact on neighboring roadways; and therefore; this minor impact cannot be a basis for denial of a Code-compliant plan.

Mr. Townsend stated that the Applicant is asking the Council to reverse the Planning and Zoning Commission's decision or to remand it for appropriate considerations with instructions to condition the proposal reasonably.

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Vince Robertson, Assistant County Attorney, stated that he was defending the Planning and Zoning Commission's denial of this subdivision application. He stated that there have been some denials of subdivisions by the Commission in the past; however, he noted that this is not a part of the record nor is it in the transcript and, therefore, it is not something to be considered. He stated that Mr. Townsend noted that this application was denied because it is not a cluster subdivision and that the Commission prefers cluster subdivisions. Mr. Robertson stated that this is also an irrelevant consideration as no where in the Commission's findings was there a reference to the fact that the Commission would prefer a cluster subdivision. Mr. Robertson referenced Mr. Townsend's comment about density being increased if this application got denied and the project got redesigned and came forward as another development, and Mr. Robertson stated that this is a misstatement; the density is 2 units per acre.

Mr. Robertson stated that the heart of the matter is the septic and the feasibility study. The original soils tests were done in 2006 and were reviewed by DNREC in 2015. Mr. Townsend stated that it was for 25 lots and therefore, it is the same. Mr. Robertson stated that it was not these same 25 lots; it is unknown what 25 lots were reviewed because the County never saw the plan that DNREC reviewed in 2015 that was accompanied by the feasibility study that DNREC reviewed in 2015. The Commission had no way of knowing whether DNREC signed off on a sewer evaluation for the same lots for this application; the Commission kept asking for that information through DNREC and DNREC responded that the soils don't change, the subdivision changed. The Commission doesn't know if the subdivision changed a little bit or materially because the Commission never saw that subdivision associated with what DNREC reviewed in 2015. Mr. Robertson stated that in the emails that came from DNREC to Sussex County, they actually state that if the situation of soils changes (compacted, regraded, etc.), then that could void out the feasibility study. The County does not have anything in the record to confirm the actual onsite conditions changed from 2006 to the present and there is nothing in the record to show that the site plan in 2006 is the same as what was reviewed by the Commission in 2021. Additionally, Section 99 of the Code requires septic feasibility; historically, septic feasibility is something the Commission asks for no matter the size of the subdivision. A subdivision cannot get approved without septic feasibility; it has to be known up front and the Commission did not know that in this case. It was unknown if the lots in this subdivision application could be served by an onsite septic system.

Mr. Robertson responded to Mr. Townsend's comments about the Kent County case which dealt with a Kent County ordinance. Mr. Robertson stated that Sussex County has Code based criteria (Section 99-9C) – the seventeen (17) items that are in Sussex County Code, and that Section 99-9A states that the Commission shall either tentatively approve or disapprove or conditionally approve the plat subject to certain changes and modifications; therefore, denial is one of the options that is available to the Commission with regard to a subdivision application. Mr. Robertson noted that the

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Commission cannot be the one to make a record or design a subdivision; that is not their role. Mr. Robertson referenced Mr. Townsend's comment that 99-9C only requires or only permits conditions on an approval and he noted that an applicant has to satisfy those seventeen (17) conditions in 99-9C and then, if the Commission is satisfied in accordance with 99-9A, then the Commission can approve it.

Mr. Robertson stated that the Council is to consider whether the Commission's review was the result of an orderly and logical review and a proper interpretation of the Chapter. There were four different considerations by the Commission: the public hearing in June 2021, old business discussion in July 2021, old business discussion again in September 2021, and then the vote which occurred in October 2021. There was also a proper application of Chapter 99 by the Commission as part of its decision.

Mr. Robertson stated that this is a unique subdivision; it is bounded on one side by Beaver Dam Creek and a water body on the other side by the Broadkill River and contains approximately 28.7 acres of wetlands. He noted, however, that there were questions about the actual amount of wetlands on the site. The Commission denied the application because the Applicant did not favorably address the requirements of 99-9C (referencing the seventeen (17) items). He noted that the application has extensive wetlands and woodlands that contain wetlands; it is unclear where the wetlands are in relation to those woodlands, it is unclear what the total amount of the wetlands are, there was a statement that the tree line may change, and there was a statement that the septic may dictate those woods being removed. From the record, there is no protection of the wetlands, the buffers or the woodlands; they are all within the lots and all subject to removal by the lot owners. Mr. Robertson reviewed those items and whether or not the application satisfied those items (99-9C1, 99-9C2, 99-9C3, 99-9C4, 99-9C5, 99-9C8 were not satisfied).

Mr. Robertson noted that the Applicant could have requested an updated DNREC review of the soils or shown a connection to central sewer,

Mr. Robertson stated that the Commission also considered 99-9C(11) which requires a consideration of safe vehicular movement within the site and to adjacent ways and 99-9C(15) which requires consideration of the effect on area roadways. DelDOT did take this into account and there was a lot of discussion and discourse between the Applicant and the Commission about it. The Opposition's testimony on this concerned the Commission since this property is located on Round Pole Bridge Road with substantial curves and an old bridge. DelDOT did state that the bridge was fine and did not impact anything; however, the Commission was concerned about information in the record about placing this subdivision with its entrance on this location on Round Pole Bridge Road. There was evidence that this is a heavily traveled road by farm equipment; that the road is tar and chip and either 18 feet or 20 feet wide; and that when there are crops along side of the road, it is difficult to see what is coming around a corner/bend.

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Mr. Robertson stated that the Commission did go through a lot of deliberations and considered all of the information in the record and came to the conclusion that there was not enough of a record to go on, i.e. sewer feasibility, where the woodlands are and would they be disturbed, will the buffers be disturbed, etc. Mr. Robertson stated that there were too many unanswered questions. He noted that there was an orderly and logical review of the record and the Commission's unanimous decision to deny the application was based on the record and the County Code.

Several questions were raised by Council and responded to by the attorneys.

Mr. Moore announced that the appeal hearing was closed.

Mr. Moore announced that the Council has until January 14, 2022 to render a decision in this matter.

Recess

At 10:20 a.m., Mr. Vincent declared a ten minute recess.

Reconvene

At 10:30 a.m., Mr. Vincent reconvened the meeting.

Mr. Schaeffer joined the meeting.

**Approve
Minutes**

The minutes of December 7, 2021 were approved by consent.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from the following in appreciation of Human Service Grants: Delaware Seashore Preservation Foundation, Delaware Hospice, Delaware Consortium, Volunteer Delaware 50+, and LOVE, Inc.

**Public
Comments**

Public comments were heard:

Three people spoke regarding the home of Elizabeth Barrett which is going to Sheriff Sale later in December and asked the Council to follow through with taking the property to Sheriff Sale.

