

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 30, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 30, 2024, at 12:30 p.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

**Call to
Order**

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

Mr. Vincent called the meeting to order.

**M 047 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**

**Grayrock
Preserve
Subdivision
Appeal**

Mr. Lawson reported that the County received an email on Thursday, January 25, 2024, from Mr., Sykes indicating that he would like to withdraw the appeal of the Planning & Zoning Commission's decision in the Grayrock Preserve matter. Mr. Charles H. Toliver, IV scheduled a meeting to discuss this request and provided a letter. In the letter, Mr. Toliver stated that it was his decision as the hearing officer appointed by the Sussex County Council to accept Mr. Sykes's decision to withdrawal the appeal by the Planning & Zoning Commission regarding Grayrock Preserve. The proceedings involving the property shall be returned to the Planning & Zoning Commission for such further proceedings as if the appeal had not been filed. The matter shall be removed from the Sussex County Council agenda and calendar for January 30, 2024. The correspondence received from Mr. Toliver was dated January 26, 2024.

Minutes

The minutes from January 23, 2024, were approved by consensus.

Corre-

Mr. Moore read correspondence received from Shoes That Fit, The Arc,

spondence **Cancer Support Community of Delaware and Optimist Foundation thanking Council for their donation.**

**Public
Comments**

Public comments were heard:

Ms. Eul Lee spoke about affordable housing strategies.

Ms. Michelle Williams spoke about accessory dwelling units.

Ms. Tammy Smith spoke about the Voluntary School Assessment (VSA).

Ms. Yvonne Valdes spoke about traffic issues on Route 24.

Ms. Melissa Yanchuck spoke about concerns about the Chapel Branch project.

Mr. Bill Bogia spoke about traffic issues on Dorman Road and Route 24.

Mr. Mike Helwich spoke about proposed development going in at Route 24 and Dorman Road.

Mr. William Howe spoke about issues relating to the Chapel Branch Apartments.

Mr. Gary Dickinson spoke about the Chapel Branch Apartments.

Ms. Christy Quiden spoke about the Chapel Branch Apartments.

Mr. Peter Zoler spoke about the Chapel Branch Apartments.

Ms. Katharine Dowell spoke about concerns with Dorman Road and Route 24.

Mr. Jon Horner spoke about the Sussex County Rental Program (SCR).

Mr. Steve Castiglione spoke about concerns with the Chapel Branch Apartments and the Sussex County Rental Program (SCR).

**M 048 24
Approve
Consent
Agenda**

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

**Use of Existing Wastewater Infrastructure Agreement – IUA-1212
Hunters Creek, Millville Area**

**Use of Existing Wastewater Infrastructure Agreement – IUA-1154
Ironwood, Miller Creek Area**

**Use of Existing Wastewater Infrastructure Agreement – IUA-1161 Revised
The Knoll, Holt’s Landing Area**

Proclamation Request – Engineers Week

Motion Adopted: 5 Yeas

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

New County Engineer Mr. Lawson reported that on December 12, 2023, Council voted to approve the selection of Candidate 2023-C. Mr. Lawson announced that the new County Engineer is Michael T. Harmer who will start with the County on February 5, 2024.

Voluntary School Assessment (VSA) Discussion Mr. Hudson recused himself from the conversation due to a possible conflict.

A discussion was held related to the Voluntary School Assessment (VSA). Mr. Lawson stated that the General Assembly last session passed a bill that gave the County the same authority as New Castle to enact a Voluntary School Assessment. In order to do, an Ordinance would need to be enacted to begin the VSA program. Earlier this month, an overview of the process was received by a staff member of the Department of Education.

