

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 7, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 7, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
David N. Rutt	Assistant County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 474 14
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by striking “Executive Session – Pending/Potential Litigation and Land Acquisition pursuant to 29 Del. C. §10004(b)” and “Possible Action on Executive Session Items”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**E/S
Minutes**

Mr. Phillips referenced Executive Session minutes.

Minutes

The minutes of September 30, 2014 were approved by consent.

**Corre-
spondence**

Mr. Rutt read the following correspondence:

**TERESA AVERY, AUTISM DELAWARE, NEWARK, DELAWARE.
RE: Card of thanks for the Council’s support of the Blue Jean Ball
Fundraiser.**

**Update/
The Live
Conference**

Sally Beaumont, Chairperson, Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County, presented information on the Second Annual Live Conference scheduled for October 13, 2014 from 8:00 a.m. to 3:00 p.m. at the Sussex Academy on Airport Road in Georgetown, Delaware. For additional information and/or tickets, interested parties can visit the following website: <http://bitly.com/LIVE2014Conference>. The mission of

Conference (continued)	<p>The LIVE Conference is to improve the knowledge and understanding of services and techniques that support seniors who want to live physically and financially safe and secure in their homes and communities.</p>
Economic Develop- ment Director	<p>Mr. Lawson introduced Sussex County’s new Economic Development Director, Melody Booker-Wilkins. Mr. Lawson reported that, after an extensive interview process, Mrs. Booker-Wilkins was the top candidate for the position. Mrs. Booker-Wilkins will join the County on October 20, 2014.</p>
Adminis- trator’s Report	<p>Mr. Lawson read the following information in his Administrator’s Report:</p> <ol style="list-style-type: none"><p><u>County Employee – Rick Rowe</u></p><p>It is with great sadness that I inform you of the passing of County employee Rick Rowe last night at his home. Rick started with the County on May 17, 2004, as Utility Construction Tech II and was promoted to a Tech III on July 1, 2006.</p><p>Arrangements are still pending, but we would ask that you keep Rick’s family and co-workers in your thoughts.</p><p><u>TD Rehoboth LLC Withdrawal Request – Overbrook Towne Center (C/Z #1760)</u></p><p>Please be advised, the County is in receipt of a letter dated October 6, 2014, from Mr. Louis Di Bitonto, the Development Director of TD Rehoboth LLC. The letter, addressed to Mr. Lawrence Lank, Director of Planning & Zoning, requests that the County withdraw TD Rehoboth LLC’s application for rezoning of the Overbrook Towne Center at this time.</p><p>Since this matter has not begun the public hearing process, no vote is required and the withdrawal request will be honored.</p>
State Energy Code Update	<p>Andy Wright, Chief of Building Code, reported that, as of May 6, 2014, DNREC, through the Division of Office of Energy, has adopted the 2012 International Energy Conservation Code; the enforcement date for this version of the Code will be November 11, 2014. Mr. Wright distributed a brochure entitled “Residential Changes in Delaware from the 2009 to the 2012 International Energy Conservation Code. Mr. Wright stated that, as a result, there will be some up-front costs to new home construction and commercial projects; however, the end result will be more efficient homes with cost savings for the homeowners. In response to questions, Mr. Wright stated that most of the major homebuilders in the area are already meeting or exceeding the new requirements. Mr. Wright also noted that this will not detrimentally affect the County’s building industry.</p>

Records Management Facility/ Roof Replacement Project

John Ashman, Director of Utility Planning, reported on the bid results for the Records Management Facility Roof Replacement Project (Sussex County Project 14-08). The project scope involves the removal of the existing roof and insulation and replacement with new insulation and roofing. As part of the bid, a contingent bid item was included to increase the insulation to 3 inches minimum. The Engineering Department recommends exercising that option since, currently, there is no insulation in the roof or ceiling of the facility. The contract term for the project is 75 consecutive calendar days, with a 30-day flexible start. Mr. Ashman reported that three bids were received and the lowest responsive bidder was C.T.A. Roofing of Newark, with a base bid of \$101,000, with a contingent bid item in the amount of \$6,000, for a total bid of \$107,000. The Engineer's estimate for the project was \$120,000.