**M 535 21
Approve
Consent
Agenda
Items**

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

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-S21-25 Cambria Hotel, West Rehoboth Area**

Motion Adopted: 5 Yeas.

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

**Sussex
Sports
Center
Foundation
Presenta-
tion**

Joe Schell, President of the Sussex Sports Center Foundation, discussed the opening of Sandhill Fields, a complex that is home to cross-country, field hockey, lacrosse, soccer, pickleball, a walking trail and many more activities. Mr. Schell discussed Phase One of the project (2017-2020) and the funding that made it possible. Mr. Schell then discussed Phase Two of the project (2021-2022) which proposes a field house with an estimated opening date in December 2022. Mr. Schell reviewed the estimated construction costs and a proposal for funding, to include public and private monies. Brad Leinbach, Sandhill Fields' General Manager, outlined the proposal for the fieldhouse and for a solar area which will provide revenue for the fields. Five people spoke in support of the Sandhill Fields proposal for an indoor venue.

**County
Council Re-
districting**

Mr. Moore presented a Redistricting Report including draft maps for Sussex County Council's five districts. He advised that, by law, the County must adjust its Council districts, a process known as redistricting, following each decennial census to equally distribute the population among the five County Council districts. Mr. Moore reported that Sussex County's population has grown substantially. The population of Sussex County is 237,378 based on the results of the 2020 U.S. census. That is an increase of 40,233 residents in 10 years. Redistricting is required every 10 years following each census to equally redistribute population among Council districts. Given the 2020 census figures, each Council district must be within plus or minus 5 percent of an ideal population of 47,475.6 residents.

Mr. Moore reported that, unlike ten years ago, when there were only two of the five districts outside of the acceptable deviation ranges, four of the five current Council districts are now outside the bounds of the acceptable deviation based on the new Census data.

Mr. Moore presented details on each district:

District 1 is below the deviation thus the need to expand its geographical boundaries.

District 2 is below the deviation and thus the need to expand its geographical boundaries.

District 3 is above the deviation creating the need to contract its geographical boundaries.

District 4 is above the deviation creating the need to contract its geographical boundaries.

District 5 is the only district that is within the acceptable deviation; however, in its current form, the district lacks communities of common interest.

Mr. Moore explained the goals of the redistricting process: impartial process, keep together communities of interest as much as possible, follow roads,

**County
Council Re-
districting
(continued)**

streams, and other landmarks to the extent possible, and look at both current and historic trends and data.

Mr. Moore stated that he looked at the school districts as they are considered communities of interest; unfortunately, the school districts' geography cannot be used in exact fashion especially in the eastern side of the County considering the larger school districts and population distribution.

Mr. Moore stated that in this redistricting process, public input was solicited and one of the maps received was from the League of Women Voters. The County received many comments concerning that map as well as some submittals of similar maps with derivations.

Mr. Moore stated that the proposed maps were developed (see map attachment to minutes):

District 1 - This District has to be expanded and communities of interest were aligned. Bridgeville was moved to District 2 and Delmar and Gumboro were moved from District 5 to District 1. This District is wholly contained in Western and Southern Sussex and includes all of Laurel, Seaford, Blades, Bethel, Gumboro and Delmar. It also contains most of the Seaford School District, all of the Laurel and Delmar School Districts, and a portion of the Indian River School District.

District 2 – This District gained Bridgeville from District 1 and Milton from District 3; however, it lost Georgetown to District 5. This District has most of the Woodbridge School District, and parts of the Cape Henlopen, Indian River and Milford School Districts.

District 3 – Because of the large population increase, this District underwent significant changes. With geographical limitations to the east, changes were achievable in the western and southern part of the District. This District contains all of the Delaware Bay/Beach communities: Rehoboth Beach, Bethany Beach, as well as some of the areas in the northern stretches of the Inland Bays. This District contains much of the Cape Henlopen School District as well as small parts of the Milford and Indian River School Districts.

District 4 – This District lost much of its northern regions but picked up Fenwick Island. In addition to Bethany, South Bethany, and Fenwick Island, this District includes Frankford, Dagsboro, and Selbyville, and many of the small southern towns and villages. All of this District's area is within the Indian River School District.

District 5 – Although this was the only District that was within the mandated deviation, it has undergone the most dramatic change. This is now the Central Sussex District. Georgetown was added to this District while Fenwick Island was added to District 4; Gumboro and Delmar were removed and added to District 1. The District spans portions of the Cape Henlopen and the

County Council Redistricting (continued)

Sussex Central portion of the Indian River School District.

Mr. Moore reported on next steps: the County will receive written public comments on the proposed maps until 4:30 p.m. on Friday, January 7, 2022. Comments can be submitted by direct email to redistricting@sussexcountype.gov or by standard mail to the Clerk of the Council, P.O. Box 589, Georgetown, DE 19947. A Draft Ordinance will be presented for possible introduction on January 11, 2022 and the Public Hearing on the Proposed Ordinance will be scheduled for some time in February 2022.

Mr. Moore thanked everyone that assisted in this redistricting process.

Administrator's Report

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

1. Caroling on the Circle

The Sussex County Council would like to thank the community for participating in the 38th Annual Caroling on The Circle on Monday, December 13th. We had a very successful night with hundreds of carolers and thus far have collected nearly 18,000 canned goods and nonperishable food items for our less fortunate neighbors.

We remind everyone that the County is continuing to collect items until the end of the year and will continue to distribute these goods to our local food pantries. We want to thank all our volunteers, local businesses, and schools for helping to collect the food over the last month and for making this year's Caroling on The Circle a success!

2. Christmas and New Year's Holidays

Please note, County offices will be closed on December 23rd, 24th and the 27th, to celebrate the Christmas holiday, and December 31st for the New Year's holiday. The next regularly scheduled Council meeting will be held on Tuesday, January 4, 2022, at 10:00 a.m.

Quarterly Pension Update

Mrs. Jennings, along with Michael Shone of Marquette Associates, provided a Quarterly Pension Update, including an investment performance update for the Pension and OPEB funds, the annual actuarial report, and a report on the November 10, 2021 Pension Committee meeting. They discussed the Pension Committee's recommendations regarding some of the policies: to lower the assumed rate of returns/discount rate of both the Pension and OPEB funds and to adjust the OPEB Funding Policy.

**M 536 21
Revise OPEB Funding Policy**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Pension Committee, that the Sussex County Council revise the OPEB Funding Policy to reflect that Sussex County will fund at least the actuarial determined contribution.

**M 536 21
(continued)**

Motion Adopted: 5 Yeas.