Mr. Schaeffer stated that he has discussed this with his local school Superintendent on a few occasions as well as discussing it on the radio over the past month. He added that he supports our kids and teachers and that he has always supported them and will continue to do so. Mr. Schaeffer stated that building classrooms is the responsibility of the legislature and the State of Delaware. It is not the responsibility of the Counties, and he has made a proposal that the State legislature should fix the problem instead of kicking the can down the road and continuing to tax our citizens. Mr. Schaeffer commented that it is clear today that the way we fund school districts in the State of Delaware is broken and has been broken for decades. He added that the state legislature needs to fix the problem and not continue to tax our citizens or attempt to tax them and try to make the three Counties in Delaware the bad guys. He also pointed out that this is a tax and there is nothing voluntary about this tax; it is mandatory. In addition, this tax will most affect lower middle-class people and middle-class people. He pointed out that the legislature has exempted people 55+ from this tax. Therefore, the retirees that are moving into the area that are buying \$700,000 houses will be exempt. Mr. Schaeffer noted that if you are not exempt and you purchase a \$700,000 house and an individual is buying a \$200,000 house, the tax is exactly the same amount which is not equitable, fair, and right and he does not support it. He added that it is not fair to continue to burden lower middle-class people and middle-class people with additional taxes. He stated that the way this tax is structured, in the Cape Henlopen school district with the new school that was recently built, he calculated that this tax would be about \$17,000 or \$18,000 per house. He pointed out that the Delaware Department of Education recently denied the

**Voluntary
School
Assessment
(VSA)
Discussion
(continued)**

Cape Henlopen School District the ability to buy additional real estate to built classrooms, however, they approved the Cape Henlopen School District the ability to buy real estate to build a new administration building which he believes does not add up. Mr. Schaeffer suggested that the local newspaper in his district and their editorial board directs their efforts and their influence to lobby the legislature to fix the problem after decades of ignoring it. Mr. Schaeffer stated that he will do anything that he can to support the children and the teachers.

Mr. Rieley commented that he echoes Councilman Schaeffer's comments about wanting to support the students and schools. However, this proposal is flawed in a number of ways. He added that this amount does not include the 4% transfer tax which is the highest in the nation and all of this is in the background of reassessment which is creating a lot of uncertainties. In addition, the State has been running a large surplus for several years now and it is their responsibility to fund schools, not the County. He added that he does not understand the urgency of the State to push this onto the County at a time when they are flush with money.

Mrs. Green commented that she agrees with Councilman Schaeffer and Councilman Rieley on their statements that they have already made. She added that clearly this is a tax, and it is going to hit the working class the hardest. It does not seem fair that the 55+ communities would be exempt when we are trying to get affordable housing. She added that the money goes to the Department of Education and then the money goes through committees and finally through the DOE's process. Therefore, by the time the money gets to the schools, all of the money does not go directly to the school which she has an issue with that.

Mr. Vincent commented that he agrees with all three of the Council Members. He added that there is nobody here that does not truly care about the children and the teachers in the community. He believes that all students deserve access to an equal education. There is nothing voluntary about this; you either have to give them land if they will take the land or this tax is put in place. He stated that this is a new tax; all taxes are paid by the public that we serve. The VSA will add more than \$15,000 for every new single-family house built in a major subdivision, regardless of the price. While it was reported that the estimate was \$2,000 per unit which was incorrect. Mr. Vincent commented that adding a new tax to development does not help with the affordability of housing in Sussex County. The Delaware Department of Education reports that all Sussex County schools would qualify for the VSA, however, all school districts are not alike. This law does not benefit or provide equity among all students in the public-school districts in the County. In fact, it shortchanges many students based on where they live; only school districts where development takes place will see added funding. This means that schools on the Western side of Sussex County will see little to no additional funding as new construction is less in these districts compared to those on the Eastern side of the County. This creates a system of winners and losers. For example, Woodbridge, Seaford

**Voluntary
School
Assessment
(VSA)
Discussion
(continued)**

and Delmar have had few than 15 new lots that would qualify for a VSA in the last five years. Mr. Vincent commented that all school districts in this County have at least one school that is considered over capacity so every school district should qualify for it. This law is fundamentally flawed that excludes apartments and condominiums not in major subdivisions for collection of VSA fees. At a time when the County is encouraging the construction of new apartments and multi-family housing units for the purpose of growing workforce housing, this legislation excludes the housing units that the County is working to build. According to State officials, the majority of new single-family housing built in Sussex County are second homes or for retirees. The developments that are considered 55+ are excluded. Due to fair housing laws, classifying a development of 55+ does not eliminate all children from moving into a development. This law will not fix Delaware's education funding failures and may do more to widen the gap between the haves and have not. It is being asked for County Council to pass an Ordinance to collect a new tax without any oversight on how much is charged, where it is spent and what to do with it since it all goes to DOE. Mr. Vincent stated that if law makers in Dover believe so adamantly in such a measure, why create a mechanism that needs a third party to enact, why not directly empower local independent school boards the ability to establish a VSA tax if they so choose and based on need. This is not a time to enact a new tax in Sussex County, reassessment is currently underway, and people are concerned of how that will affect their tax bills.