M 475 14 Award Bid for Roof Replacement Project/ Records Management Facility

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project 14-08, Records Management Facility Roof Replacement, be awarded to C.T.A. Roofing of Newark, Delaware, at the bid amount of \$107,000.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea

Angola North Expansion of the Angola Neck SSD

John Ashman, Director of Utility Planning, presented the Public Hearing results for the Angola North Expansion of the Angola Neck Sanitary Sewer District. The Public Hearing was held on September 18th at which time the Engineering Department, Whitman Requardt & Associates and DNREC made presentations of the proposed boundary, preliminary infrastructure layout, estimated user costs and new septic system regulations and their impacts. The proposed boundary includes 196 parcels, two manufactured home parks (approximately 48 residents), and Sunset Lane Condominiums (4-6 units); the boundary runs from the boundary of the Love Creek Bridge west to Peddlars Village, includes Fox Hollow to the north, and goes to Love Creek Woods to the south. Estimated users costs and a proposed project schedule were presented at the Public Hearing. Mr. Ashman reported that the Department is working on a facility plan and environmental assessment and will try to secure funding. Construction is proposed to begin in October 2015 with the system operational by October 2016; this proposed schedule would give customers one year from October 2016 to connect (October 2017).

Mr. Ashman reported that, prior to the Public Hearing, a resident of Fox Hollow presented a petition with approximately 19 signatures asking to be excluded from the boundary. There was also some confusion as to the residents of Love Creek Woods as to their desire for service. The public record was left open until September 28th to receive written comments

**Angola
North
Expansion
of the
Angola
Neck SSD
(continued)**

either in support of or in objection to the proposal and to clarify the position of the Love Creek Woods homeowners. Some letters were received prior to the September 28th deadline. Three (3) additional people asked to be excluded and 1 resident on Sunset Lane that has just installed a new septic system expressed concerns as to whether she can afford connecting after just paying for a new system. Mr. Ashman stated that the County is looking into a way to provide some relief to the homeowner with the new system. Also, three letters were received from residents of Sunset Lane Condominiums expressing their desire to be included and a clarification was received from Love Creek Woods of the community's desire to be included in the project. Also, an email was received from a person in Fox Hollow expressing that he and his two neighbors would like to be included. In summary, out of over 200 parcels, there are 21 that are not in favor of the expansion.

Of those in attendance at the Public Hearing, 35 people were in favor and 18 were opposed. By community, Fox Hollow had 7 people in favor and 12 opposed, and Love Creek Woods had 18 people in favor and 2 opposed.

Mr. Ashman and the Council discussed the matter of excluding parcels. Mr. Ashman noted that any exclusions could impact the estimated costs to the others. Mr. Asham advised that the Engineering Department is recommending to proceed with the boundary, as proposed.

In response to questions, Mr. Ashman noted that since this is a proposed expansion of a sanitary sewer district, a referendum is not required.

**M 476 14
Adopt
R 009 14/
Angola
North
Expansion
Resolution**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Resolution No. R 009 14 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE ANGOLA NECK SANITARY SEWER DISTRICT (ANSSD) TO INCLUDE THE AREA KNOWN AS ANGOLA NORTH, FROM LOVE CREEK WEST TO PEDDLER'S VILLAGE, BEING SITUATE IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Proposed
Dwelling
Definition
Ordinance**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I BY AMENDING THE DEFINITIONS OF "DWELLING", "DWELLINGS, SINGLE FAMILY", "DWELLING, MULTI-FAMILY", AND "FAMILY".

This Ordinance amends the definitions of Family, Single Family Dwellings and Multifamily Dwellings to avoid unintended discrimination under State and Federal Law. It confirms that a family may include one or two people

**Public
Hearing/
Proposed
Dwelling
Definition
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(continued)**

living together and not only their natural or adopted children but also step children and foster children. It also clarifies that children are permitted to reside with legally appointed guardians. It permits licensed and approved residential houses of no more than ten persons with disabilities as defined in the Delaware Fair Housing Act. Lastly, it recognizes that it is appropriate for two families to reside in a single unit when the owner(s) of the unit are elderly and/or disabled.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on August 7, 2014 at which time action was deferred. On September 11, 2014, the Commission recommended that the Proposed Ordinance be approved.

(See the minutes of the Planning and Zoning Commission dated August 7 and September 11, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and decision.

Vince Robertson, Assistant County Attorney, advised that the Proposed Ordinance has been a collaborative effort that has its start from several different points: the recent campground applications pointed out what was an unintended distinction between manufactured homes and dwellings under the Code about separation distances and a review of State and Federal Law and directives from HUD and others about fair housing, including the recent fair housing training that the County has participated in; that the Ordinance has been prepared by the County Attorneys with input from Brandy Nauman, County Fair Housing Coordinator and the County’s Community Development Office, Delaware State Housing Authority and the Office of State Planning Coordination; that both offices have commended the County’s efforts; that the language in the Ordinance is based on Federal Law for the definition of a dwelling and State Law for groups that can reside in a dwelling; that the County had to be careful about creating unintended consequences of the Ordinance change; that whenever there is a change like this, you have to review all sections of the Code to try and avoid it having unanticipated effects on other areas of the Code; that this Ordinance brings manufactured homes back into the definition of dwelling; that putting that into the context of campgrounds, this means that in future campground conditional use applications, the camp sites must be 400 feet from the nearest dwelling, whether it is a stick-built home, a Beracah-style home, or a single wide or double wide manufactured home; that the definition of dwelling is based on Federal Law; that it is also included in the Consent Decree that was agreed upon; that for zoning purposes, the term “family” has given way to a more broad definition of who can live together in a dwelling; that this amendment takes the separate definition of family out of the zoning code and it states who can live in a dwelling as follows: 1 or 2 people related by blood or marriage, with any number of their children (natural, foster or step); 2 single parents/guardians with any number of their children (natural, foster or