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

**M 537 21
Lower
Assumed
Rate of
Return/
Discount
Rate/
Pension
and OPEB
Funds**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based on the recommendation of the Pension Committee, that the Sussex County Council lower the assumed rate of return/discount rate of both the Pension and OPEB funds to 6.75%.

Motion Adopted: 5 Yeas.

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

**Employee
Recognition
Awards**

Karen Brewington, Human Resources Director, announced the Fourth Quarter recipients of the Shining Star Employee Recognition Program. This program recognizes and celebrates employees who demonstrate exceptional performance, service, and accomplishments that reinforce the County's mission, vision and goals. Fourth Quarter recipients are Jacob Adams of the EMS Department and Holly Phleger of the Building Code Department. Mrs. Brewington also announced the Employee of the Year 2021 – Guillermo Montalvo Merino of the Community Development and Housing Department. Congratulations were extended to all.

**Ellendale
Water
District/
Project C/O**

Hans Medlarz, County Engineer, presented Change Order No. 1 to the Ellendale Water District Project, Contract W20-17. The contractor, Pact One, LLC submitted the Proposed Change Order in the amount of \$490,430.00 for an increase in project work and applicable item quantities.

**M 538 21
Approve
Change
Order/
Ellendale
Water
District
Project
W20-17**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract W20-17, Ellendale Water District, be approved in the amount of \$490,430.00, contingent upon concurrence by the State Funding Agency.

Motion Adopted: 5 Yeas.

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

**Indian
River
Acres
Area
Boundary**

John Ashman, Senior Manager of Utility Planning & Design Review, presented a Proposed Resolution establishing the Indian River Acres Area (IRAA) of the Sussex County Unified Sanitary Sewer District. On November 20, 2021, the Engineering Department held a Public Hearing on the proposed boundary, County rate structure and estimated costs. Those

Indian River Acres Area Boundary (continued)

in attendance showed strong support for the establishment of a boundary to provide sewer service. Mr. Ashman presented the proposed boundary to Council as the recommended Final Boundary. Mr. Ashman asked for Council's approval of the Proposed Resolution and authorize the Engineering Department to take questions of establishing the District to a referendum.

**M 539 21
Adopt
R 026 21**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Resolution No. R 026 21 entitled "BOUNDARIES FOR THE PROPOSED INDIAN RIVER ACRES AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT".

Motion Adopted: 5 Yeas.

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

2021 Mass Annexation

John Ashman, Senior Manager of Utility Planning & Design Review, reported that, under the direction of the County Engineer and under his authority according to County Code §110-98 and §110-99, the Engineering Department has been accepting annexation fees and connecting individual parcels on an as-needed basis. Many of these parcels are close to a County sewer district, close to County sewer lines, and some already have lateral connections available. The County Engineer may grant connections to scattered parcels at the equivalent dwelling unit (EDU) density of the abutting property but cannot exceed 12 EDUs per acre; parcels must be able to become contiguous. The connection must be evaluated and determined to not overload capacity in existing infrastructure. Mr. Ashman noted that a list of parcels is being submitted as an all-encompassing annexation for parcels previously requesting annexation, paying the appropriate annexation fee and meeting the previously stated requirements. Approximately 80 percent of these are septic remediation projects; some are for new construction. Mr. Ashman asked for Council's approval for the Engineering Department to adjust the sewer tier maps to reflect the following individual parcels: 134-19.00-105.02, 134-8.00-10.00, 433-6.15-49.00, 134-11.00-170.01, 134-19.00-75.01, and 134-11.00-162.02.

**M 540 21
Approve
Mass
Annexation**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the mass annexation, 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**

Electronic Document Management System/ RFP Results and Recommendation

Jamie Whitehouse, Planning and Zoning Director, presented a recommendation to award a Request for Proposals (RFP) for an Electronic Document Management System. He reported that the Planning and Zoning Department currently operates a largely paper-based document management system for its land-use applications, with approximately 30,000 documents being received each year. Documents include application forms, supporting technical statements, exhibit books, plans, maps, photographs, and public comment letters. At present, for each application hearing, a paperless packet is prepared; this enables documents to be presented to both the public and decision makers in a paperless format.

On March 25, 2021, the Planning and Zoning Department published the RFP. The purpose of the RFP was to seek one or multiple vendors to provide the County with the ability to effectively collect, store, manage and publish documents associated with the various applications processed by the County. Mr. Whitehouse reviewed the anticipated scope of work.

Mr. Whitehouse reported that twenty-six (26) vendor proposals were received. Following a review and scoring by the Evaluation Committee, seven (7) vendors were selected to make presentations. Following the presentations, the final rankings of the vendors was completed. The highest scoring vendor was Versivo, Inc. The Planning and Zoning Department recommends that, subject to the final review of all agreements, the County Council award the Electronic Document Management System RFP to Versivo, Inc.

M 541 21 Award RFP/ Electronic Document Management System

A Motion was made by Mr. Hudson, seconded by Mrs. Green, based upon the recommendation of the Planning and Zoning Department, that the Sussex County Council awards the RFP for an Electronic Document Management System to Versivo, Inc., subject to completion of all necessary agreements.

Motion Adopted: 5 Yeas.

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

Old Business/ CZ 1922

Under Old Business, the Council considered Change of Zone No. 1922 filed on behalf of Baywood, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on May 13, 2021 at which time action was deferred. On May 27, 2021, the Commission recommended approval with the following conditions:

- A. The maximum number of residential units shall be 514.**
- B. All entrances, intersections, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT**

**Old
Business/
CZ 1922
(continued)**

- requirements.
- C. The project shall be served by central sewer through the Inland Bays Preservation Company and Sussex County. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
 - D. The project shall be served by central water to provide drinking water and fire protection.**
 - E. Interior street design shall meet or exceed the Sussex County street design requirements.**
 - F. Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday or Sunday hours shall be permitted. A 24 inch by 36 inch "NOTICE" sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
 - G. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - I. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - J. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area which shall be shown on the Final Site Plan if required by the District.**
 - K. The Central Recreational Complex, including the community clubhouse, indoor and outdoor swimming pools, shall be completed prior to the issuance of the Certificate of Occupancy for the 161st multi-family unit.**
 - L. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
 - M. Lighted signs shall be permitted at each of the four entrances to the development. Those signs shall not exceed 32 square feet in size per side.**
 - N. As proffered by the Applicant, this HR-RPC rezoning was sought for the specific purpose of development of a 514-unit multi-family development depicted on the site plan submitted with this application. In the event the RPC is not developed and is declared null and void pursuant to Section 99-9B or 99-40A of the Sussex County Code, then Sussex County may initiate the rezoning process and schedule public hearings to consider whether to revert this land (currently Tax Map Parcel 234-23.00-270.00, 273.01, 273.02, 270.03 and 270.05) back to the zoning classification of the land in existence immediately prior to this HR-RPC rezoning.**
 - O. The Developer shall coordinate with DelDOT for safe and clearly marked pedestrian crossings at the intersection of Long Neck Road and School Lane for the two sections of this development. The Developer shall clearly indicate the means of safe crossing on the Final Site Plan**

**Old
Business/
CZ 1922
(continued)**

and no apartments shall be constructed on the south side of Long Neck Road until those safety measures are installed.