There was no interest to move this matter forward into an Ordinance.

**SCRP &
Chapel
Branch
Apartments**

Mr. Lawson reviewed the Sussex County Rental Program & the Chapel Branch Apartments. Mr. Lawson reviewed the Sussex County Rental Program which was enacted in 2008 with incentives for developers to build moderately priced rental units. Over the next 14 years, only one developer utilized the program and developers reported that the program was not economically viable and expediting the approval process was not an incentive to produce these units. During this time, the need for workforce housing continued to grow and became a centerpiece of the County's updated Comprehensive Land Use Plan in 2018.

Fast forward to 2019 when the County hired LSA, a firm which specializes in housing consultation, to produce a housing needs and market analysis focused on Sussex County. The analysis provided several recommendations to the County, including updating the SCR. With the analysis and subsequent recommendation, along with the growing call for more workforce housing, the Council requesting the SCR to be updated in 2022.

The SCR update in 2022 came in the form of Ordinance Number 2889. The Ordinance was introduced by County Council on March 29, 2022; a public hearing was held by the Planning & Zoning Commission on April 28, 2022, and the Ordinance was amended and approved by the Commission on June 9, 2022. Subsequently, the County Council held its public hearing on October 18, 2022, and voted to approve the Ordinance on the same date.

**SCRP &
Chapel
Branch
Apartments
(continued)**

The SCR update does allow the development of multifamily units or townhouses “by right” so long as the development meets several requirements outlined in the Ordinance. Among those requirements, the site must be located within a Town Center, Developing Area, Commercial Area, or the Coastal Area as described within the County’s publicly adopted Comprehensive Land Use Plan. Twenty-five percent (25%) of the dwelling units must be offered at a reduced rent based on the household income. Families with incomes between 30%-80% of the area medium income (AMI) as defined by the U.S. Department of Housing and Urban Development would be able to apply for these units. The rent is set at 25% of household income for a family earning 50% AMI. Generally speaking, these rent ranges are designed to support working families. The site must be located on specific roads classified by the Delaware Department of Transportation (DelDOT) and work to have DART First State transit access. The site must be served by central water and sewer systems. The site requires a 100-foot setback around the perimeter if the dwelling exceeds 42 feet in height and a 50-foot setback if the dwelling is less than 42 feet in height. Additionally, the site requires that 50% of the gross area remain as open space.

As a result of these requirements, similar to any other “by right” property use, a developer seeking to participate in the SCR must still submit their application and receive approval in a public meeting from the Planning & Zoning Commission upon review of the site plan. no public hearings are required, nor held.

In addition to meeting the County criteria for approval, the developer must meet all other agency approvals, including DelDOT, Sussex Conservation District, and the Delaware State Fire Marshall.

To date, the County has had four developers being the SCR process, including the development known as Chapel Branch Apartments.

Following the process outlined above, the Chapel Branch Apartments application was submitted for the site located at the corners of John J. Williams Highway (DE Route 24) and Dorman Road, east of Burton Pond, near Agnola. The Planning & Zoning Commission reviewed the site plan and granted preliminary approval of the application on May 25, 2023. The developer’s building renderings were shown.

According to the site plan provided by the applicant, the Chapel Branch Apartments will be developed in two phases. Phase 1 features two apartment buildings and a clubhouse, while Phase 2 features two apartment buildings. Phase 1 construction is tentatively scheduled to being in the spring of 2024.