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(continued)**

step); a group of no more than 4 unrelated people; a group residential facility licensed by the State of Delaware serving 10 or fewer individuals with disabilities on a 24 hour basis, as the term disability is defined under State law; 1 or 2 elderly or disabled persons who own a dwelling plus 1 or 2 people related by blood or marriage and their children; and that a single family dwelling would be one of these groups and a multi-family dwelling would be 2 or more of these groups.

Mr. Robertson reviewed the differences regarding what is currently in the Code and what is in the Proposed Ordinance:

- under the current Code, a family is defined as 1 or 2 people living together and related by blood or marriage – it does not reference their children; under the Proposed Ordinance, a family is defined as 1 or 2 people living together and related by blood or marriage and their children (foster, step, adopted or natural);
- a new provision in the Proposed Ordinance that is not currently in the Code is 2 single parents or guardians with their children (foster, step, adopted or natural);
- the current Code refers to 4 unrelated people; the Proposed Ordinance still refers to 4 unrelated people;
- under the current Code, there is not a provision for group residential facilities (for 10 or fewer people with disabilities); Title 22 of the Delaware Code mandates this; this is not a change, it is just making Sussex County’s Code consistent with what is already in State law;
- a new provision in the Proposed Ordinance for the ability for 1 to 2 people related by blood or marriage living with an elderly or disabled adult.

Mr. Robertson stated that the proposed changes are not that significant.

Mr. Robertson stated that, during the Planning and Zoning Commission’s Public Hearing, a question was raised by Mr. James Truitt regarding foster children and the number of foster children that could reside in a home. Mr. Robertson stated that this was researched and it was determined that the foster child program is regulated by the State of Delaware. Additionally, under State Law, there is no distinction between foster children, step children, adopted children or natural born children.

Mr. Robertson stated that the Proposed Ordinance would bring Sussex County up-to-date with regard to Federal and State Law requirements and it implements what the County was required to do under the Consent Decree with HUD.

The Council discussed the Proposed Ordinance.

Public comments were heard.

**Public
Hearing/
Proposed
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Definition
Ordinance
(continued)**

James S. Truitt, Jr. of Rehoboth spoke in opposition to the Proposed Ordinance. He stated that the County is doing this because “it is the law” and he questioned “who is the law”; that this is happening because of the corrective actions required in the VCA (Voluntary Compliance Agreement) in the fair housing settlement; that there should be some negotiation/mediation/middle ground to what is going on with the definition; that he does not have a problem with the definition of dwelling as it relates to mobile home parks, etc.; that the definition of dwelling should be addressed in a separate ordinance and that single family and multi-family should be addressed in a separate ordinance; that the Chairman of the Planning and Zoning Commission told him not to worry about the proposed ordinance and that the County just has to get this done; that there are a lot of problems with the ordinance amendment; that someone may have as many foster children as they want; that Kent County has no limits in its Code; that in some homes in Rehoboth Beach Yacht and Country Club, there are 10 to 12 people living in the homes; that there would be too many people per acre; that the Proposed Ordinance will create traffic, septic, standing water, density and safety problems; that the Proposed Ordinance will affect quality of life; that investments in houses in certain pockets of communities is going to go down all over Sussex County; that the County cannot enforce existing ordinances; that the State of Delaware is discriminating against Sussex County Council and the County because other counties and municipalities don’t have to do this; that one solution is to grandfather everything in Sussex County that exists now and record it and put the new regulations on new subdivisions, mobile home parks, etc.; and that he cannot believe this is being pushed on Sussex County.

Dan Kramer of Greenwood referenced manufactured housing and he questioned if it includes single-wide and double-wide manufactured homes; that he questions why manufactured home owners are paying taxes if manufactured homes are not considered dwellings; and he questioned if the Proposed Ordinance will allow single-wide and double-wide manufactured homes in any and all zoning districts and that he believes it will.