- P. This recommendation is contingent upon an amendment to the Future Land Use Map in the Sussex County Comprehensive Plan revising the designation of a portion of the property from “Commercial Area” to the “Coastal Area” which otherwise surrounds it.**
- Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

The County Council held a Public Hearing on this application on June 29, 2021 at which time action was deferred.

Jamie Whitehouse, Planning and Zoning Director, noted that, at its meeting of December 7, 2021, the Council approved the adoption of an Ordinance to amend the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel 234-23.00-270.00. The amendment was to change the designation of the parcel from the Commercial Area to the Coastal Area.

**M 542 21
Amend
Conditions/
CZ 1922**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to amend Condition F recommended by the Planning and Zoning Commission to read as follows: “Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday hours from May 15th to September 15th or any Sunday hours shall be permitted. The Saturday hours, when permitted, shall be limited from 8:00 a.m. to 5:15 p.m. A 24 inch by 36 inch “NOTICE” sign confirming these hours shall be prominently displayed at all entrances to the site during construction.”

Motion Adopted: 5 Yeas.

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

**M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2820 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 (NEIGHBORHOOD BUSINESS DISTRICT), C-1 (GENERAL COMMERCIAL DISTRICT) AND CR-1 (COMMERCIAL RESIDENTIAL DISTRICT) TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.38 ACRES, MORE OR LESS” (Change of Zone No. 1922) filed on behalf of Baywood, LLC, with the following conditions, as amended:

- A. The maximum number of residential units shall be 514.**
- B. All entrances, intersections, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT**

M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922
(continued)

- requirements.
- C. The project shall be served by central sewer through the Inland Bays Preservation Company and Sussex County. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
 - D. The project shall be served by central water to provide drinking water and fire protection.**
 - E. Interior street design shall meet or exceed the Sussex County street design requirements.**
 - F. Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday hours from May 15th to September 15th or any Sunday hours shall be permitted. The Saturday hours, when permitted, shall be limited from 8:00 a.m. to 5:15 p.m. A 24 inch by 36 inch “NOTICE” sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
 - G. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - I. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - J. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area which shall be shown on the Final Site Plan if required by the District.**
 - K. The Central Recreational Complex, including the community clubhouse, indoor and outdoor swimming pools, shall be completed prior to the issuance of the Certificate of Occupancy for the 161st multi-family unit.**
 - L. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
 - M. Lighted signs shall be permitted at each of the four entrances to the development. Those signs shall not exceed 32 square feet in size per side.**
 - N. As proffered by the Applicant, this HR-RPC rezoning was sought for the specific purpose of development of a 514-unit multi-family development depicted on the site plan submitted with this application. In the event the RPC is not developed and is declared null and void pursuant to Section 99-9B or 99-40A of the Sussex County Code, then Sussex County may initiate the rezoning process and schedule public hearings to consider whether to revert this land (currently Tax Map Parcel 2-34-23.00-270.00, 273.01, 273.02, 270.03 and 270.05) back to the zoning classification of the land in existence immediately prior to this HR-RPC rezoning.**
 - O. The Developer shall coordinate with DelDOT for safe and clearly marked pedestrian crossings at the intersection of Long Neck Road and**

**M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922
(continued)**

School Lane for the two sections of this development. The Developer shall clearly indicate the means of safe crossing on the Final Site Plan and no apartments shall be constructed on the south side of Long Neck Road until those safety measures are installed.

- P. This recommendation is contingent upon an amendment to the Future Land Use Map in the Sussex County Comprehensive Plan revising the designation of a portion of the property from “Commercial Area” to the “Coastal Area” which otherwise surrounds it.**
- Q. 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**

**Old
Business/
CU 2269**

Under Old Business, the Council considered Conditional Use No. 2269 filed on behalf of Dennis Nelson, Jr.

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended denial of the application.

The County Council held a Public Hearing on this application on November 9, 2021 at which time action was deferred.

**M 544 21
Adopt
Proposed
Ordinance
CU 2269**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt the Proposed Ordinance entitled AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRACTOR TRAILER PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.17 ACRES, MORE OR LESS” (Conditional Use No. 2269) filed on behalf of Dennis Nelson, Jr.

DENIED

Motion Denied: 5 Nays.

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

Mr. Vincent stated that he would like for the Applicant to have at least four (4) months to relocate his tractor trailer business and that no action should be taken against the Applicant during that time period. There was no objection from the other Council members.

Introduction of Proposed Ordinance Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR A SIGN AND VEHICLE GRAPHICS BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS” (Conditional Use No. 2317) filed on behalf of William E. Martin, II (Tax I.D. No. 334-6.00-340.00) (911 Address: 35583 Wolfe Neck Road, Rehoboth Beach).

M 545 21 Go Into Executive Session At 12:33 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session to discuss matters relating to pending/potential litigation, land acquisition, personnel and job applicants’ qualifications.

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 12:37 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to pending/potential litigation, land acquisition, personnel and job applicants’ qualifications. The Executive Session concluded at 1:30 p.m.

M 546 21 Reconvene Regular Session At 1:36 p.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

Retirement of County Clerk Mr. Lawson announced that Robin Griffith, Clerk of the Council, has announced her retirement effective the beginning of 2022. Mr. Lawson reported that Ms. Griffith is the longest serving Clerk of the Council since the Council was established in the early 1970’s.

Selection Process/ County Clerk Mr. Lawson commented on the selection process for the Clerk of the Council position and announced that a candidate has been recommended for Council’s consideration. It was noted that this position is appointed by the County Council. The candidate’s name is Tracy N. Torbert. Ms. Torbert currently serves as the Clerk for the City of Seaford.

M 547 21 Approve Appointment A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that the Sussex County Council approves the appointment of Ms. Tracy N. Torbert for the position of Sussex County Clerk of the Council.

M 547 21
Approve
Appoint-
men
(continued)

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

Rules

Mr. Moore read the rules of procedure for County Council zoning hearings.

Public
Hearing
CU 2274

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRES, MORE OR LESS” (Conditional Use No. 2274) filed on behalf of R&J Farms Limited Partnership (Tax I.D. No. 232-9.00-5.01) (911 Address: 28274 East Trap Pond Road, Laurel).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval with conditions.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

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

The Council found that Jed James, Applicant, stated that they are asking to have a repair shop in the existing building on the site and that the repair shop would be for their own vehicles and other vehicles and that most of the vehicles are large trucks (Class A).