The development is approved for a total of 84 units with 28 designated as SCR and 56 as non-SCR. The apartment buildings are designed to be 38 feet, 6 inches in height and will have a 50-foot setback to the rear, side, and

**SCRP &
Chapel
Branch
Apartments
(continued)**

front of the property. a bus stop is called for on the corner of Dorman Road.

Mr. Roberston provided an overview of property rights for property owners and outlined the steps that were taken for the Ordinance. It was stated that DelDOT make the determinations related to traffic improvements that may be needed for developments. Mr. Robertson noted that they are not subsidized housing, however, through Mrs. Nauman’s department, there is an ongoing monitoring and coordination with any SCRIP project to ensure all of the requirements are being followed.

**Adminis-
trator’s
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Cardinal Grove – Phase 2 (Construction Record); Cardinal Grove – Pump Station; Heritage Shores – Villas at Bridgeville – Phase 5A (Construction Record); Heritage Shores – Villas at Bridgeville – Phase 5B (Construction Record); all effective January 17th.

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

**Accessory
Dwelling
Units
Discussion**

Jamie Whitehouse, Director of Planning & Zoning provided a presentation related to Accessory Dwelling Units. Mr. Whitehouse reminded Council that this topic was discussed during the public workshop that was held with the Commission in the fall of last year. He explained that the definition is broad, and it goes to the relationship with the structure vs. its principal structure on the property. An accessory dwelling unit is a self-contained dwelling unit that is secondary to the principal dwelling. So, that means there is an existing house on the parcel, and this is a smaller, secondary dwelling. They are more affordable dwellings, and they are designed to be occupied for year-round dwellings. They have all of the functional facilities of a dwelling house, but they are separate from the main dwelling house. Mr. Whitehouse explained that they come in a variety of different types of attachment whether they are internal or external. There are six common types which were discussed. Currently, in the zoning code, you will not see the words accessory dwelling unit. This does not mean that we do not have them, we call them garage/studio apartments which have been in the Code since about 1998. These applications go through the Board of Adjustments and historically, you would make an application and pay a fee. There are certain requirements that have to be met prior to the application going for a public hearing. In 2019, a change was adopted by County Council by an Ordinance that allows the applicant to come to staff to apply and a survey along with a \$50 fee. It then triggers staff to notify the adjoining property owners to allow them 10 working days to review what has been submitted and give them an opportunity to object. If there is an objection, then the

Accessory Dwelling Units Discussion (continued)

application would go to the Board of Adjustment as a public hearing, but if nobody objects, staff has the ability to administratively approve the application without the need for a public hearing. Since 2019, staff has seen over 70 detached ADUs of which about 85% of them were approved administratively.

Mr. Whitehouse then reviewed recent changes that Kent County adopted last year. He explained that the Ordinance came up with a good definition of an ADU. They define an ADU as a self-contained dwelling unit that is secondary to the principal dwelling unit on the property and includes independent living facilities such as a separate entrance, bathroom, and a kitchen. The dwelling unit may be attached to the principal dwelling, but they call it an accessory apartment. However, what may be detached on the same lot, they refer to as cottages. In addition, Kent County only permits one per property and they do not allow manufactured homes to be an ADU. They also have design requirements that states that the area of the ADU is a maximum of 50% of the floor area of the principal dwelling. It also has to be constructed on a slab or a cross space and the total lot coverage can only be 50% which includes the main dwelling. It also must also comply with all of the regulations in the Code.

Mr. Whitehouse and Mr. Robertson reviewed possible next steps and recommendations.

Grant Requests

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

M 049 24 Milton Historical Society

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green’s Councilmanic Grant Account) to Milton Historical Society for their Shipbuilding Museum and Public Exhibit.

Motion Adopted: 5 Yeas

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

M 050 24 Pop Warner Little Scholars Inc.

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,500 (\$1,500 from Mrs. Green’s Councilmanic Grant Account) to Pop Warner Little Scholars, Inc. (Woodbridge) for their Woodbridge Youth football program.

Motion Adopted: 5 Yeas

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

Introduction of Proposed

Mr. Vincent introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1

Ordinances **AGRICULTURAL RESIDENTIAL DISTRICT FOR TRUCK PARKING, STORAGE, & MAINTENANCE AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.06 ACRES, MORE OR LESS” filed on behalf of Deihm’s Trucking Inc.**

Mr. Vincent introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR VENUE FOR SEASONAL VENDORS AND SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.84 ACRES MORE OR LESS” filed on behalf of Blue Hen Rental Company, LLC.