There were no public comments.

The Public Hearing and public record were closed.

M 548 21
Adopt
Ordinance
No. 2821/
CU 2274

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2821 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRES, MORE OR LESS” (Conditional Use No. 2274) filed on behalf of R&J Farms Limited Partnership, with the following conditions:

- A. The use shall be limited to diesel repairs on trucks and farm equipment. There shall not be any retail sales occurring on the property.**
- B. One lighted sign shall be permitted. It shall not be larger than 32 square feet per side.**

**M 548 21
Adopt
Ordinance
No. 2821/
CU 2274
(continued)**

- C. Security lighting shall be shielded and downward screened so that it is directed away from neighboring properties and roadways.**
- D. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- E. All repairs shall occur indoors within the existing building or in outdoor areas in locations shown on the approved Final Site Plan. No outside storage of parts or other materials associated with the use shall be permitted.**
- F. The hours of operation shall occur between 7:00 a.m. and 8:30 p.m., seven days per week.**
- G. No junked, unregistered or permanently inoperable vehicles, trucks or trailers shall be stored on the site.**
- H. There shall be no more than four trucks or trailers on the site at any time.**
- I. There shall not be any parking in the front yard setback.**
- J. The parking shall be shown on the Final Site Plan and clearly marked on the site itself. Trucks and farm equipment shall only be parked and worked on within these designated areas.**
- K. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with all State and Federal requirements for the disposal of these fluids.**
- L. There shall be sanitary bathroom facilities installed for this use. The type and location of these facilities shall be shown on the Final Site Plan.**
- M. The site shall be subject to all DelDOT entrance and roadway requirements.**
- N. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2275**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR RETAIL SALES OF ANTIQUES AND COLLECTIBLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 9.7 ACRES, MORE OR LESS” (Conditional Use No. 2275) filed on behalf of Christopher L. Hooper and Lisa A. Hooper (Tax I.D. No. 231-7.00-36.00) (911 Address: 16842 Seashore Highway, Georgetown).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On

**Public
Hearing/
CU 2275
(continued)**

December 9, 2021, the Commission recommended approval with conditions.

The Council found that Christopher Hooper was present on behalf of his application. He stated that he wishes to open a business for the retail sales of antiques and collectibles; that he and his mother would operate the business; that the hours proposed are 9:00 a.m. to 5:00 p.m., Thursday through Sunday; that there is an existing structure on the property, a 60 foot by 100 foot pole barn; and that he does not have any opposition to the conditions recommended by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 549 21
Adopt
Ordinance
No. 2822/
CU 2275**

A Motion was made by Mrs. Green, seconded by Mr. Hudson, to Adopt Ordinance No. 2822 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR RETAIL SALES OF ANTIQUES AND COLLECTIBLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 9.7 ACRES, MORE OR LESS” (Conditional Use No. 2275) filed on behalf of Christopher L. Hooper and Lisa A. Hooper, with the following conditions:

- A. The use shall be limited to the retail sales of antiques and collectibles.**
- B. All merchandise shall be stored indoors.**
- C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.**
- D. All outdoor lighting shall be screened and shielded so that it does not shine on neighboring properties or roadways.**
- E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.**
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.**
- H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.**
- I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.**
- 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/
CU 2276**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A WATER WELL DRILLING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.04 ACRES, MORE OR LESS” (Conditional Use No. 2276) filed on behalf of Atlantic Well Drilling, Inc. (Tax I.D. No. 132-3.00-4.09) (911 Address: 10872 Concord Road, Seaford).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval with conditions.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

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

The Council found that Douglas Hudson was present on behalf of the Application. Also present was Mike Kelly who operates the well drilling business. Mr. Hudson stated that the well drilling business is operated out of the pole building on the property; that they operate out of the office located in the building; that only office work takes place there and the well drilling is offsite; that supplies are delivered to the site; and that maintenance to vehicles takes place on the site. Mr. Kelly stated that he owns the property located behind this site and that his house is located on his property behind this site; that Mr. Hudson also operates his farming business on the site; that he and Mr. Hudson together own a total of 41 acres; that all business is located by phone or online; that the well drilling business is a small business with only two rigs; and that they have about eight employees.

(It was noted that the Applicant, Douglas Hudson, is not the same as Councilman Douglas Hudson.)

There were no public comments.

The Public Hearing and public record were closed.

**M 550 21
Adopt
Ordinance
No. 2823/
CU 2276**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2823 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A WATER WELL DRILLING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.04 ACRES, MORE OR LESS” (Conditional Use No. 2276) filed on behalf of Atlantic Well Drilling, Inc., with the

**M 550 21
Adopt
Ordinance
No. 2823/
CU 2276
(continued)**

following conditions:

- A. The use shall be limited to a well drilling business. No retail sales shall occur from the site.**
- B. All equipment and vehicle maintenance shall occur inside of the approved buildings on the property.**
- C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.**
- D. All outdoor lighting associated with this use shall be screened and shielded so that it does not shine on neighboring properties or roadways.**
- E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.**
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.**
- H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.**
- I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.**
- 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/
CZ 1941**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS” (Change of Zone No. 1941) filed on behalf of Charletta Speaks-Floyd (Tax I.D. No. 234-32.00-60.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

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

**Public
Hearing/
CZ 1941
(continued)**

The Council found that Charletta Speaks-Floyd was present on behalf of her application, stating that she is the owner of the property and the adjacent property; that she operates a child care center that she wishes to expand; and that the expansion would be on the adjacent site where she wants to construct another facility so that there will be more room for additional children.

There were no public comments.

The Public Hearing and public record were closed.

**M 551 21
Adopt
Ordinance
No. 2824/
CZ 1941**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2824 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS” (Change of Zone No. 1941 filed on behalf of Charletta Speaks-Floyd.

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/
Land Use
Map
Amendment
(Delmar
Area)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00”.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended adoption of the Ordinance.

(See the minutes of the Planning and Zoning Commission meetings dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the Proposed Ordinance. He reported that, on May 7, 2021, the Planning and Zoning Department received a request on behalf of the property owners to consider a potential revision to the Future Land Use Map Element of the Comprehensive Plan, specifically in relation to Tax Parcel Nos. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00. The parcels are located on the north and south side of Delmar Road, west of the municipality of Delmar. The request is to change the area designation of the five parcels from being in the Low Density Area and also the existing Development Area to the Developing Area. Upon receipt, the applications

**Public
Hearing/
Proposed
Ordinance/
Land Use
Map
Amendment
(Delmar
Area)
(continued)**

were submitted to the State Planning Office where they went through the PLUS Review. Following the PLUS Review, the applications were then discussed further with the State Planning Office. A copy of the PLUS comments is included in Council's packet. Following discussions with the State Planning Office, it was agreed to bring them forward to public hearing before the Planning and Zoning Commission and the County Council.

Mr. David Edgell, Director of the Office of State Planning Coordination (OSPC), was in attendance and provided an overview of their process and procedures following the PLUS application and reasons why the OSPC objects to this application.

Mr. Edgell explained the process that is stipulated in Code that starts with a 45-day negotiation period, which was initiated after the PLUS Review and the Office mutually agreed with Sussex County's Planning Office and with the Cabinet Committee that the time would be extended so that Public Hearings could be held to gather public input and Council's feedback before moving to the next step. Mr. Edgell stated that if the Council is inclined to move this plan amendment forward towards adoption, the OSPC asks that the Council push the pause button so that it can be sent to the Cabinet Committee on State Planning issues, for the dispute resolution process.

Mr. Edgell stated that, in regard to this application, it was reviewed in June 2021 and objected to in the PLUS Letter. The OSPC met with the Cabinet Committee in September 2021 and briefed them on the issue and the reasons for the objection; at that meeting, the Cabinet Committee agreed to extend the period so the public hearings could be held. At that meeting, the Cabinet Committee voted unanimously to support the PLUS letter and the objections.

Mr. Edgell stated that it is about 899 acres that is a part of this application; three of the five largest parcels are in the Low Density category in the County's Plan. The proposal is to move it all into the Developing Area in the Comprehensive Plan and making that change has some potential consequences. The PLUS letter states that it really doesn't match what a Developing Area is set out to be in the Plan. The Developing Area allows a very broad range of potential zoning districts that could be requested of the County Council for development in that area, including high density residential, heavy commercial, and industrial. He noted that this application was presented to the OSPC without a lot of additional information, as a change that did not come from the County, it came from a land developer. He stated that this application, if approved, could create a major town west of Delmar, and the OSPC would like more conversation about that. He stated that there is a tremendous amount of development potential already out there, and this was not anticipated in the State Strategies. Additionally, this site is far enough away from any infrastructure or services that it does not have any favoring growth aspects

**Public
Hearing/
Proposed
Ordinance/
Land Use
Map
Amendment
(Delmar
Area)
(continued)**

that they use as part of their analysis; that is why it is a Level 4 Area in State Strategies. He stated that the OSPC encourages the Council to push the pause button and start talking about this in a larger context within the Sussex County Comprehensive Plan rather than change the map now. If Council agrees with pausing, the OSPC can work with Mr. Whitehouse and the Planning Office. If Council is inclined to proceed at this time, the matter can be brought to the Cabinet Committee and they can have more specific input regarding their agencies and their funding and services. In response to questions, Mr. Edgell stated that, if the Cabinet Committee does not agree with the application, the State is not obligated to provide any funding.

David Hutt, Attorney, was present representing Double H Properties II, LLC and Blackwater Showfield LLC, which were the Applicants who initiated this process which resulted in the Public Hearing on this date. Mr. Hutt stated that, in this case, the Applicant is the County; this is in accordance with State Code. The owners of these properties asked for this Future Land Use Map change and that caused the County to file an application making the County the Applicant for this Future Land Use Map Amendment. Mr. Hutt noted that also in attendance was Robert Horsey, Principal of the two LLCs and Ring Lardner, Professional Engineer with Davis, Bowen & Friedel. Mr. Hutt stated the Proposed Ordinance to amend the Future Land Use Map within the Comprehensive Land Use Plan for five parcels consisting of approximately 895 acres of land; the request from the property owners is that the land be designated as being in an Developing Area. Mr. Hutt discussed the history of the properties including the prior consideration by the County of four applications for these parcels of land absent one parcel (in 2006 and 2007). Those applications were Change of Zone Nos. 1595, 1596, and 1597, and Subdivision Application 2005-57; these projects were known as the Blackwater Creek Project, and, in January 2007, all of the Change of Zone applications were approved by Council and the Blackwater Creek Project received preliminary approval by the Planning and Zoning Commission. Mr. Hutt noted that in 2008, the real estate market became severely depressed and the project was not built. In the 2008 Comprehensive Plan, it showed this area to be within a Developing Area. So, from 2008 to when the Governor certified the new Plan, all of the subject properties (except for a portion of the far northeast property) were within the Developing Area on Sussex County's Future Land Use Map. Mr. Hutt noted changes to Chapter 4 of the Plan between the time when the Planning and Zoning Commission provided its recommended version and when Council ultimately issued its recommended version, which was sent to the OSPC in mid-summer 2018. In August 2018, there was a PLUS Review, and a PLUS review letter was issued. On the version of the Land Use Map recommended by Council, some parcels were within the existing Developing Area and the parcel in the southeast corner was no longer in a Developing Area. Comments were received from PLUS and there was no particular mention of this area of the County. Mr. Hutt stated that there is a difference in Council's recommended map version and the version that ultimately appeared in the version certified by the Governor, despite the

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fact that this was never discussed at all. Mr. Hutt further noted that all of the properties on the eastern side of Providence Church Road are in a Low Density Area and no longer in a Growth Area.

Mr. Hutt noted how ideal this location is for a place for people to live and be in close proximity to employment centers; it is close in proximity to the largest metropolitan area on the Peninsula (City of Salisbury), it is in close proximity to Millsboro, Seaford, and Delmar; this is the basis for this request. Mr. Hutt further noted that there is no land use application pending. If the Future Land Use Map Amendment were approved and applications filed, those applications would have to go through the PLUS Review. Mr. Hutt referenced that these areas are shown as being in a Level 4 Area and that part of this is objective; this is also largely a function of how the County has it designated on its Comprehensive Plan Future Land Use Map.

Mr. Hutt stated that with most applications, one of the number one topics is traffic and traffic improvements. DelDOT's comments with respect to this application are instructive; DelDOT stated that the Developer would be required to build all infrastructure in and around any development.

Mr. Hutt referenced categories within the Growth Areas in the Comprehensive Plan and how this Land Use Map Amendment/Proposal meets those requirements and all weigh into to this being in a Developing Area.

Robert Horsey commented on the 2008 Comprehensive Plan and stated that their purpose in asking for the Land Use Map change is to clean up and reinstate what was on that property in 2008, and somehow got missed in the process. Mr. Horsey noted that, for 16 years, the Town of Delmar has been fighting the sewer issue; the State has not helped solve that problem so that the Town can grow. He stated that the western side of the County needs some growth areas; that the City of Salisbury is a large employer; that the Land Use Maps do not show the western side of the County's ties with Maryland (and the commercial area of Salisbury); that the definition of a growth area is where people want to live; and this area is an area where people can live near where they work; and that he will work with Tidewater/Artesian on how they plan to serve the area with sewer and water.