The Proposed Ordinances will be advertised for a Public Hearing.

Council Members’ Comments **Mr. Hudson commented about the three soldiers that were killed and the several that were injured in the drone attack in Jordan. He asked that everyone keep them in their thoughts.**

Recess **A five-minute recess was held at 2:07 p.m. At 2:12 p.m., the Council came out of recess back into Public Hearings.**

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

Public Hearing/ CU2401 **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 MULTI-FAMILY (180 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 48.36 ACRES, MORE OR LESS” (property lying on the northeast corner of Old Mill Road [Rt. 349], and the southwest corner of Railway Road [S.C.R. 350], at the intersection of Railway Road [S.C.R. 350] and Old Mill Road [Rt. 349]) (911 Address: N/A) (Tax Map Parcel: 134-12.00-74.01) filed on behalf of OA Sundance Club, LLC.**

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

The Planning & Zoning Commission held a Public Hearing on the application on December 14, 2023. At the meeting of January 3, 2024, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 17 recommended conditions as outlined.

The Council found that Mr. Jim Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, OA Sundance Club, LLC;

Public
Hearing/
CU2401
(continued)

that also present were Mr. Ben Gordy of Ocean Atlantic Companies and Mr. Alan Decktor, Senior Engineer, with Pennoni Associates, Inc. Mr. Fuqua stated that an Exhibit Booklet was submitted; that the Application proposes 180 multi-family residential units; that the units will be single-family detached condominium units, to be located within an over 55 age-restricted community; that the Application is unique; that the site was already approved as a Conditional Use, and received Final Site Plan approval for a 200 unit multi-family development, as 17 multi-family apartment-type buildings; that the current Application proposes three modifications to the original Conditional Use and Site Plan; that rather than the large multi-family unit buildings, the Applicant is proposing single-family detached condominium units; that both types of units are defined as multi-family dwellings under the Sussex County Zoning Ordinance; that there was a 2.25 acre parcel that was located on the east side of Railway Rd., which has been removed from the current Application request; that the already approved 200 unit Conditional Use is now being proposed to reduce the density to 180 units; that the property is located at the northwest corner of the intersection of Railway Rd. and Old Mill Rd.; that the parcel contains 48.36 acres, which mostly consists of farmland; that there is approximately 3.6 acres of forest; that within the forested area is 1.3 acres of non-tidal wetlands, being located to the northwest corner of the site; that the site had frontage along both Railway Rd. and Old Mill Rd.; that the site is located adjacent to a wooded parcel to the rear of the site; that the remainder of the area surrounding the site is predominantly for single-family residential uses; that in 2010, the property was approved as a Conditional Use for 200 multi-family residential units; that approval was subsequently voided for the failure to be substantially under construction within the timeframe allotted; that in April 2021, the County Council held a public hearing on a Conditional Use application, C/U 2206, filed by Lender and Company for a 200 unit, multi-family development, which was similar to the Conditional Use that had been approved in 2010; that neither Ocean Atlantic nor Mr. Schell were involved in the previous Application, nor was Mr. Fuqua; that from his research, it seemed the previous application was controversial; that the previous public hearing lasted over five hours; that there was a opposition petition signed by over 1,000 residents in the area; there were over 260 email and letters of opposition submitted for the previous Application; that there was an organization, Evans Farm Watch, comprised of representatives from over a dozen area communities who led the opposition; that the previous application was granted a recommendation of approval by the County Council granted approval by a three to two vote; that the previously approved application proposed 200 units, in 17 multi-family buildings with 17 garage buildings located on the perimeter of the site; that the current Application request is to modify the previously approved development by replacing the large multi-family buildings with single-family detached condominium units, and reducing the units from 200 to 180; that this change was proposed for several reasons; that first, Ocean Atlantic Companies is an established and experienced local developer; that they build single-family

**Public
Hearing/
CU2401
(continued)**

and multi-family residential developments, rental communities and commercial projects; that based on the companies' experience and knowledge in Sussex County, it was determined that the site was not an appropriate location for the development of a large multi-family rental-type project; that the need for rental housing, particularly workforce housing is well established; that such housing does need to be located in an appropriate place; that the current location was deemed not to be appropriate for several reasons; that the site is not located in close proximity to shopping areas or employment centers; that the site is not served by public transportation; that the area roads, particularly Railway Rd., between Old Mill Rd. and Rt. 26, is a narrow, two-laned road; that there are no sidewalks or shoulders; that due to this, it would create unsafe conditions for pedestrians walking or cycling along the road; that additionally, as it was noted by the opposition for the prior Conditional Use, the large multi-family building project does not fit in with the existing character of the area; that the surrounding area is predominantly of single-family residential character; that the previous Conditional Use Site Plan reflected 17 large buildings, with 17 garage buildings located along the outside perimeter of the large buildings; that one resident in opposition referred to the previous Site Plan layout as a circled wagon train design; that everything was centered with an almost military style and feel with compounded units located on the outside surrounding of the site; that the aesthetic appeal was lacking, and was not in character with the existing nature of the area; that the Site Plan for the current Application replaces the 17 big, box-styled, multi-family buildings and garages with 180 single-family attached condominiums; that there are a variety of unit types and styles that can be chosen, with options that the purchaser can choose from; that there will be a variety of different styles and appearances within the development; that the current Site Plan has the appearance of a mini-subdivision comprised of single-family condominium units, rather than the single-family homes located on individual lots; that the modified Site Plan retains the multi-family use, but with a building design that is in better harmony with the area and creates a more appropriate transition from the surrounding area to the use of the site; that everyone can recognize there is a need for rental housing in eastern Sussex County, however, there is also a need for appropriate housing, such as an over 55 community for both new and current older residents; that the existing 2019 Sussex County Comprehensive Plan note that the median age of a Delaware resident is 39 years; that the median age in New Castle County is 37.5 and Kent County it is 37 years; that the median resident age in Sussex County is 47 years; that the median age of residents in eastern, coastal area of Sussex County is much higher; that the census population data from the beach towns and areas such as Longneck and Ocean View, report an average median age of approximately 64 years; that this equals to half of the population in those areas being older than 64 years of age; that now, over 55 communities are designed with the needs of the older residents in mind; that the homes tend to be smaller, with master bedrooms located on the first floor; that accessibility and safety are key design components;

**Public
Hearing/
CU2401
(continued)**

that options are available to provide a number of things that would be desirable by older residents, which include handicap accessible bathrooms, and other floor modifications to make the homes more navigable and safer for older residents, many purchasers, including current older residents seeking to remain living in the area where they have been living, but wanting to downsize from their existing larger homes and yards; that downsizing will provide less utility and other expenses, as all buildings and lawn maintenance will be taken care of by the Owner's Association; that the Applicant has concluded the subject site is much more appropriate for the proposed type of use, and is more compatible with the local uses in the area; that the proposed development will contain 180 single-family detached condominium units, resulting in a density of 3.7 units per acre; that the proposed density is significantly less than the density that would have been permitted by the existing GR (General Residential) Zoning; that the parcel is zoned GR (General Residential); that the current Application proposes 20 units less than what was already approved for the site; that the site is located within the Coastal Area, which is a Growth Area, where a range of housing types, including multi-family uses, are appropriate; that the site is in State Investment Level 2 and 3; that central water will be provided by Tidewater Utilities; that central sewer will be provided by Sussex County; that the Applicant will be responsible for the entrance and road improvements, as required by DelDOT, along the road frontage on both Railway Rd. and Old Mill Rd.; that the road improvements will include a shared use path along both of those roads; that there will be a vegetated or forested buffer of at least 20 ft. in width installed along the perimeter of the development that is adjacent to lands of other ownership; that the buffer will be increased to a minimum of 25 ft. along the western boundary line of the site; that there will be an enhanced buffer to the northeastern corner of the property; that there would be a landscape buffer to the rear of the homes bordering Railway Rd. and Old Mill Rd.; that there are 1.6 acres of non-tidal Federally regulated wetlands located in the northwest corner of the site; that area will remain undisturbed, and in its natural wooded state; that there will be a 50 ft. buffer established from any home and the wetland line; that the site is located with Flood Zone X, being outside of the floodplain, according to the FEMA Insurance Map; that there are 3.6 acres of woodlands that are located to the northwest corner; that along the northern boundary line, approximately .39 acres of woodlands will be removed; that approximately 89% of the existing woodlands will remain as they are; that stormwater management facilities will be designed and constructed in full compliance with DNREC's regulations; that there will be a recreational area located near the entrance of the site that will consist of a clubhouse, a pool and a deck, two pickleball courts, a community garden, and a dog park; that it is proposed that the recreational amenity would be completed prior to the issuance of the 90th Certificate of Occupancy, equating to 50%; that sidewalks will be located on one side of all internal streets with shielded street lighting; that each residential unit will have a two car garage and space for two cars to be located in the