Mr. Hutt asked that the Council adopt the recommendation of the Planning and Zoning Commission to approve the Proposed Ordinance, which will begin the negotiation process with the OSPC and the Cabinet Committee.

In response to questions, Mr. Edgell strongly urged the Council not to adopt the Proposed Ordinance prior to going to the Cabinet Committee. Public comments were heard.

There were no public comments in support of the Proposed Ordinance.

Public Hearing/ Proposed Ordinance/ Land Use Map Amendment (Delmar Area) (continued)

Keith Steck, Vice President of the Delaware Coalition for Open Government, stated that there was no public notice; that there was no signage on the subject properties and no letters to the landowners regarding the proposed land use map change; and that if there had been, the public would have known about it and possibly more people would be in attendance. He stated that if something affects the Comprehensive Plan and the Land Use Maps, properties should be posted, and that the process should be changed to require this. Mr. Steck stated that this is the continuation of a process that seems to be slowly dismantling the Comprehensive Plan. Mr. Steck noted some confusion with the maps' preserved areas and he questioned how an area can be designated for preservation and also for development. Mr. Steck further noted that if the County proceeds with the adoption of the Proposed Ordinance, the State will not provide funding for infrastructure.

There were no additional public comments.

The Public Hearing was closed.

The public record was left open.

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A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00".

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 stated that he would like for discussions to take place with Vince Robertson, Assistant County Attorney, about how to proceed. He noted that this would need to be discussed in public session. It was decided to place the matter on the January 4, 2022 Council agenda to obtain additional information and guidance from Mr. Robertson.

Public Hearing/ Proposed Ordinance/ Land Use Map Amendment

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01".

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended adoption of the Ordinance.

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(See the minutes of the Planning and Zoning Commission meetings dated November 18 and December 9, 2021.)

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

He reported that, on February 5, 2021, the Planning and Zoning Department received a request on behalf of the property owner to consider a potential revision to the Future Land Use Map Element of the Comprehensive Plan, specifically in relation to Tax Parcel Nos. 235-23.00-2.02 (portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01. The total area of the parcels is approximately 247 acres. The parcels are located on the northeast side of SR-1 (Route 1), east of the intersection of SR-1 and Cave Neck Road. Upon receipt, the application was submitted to the Office of State Planning Coordination where it went through the PLUS Review. Following the PLUS Review, the application was then discussed further with the OSPC. A copy of the PLUS comments is included in Council's packet. Following discussions with the State Planning Office, it was agreed to bring them forward to public hearing before the Planning and Zoning Commission and the County Council.

Mr. Whitehouse reported that 128 comments have been received pertaining to this ordinance; 48 of them appear to be in support and 79 are in opposition.

Mr. Moore noted that some of the comments made by Mr. David Edgell, Director of the Office of State Planning Coordination, during the previous public hearing have been made a part of this public hearing, per Mr. Edgell's request. (Mr. David Edgell, Director of the Office of State Planning Coordination, was in attendance and provided an overview of their process and procedures following the PLUS application and reasons why the Office objects to this application. Mr. Edgell explained the process that is stipulated in the Code that starts with a 45-day negotiation period, which was initiated after the PLUS Review and the Office mutually agreed with Sussex County's Planning Office and with the Cabinet Committee that the time would be extended so that Public Hearings could be held to gather public input and Council's feedback before moving to the next step. Mr. Edgell stated that if the Council is inclined to move this plan amendment forward towards adoption, the OSPC ask that the Council push the pause button so that it can be sent to the Cabinet Committee on State Planning, and for the dispute resolution process.)

Mr. Edgell stated that this amendment involves a group of parcels that have had quite a history in Sussex County and the PLUS process and he noted four different applications that have been seen throughout the years (2008-2018, including a shopping mall, shopping centers, and various residential subdivisions). He stated that this particular plan amendment was reviewed in June 2021 and objected to in the PLUS Letter. The OSPC met with the Cabinet Committee in September 2021 and briefed them on the issue and

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the reasons for the objection; at that meeting, the Cabinet Committee agreed to extend the period so the public hearings could be held.

Mr. Edgell that the front area is approximately 274 acres along Route One, which is Low Density in the Comprehensive Plan and in an Investment Level 4 in State Strategies. The proposal is to move it to a Coastal Area designation in the Comprehensive Plan, a growth area designation which would allow a number of uses and would allow considerable additional density over what is allowed in a Low Density designation in the Plan, and that this caused some concern. The proposal could result in quite a large development at that location.

Mr. Edgell stated that State Strategies takes into account public sewer and public water and that they were not able to obtain private sewer information from Tidewater or Artesian during their 2019 data gathering phase and that he understands from the presentation given to the Planning and Zoning Commission, that there is a private sewer nearby and that they say they have access to. He noted that this information was not made available to the OSPC previously.

Mr. Edgell stated that other factors that go into State Strategies is environmental factors and he noted that when they processed the application, the 274 acres along the front is what was received and when the OSPC reviewed it, they actually looked at the parcels and the parcels go far back towards the marsh area, so some of the comments in the PLUS letter are related to the natural resources that are near this site; but they do recognize that the frontage along the road is what is the subject of the 274 acre application. He stated that, nevertheless, these parcels are adjacent to an Agricultural Preservation District and the eastern part of the parcel are full of ecological resources with wetlands, flooding and sea level rise concerns; it is a sensitive environmental area.

Mr. Edgell stated that part of their objection is the location in Level 4, its in an area where they did not anticipate any growth or development, and they want to keep with the Plan that is in place that was certified. Another concern they have is the proposed SR-1/Cave Neck Road grade separated intersection and that the design of this project is based on the current Comprehensive Plan, the current land use and the current zoning of AR-1, Low Density, on the eastern side of Route 1. Mr. Edgell emphasized that grade separated intersections are in no way intended to signal that this is a place for larger scale development. Mr. Edgell stated that his concern is that should the Council choose to move forward and change this land designation to the Coastal Area, the Council would then be faced with land use applications and zoning applications to increase density and allow additional uses and intensity on this site, which could jeopardize the success of the road improvement project.

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(continued)**

David Hutt, Attorney, was present on behalf of the Robinson family. Mr. Hutt stated that Joe Reed, Principal of the Seaside of Lewes, LLC, was available and listening in by phone; Seaside of Lewes, LLC has an interest in these parcels (Seaside of Lewes, LLC purchased the Chappell piece). Mr. Hutt stated that the Proposed Ordinance is to amend the Future Land Use Map for five (5) parcels (4 parcels and a portion of a 5th parcel) consisting of 247 acres of land.