**Public
Hearing/
CU2401
(continued)**

driveway; that in addition, there will be 47 parking spaces located at the recreational area; that the spaces will be comprised of 44 regular spaces and three ADA compliant spaces; that there was an emergency access placed in the northeast corner of the site, which he believed was to have lighting along the shared use paths; that DelDOT requested the emergency access be removed, as they did not want the emergency access or the lighted pathway; that due to this both the emergency access and lighting were removed; that the modified Site Plan does present an appropriate transition design that is more harmony in appearance with the many single-family developments in the area; that he believed the proposed design is much more acceptable and preferred by many of the residents of the area; that there was a letter submitted by the Evans Farm Watch, which was the same organizational group on record for the previous application; that the group did indicate that they found the modified plan to be more acceptable; that in 2021, the Council stated a number of reasons for recommending approval of the previous application; that those reasons were adopted by the County Council, and the application was approved; that he felt those previous reasons equally applied to the current Application; that the property is zoned GR (General Residential), which provides for medium density residential use with a permitted density of four units per acre; that the property is in the vicinity of a mixture of residential and commercial zoned properties, including GR properties, as well as MR (Medium-Density Residential) and C-1 (General Commercial) zoned properties; that a multi-family residential project is consistent with those zoning classification options; that the proposed Conditional Use is appropriate for the site because central sewer and water is available; that the proposed use is consistent with the County's Comprehensive Plan because the site is located within the Coastal Area, which is a Growth Area, and is located in an area where medium and higher density is appropriate, and a range of housing types should be permitted in the Coastal Area, including multi-family units; that DelDOT reviewed the proposed use and determined under its vehicle trip standards, that the traffic impact would be minor; that the developer will be responsible for road improvements required by DelDOT; that the current Application proposed fewer units than the previous application, and the current Application is for an age restricted community; that the Commission previously stated under the Sussex County Zoning Ordinance, there is no distinction between a condominium multi-family unit and an apartment multi-family unit; that a condominium is not a building, it is a form of ownership; that it is a way to own something; that it is not a construction type; that the definition of a multi-family unit is various things under the Sussex County Zoning Ordinance, including an apartment, a townhouse, and a duplex; that these findings were made in 2021; that no conditions have changed in that area so they equally apply to this application; that at its meeting on January 3, 2024, the Planning & Zoning Commission recommended approval of this application subject to conditions A-Q; that the applicant believes that this application is an appropriate use of the land and the existing GR zoning; that it is compliance with the

**Public
Hearing/
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(continued)**

Comprehensive Plan; that it is more compatible with the existing residential communities in the area; that it is much more acceptable to the many area residents; that he requested the Council’s approval based on the findings and conditions provided by the Commission.

Public comments were heard.

Mr. Martin Lampner spoke in favor of the application; that his neighborhood association, formerly Evans Farm Watch will be becoming the Whites Neck Communities Association; that the association is approachable; that Mr. Schell reached out to them; that they sat down to provide ground on both sides to give a workable design and they recommend the Council approve this development.

Ms. Tracy Wells questioned if this building would affect their wells; that she questioned what a condominium unit is; that she questioned the lighting on the site; that she did not receive any notice for the meetings.

The Public Hearing and the public record were closed.

**M 051 24
Amend
Condition J/
CU2401**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to amend Condition J to state as follows: Construction, site work, excavation, grading, and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no Sunday hours. During sitework and initial construction, all dumpsters and roll-off containers shall be covered to prevent construction materials and debris from blowing across the site or onto neighboring properties.

Motion Adopted: 5 Yeas

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

**M 052 24
Adopt
Ordinance
No. 2977
CU2401**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2977 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (180 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 48.36 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as amended by this Council as follows:

- 1. This property has been the subject of several prior applications. Conditional Use No. 1848 was recommended for approval by this Commission and then approved by County Council for 200 multifamily condominium units. Then, Conditional Use No. 2206 was subsequently approved for a similar project with 200**

**M 052 24
Adopt
Ordinance
No. 2977
CU2401
(continued)**

- apartment multifamily units. Neither development was built.
2. This application is for 180 condominium units, twenty less than what was previously approved. Instead of large buildings with multiple units, this project will consist of condominium units that have the appearance of individual homes. These individual structures will be consistent with the single-family homes that exist on many neighboring properties.
 3. The property is currently zoned GR General Residential. According to the Sussex County Zoning Code, the purpose of the GR District is to provide for medium density residential uses. The permitted density within the GR District is 4 units per acre. This application complies with the purpose and density of the GR Zoning District.
 4. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including other GR properties, MR properties and C-1 properties. This use is consistent with all of the nearby uses and zoning districts.
 5. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
 6. 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.
 7. The project will be served or benefitted by amenities which include a clubhouse, pool, playground, sport courts, and walking paths.
 8. DelDOT has reviewed the proposed project and has determined that the development traffic impact will be minor.
 9. With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.
 10. This recommendation is subject to the following conditions:
 - a. There shall be no more than 180 Units within 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. There shall be on-site active and passive amenities including a clubhouse, swimming pool, pickleball courts, gardens, and a dog park. These amenities shall be completed and open to use as required by the Zoning Code.
 - d. 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.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as

**M 052 24
Adopt
Ordinance
No. 2977
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(continued)**

- required by applicable regulations.
- f. 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.**
 - g. No wetlands shall be disturbed except as authorized by State and Federal permits.**
 - h. All internal roadways shall be private and maintained by the developer or its assigns. All roads shall comply with Fire Marshal and Delaware Fire Prevention requirements.**
 - i. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.**
 - j. Construction, site work, excavation, grading, and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no Sunday hours. During sitework and initial construction, all dumpsters and roll-off containers shall be covered to prevent construction materials and debris from blowing across the site or onto neighboring properties.**
 - k. The developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.**
 - l. There shall be a forested and/or vegetated buffer strip that is at least 20 feet wide adjacent to land of other ownership. This buffer shall increase to a width of 25 feet along the western boundary line between units 13 and 31 and along the northeastern boundary line between units 54 and 62. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.**
 - m. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.**

**M 052 24
Adopt
Ordinance
No. 2977
CU2401
(continued)**

- n. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- o. As represented by the Applicant, the development shall be an “age-restricted, over-55” community as that term is generally interpreted under Federal Law and Fair Housing.**
- p. The Final Site Plan shall include an unobstructed area set aside for vehicular access to the subdivision in emergency situations from Railway Road. This area does not need to be improved with paving or stones. Instead, it must be an area outside of any structures and free from obstructions so that the development is not isolated in the event that the main entrance is impassible.**
- q. The Final Site Plan shall be subject to the review and approval of the Sussex Planning & 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**

**M 053 24
Go Into
Executive
Session**

At 2:51 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session for the purpose of discussing matters related to 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 2:53 p.m., an Executive Session of the Sussex County Council was held in the Council Chambers to discuss matters related to pending & potential litigation. The Executive Session concluded at 3:07 p.m.

**M 054 24
Reconvene**

At 3:09 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Executive Session back into Regular Session.

Motion Adopted: 5 Yeas

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

There was no action related to Executive Session matters.

**M 055 24
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to adjourn at 3:10 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.}