Mr. Hutt commented on the process and he noted that this land has been in the Growth Area since 2008 and that now this area is no longer in the Growth Area. Mr. Hutt spoke on “how we got here”. He stated that Mr. Chappell was considering the sale of his property and the potential buyer found that no portion of the property was within a Growth Area and that was a surprise to Mr. Chappell because, since 2008, the frontage of his property has been in a Growth Area on the County’s Future Land Use Plan. The Environmentally Sensitive Development District Overlay Zone was one of the County’s Growth Areas and these lands were in that Area from 2008 through the adoption and certification of the 2018 Comprehensive Plan that was certified in 2019.

Mr. Hutt asked that Council consider his comments that apply generally to the process from the last public hearing to also apply to this public hearing. He stated that during the workshop process, what resulted was the Planning and Zoning Commission issued its recommended version of the Future Land Use Plan to the Council, the Commission carried forward what existed in 2008 on its Future Land Use Plan (the County called it the 2045 Future Land Use Map). The Commission carried forward with this area being in the Growth Area, a Growth Area that recognizes that this is near an environmentally sensitive area. As the Comprehensive Plan was being developed, the property owners of these five parcels followed the process and they were content with the Plan which carried forward what historically was the designation of these properties since 2008. Council made changes to Chapter 4 of the Plan and the Future Land Use Map when it produced its recommended version. The recommended map was submitted to the OSPC and the property owners had no objection to this version of the Future Land Use Map. The surprise to the property owners in this case arises after the letter of response to the County from the OSPC. On October 23, 2018, the County Council held a public hearing for the final version of the Comprehensive Plan; the final draft was presented. At that public hearing, thirteen (13) people spoke. These subject properties were not discussed during the public hearing nor were they discussed in the PLUS response – there is no comment nor recommendation nor requirement from the OSPC that this map be adjusted; and that there was no comment from the public. At the conclusion of the Public Hearing on October 23rd, the Council did not vote on the various applications; the Council deferred action for one week. On October 30th, the Council resumed its discussions on the various applications to modify the Future Land Use Map by various property owners and the Council discussed modifying the Future Land Use Map on the eastern side of Route One for a

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number of properties. At that meeting and successive meetings, Council began to redraw that and, ultimately, the Comprehensive Plan, including the map, was approved on December 4, 2018 to be sent to the Governor for his certification. Through that process, the Plan was modified and there was significantly less Coastal Area including the entirety of the five parcels which are the subject of this Proposed Ordinance. Mr. Hutt noted that this happened after all of the public comment and all discussion was closed, and after two years of discussion about these properties where they had been shown consistently within a Growth Area. Thereafter, in December 2020, the property owners of these properties sent a letter objecting to the change that had occurred on Future Land Use Map designations. Mr. Hutt noted that the amendment of the Future Land Use Map is a new process in the County and those were considered in June 2021 by the OSPC and in that process, the property was misidentified. When the property owners asked to speak at the PLUS Review for this matter, they were told no because the County was the Applicant in this matter. Mr. Hutt stated that, in the letter from PLUS, one of the concerns is that no reason is given for the proposed amendment to the Future Land Use Map, because the County is the actual Applicant, and that is because the property owners could not speak to that. Mr. Hutt noted that in the July 22, 2021 letter from the OSPC, there are a number of errors and he stated that he does not believe the OSPC had the full picture of the properties when they issued their letter. Mr. Hutt commented on those errors.

Mr. Hutt stated that the properties were removed from the Growth Area and put in a Low Density Area and were not removed in a logical and orderly process, and were removed in an arbitrary manner.

Thomas Robinson, Jr., one of the family members that owns the parcels, stated that he has lived on the farm on Coastal Highway since 1988. He reported on the history of the farm and commented on the growth in the area and on land rights. He stated that they are asking for the property to be reinstated into the Growth Area, like many of the neighboring properties around them; that this would allow the highway portion of their farm to maintain some of the value that is soon to be lost with DelDOT's planned interchange. That in 2018, their farms and their neighbor's farms were removed from the Growth Area and the properties had been in the Growth Area for more than a decade, and without notice and after public notice was closed, the land was taken out. Mr. Robinson commented on the grade separated interchange and the impact the project will have on the land forever.

Public comments were heard.

Four people spoke in regards to the Proposed Ordinance.

Jeff Stone was in attendance and spoke on behalf of Sussex Alliance for Responsible Growth (SARG). He stated that SARG joins with the Office of State Planning Coordination and DNREC to oppose this proposed change

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in land use designation and to support maintaining the Low Density designation. He stated that this proposed change will have profound ramifications for Sussex County far beyond the parcels involved. It raises the fundamental question: is the recently adopted Comprehensive Plan a true guide for the long range development of the County, to be honored and followed, or is it merely symbolic, to be ignored until it is convenient to reference it. Mr. Stone presented into the record a written statement of SARG's position on this matter.

John Bucchioni, a resident of Paynters Mill, was in attendance and spoke in opposition to the Proposed Ordinance. He stated that he is the single closest property owner to the subject properties and that he has a lot of concerns; that he does not know what the proposal is; that the Council needs to obtain a more specific plan; that crashes have increased in the area; that he questions if a sound barrier will be installed (at the round-about); that flooding is a concern; and that the Council needs to stick to the Comprehensive Plan.

Jill Compello spoke via teleconference and spoke in support of Council reinstating the properties to the Coastal Area. She referenced the fact that the property owners were never notified nor given the opportunity to comment on the last-minute modification; that she believes some of the communications about this application are confusing and may have generated mis-information that is being repeated in many of the letters of opposition; and that this is a proposed Comprehensive Plan amendment and not a land use application for these properties. Ms. Compello also commented on the design traffic numbers, which can be verified by DelDOT, for the planned interchange which are based on some anticipated commercial uses and not just 2 units per acre as stated incorrectly in the OSPC letter.

Erik Hein spoke via teleconference stated that this proposal is literally in his front yard and that he asks the Council to not act on the Proposed Ordinance at this time. He stated that he is very concerned about the proposed overpass; that changing the Comprehensive Plan is unnecessary; that the Comprehensive Plan can be revised after the overpass is built; and that not enough information has been made available to warrant the change that could forever alter the landscape of this area.

The Public Hearing was closed.

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ment (RT. 1)**

The public record was left open.

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01".

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Motion Adopted: 5 Yeas.

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

It was decided to place the matter on the January 4, 2022 Council agenda to obtain additional information and guidance from Vince Robertson, Assistant County Attorney.

**M 554 21
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to adjourn at 6:09 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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