Mr. Robertson responded to Mr. Kramer’s question and stated that it will not and that the reason is that while the dwelling definition is proposed to include manufactured homes, elsewhere throughout the Code, it still references the separation of detached single family dwellings versus manufactured homes; that manufactured homes are permitted in the GR District; that in an AR-1 district, single family detached dwellings are permitted but not manufactured homes unless they meet other criteria; that in the individual zoning districts, it references single family dwellings, multi-family dwellings and manufactured homes; and that regarding the tax issue, taxation is not going to change as a result of the Proposed Ordinance.

Jesse Garcia of Millsboro stated that he was confused by the Proposed Ordinance; that he thought the purpose was to change the definition of dwelling to include manufactured housing; that if a manufactured home is

**Public Hearing/
Proposed Dwelling Definition Ordinance (continued)**

not a dwelling, he questions what they are living in; and that manufactured homes are governed by the housing rule and are taxed.

Anthony Bruce Wright of First State Community Action Agency stated that he applauds what Council and Administration is doing to ensure fair housing in Sussex County.

Paul Reiger of Georgetown referenced single-wide and double-wide manufactured homes; that he has a lot of problems with codes; that the zoning and building departments should have control over the number of people; and that the zoning department could be allowed to classify what a bedroom is.

There were no additional public comments.

Council members referenced the suggestion to separate the family definition from the dwelling definition and have two separate ordinances and referenced the possibility of grandfathering.

Mr. Robertson and Mr. Rutt discussed the potential problems with grandfathering.

Council members discussed holding the Public Hearing and public record open.

**M 477 14
Leave Public Hearing Open on Proposed Dwelling Definition Ordinance**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to leave the Public Hearing (on the Proposed Ordinance) open for two weeks to receive further input from staff and to receive further public comment, including written comments.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Grant Request

Mrs. Jennings presented a grant request for the Council's consideration.

**M 478 14
Councilmanic Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 (\$500.00 each from Mr. Cole's and Mr. Phillips' Councilmanic Grant Accounts) to Indian River High School Band Boosters for a fundraiser for trip expenses.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Additional Business Under Additional Business, Dan Kramer commented on the appointment of the Economic Development Director and he stated that he wants to know what the salary is and that this information is required to be broadcast at the time of hiring.

M 479 14 Recess At 12:08 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to recess until 1:30 p.m.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 480 14 Reconvene At 1:32 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea

Rules Mr. Rutt reviewed the Rules of Procedure for Public Hearings.

Mr. Phillips joined the meeting.

C/U 1992/ Applicant Not Present Shane Abbott, Assistant Director of Planning and Zoning, announced that the Applicant (Ralph Brumbley) for the first application (Conditional Use No. 1992) was not in attendance. The Council decided to move to the next application on the agenda.

Public Hearing/ C/U No. 1993 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 PAINT BALL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.1345 ACRES, MORE OR LESS” (Tax Map I.D. 430-8.00-9.02) (Conditional Use No. 1993) filed on behalf of David J. Bosco.

The Planning and Zoning Commission held a Public Hearing on this application on August 7, 2014 at which time action was deferred. On August 21, 2014, the Commission recommended that the application be approved with conditions.

(See the minutes of the Planning and Zoning Commission dated August 7 and 21, 2014.)

**Public Hearing/
C/U**

**No. 1993
(continued)**

Mr. Abbott read a summary of the Commission’s Public Hearing and decision.

The Council found that Amy Robb was present on behalf of the application. She stated that she owns the property and her family owns the farmland around it; that the land is currently pasture land; that a perimeter fence exists; and that she and her family fully support the application.

There were no public comments and the Public Hearing was closed.

**M 481 14
Adopt
Ordinance
No. 2367
(C/U
No. 1993)**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2367 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PAINT BALL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.1345 ACRES, MORE OR LESS” (Conditional Use No. 1993) filed on behalf of David J. Bosco, with the following conditions:

- A. The use shall be limited to paintball and activities related to it. Sales of paintball related items shall also be permitted.**
- B. As stated by the applicant, the facility shall only be open on Saturdays and Sundays from 11:00 a.m. until 6:00 p.m.**
- C. One lighted sign shall be permitted, not to exceed 32 square feet in size per side.**
- D. As stated by the applicant, the use will only occur on the north side of the site to the left of the dwelling that is located on the property. The area used for paintball shall be entirely enclosed with netting or fencing. The Final Site Plan shall show the exact location of the area specified by the applicant for the Conditional Use.**
- E. The areas set aside for parking shall be clearly identified on the Final Site Plan and on the site itself.**
- F. 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. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public Hearing/
C/Z
No. 1755**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 1 AND TO DELETE CONDITIONS NO. 2 AND NO. 15 IMPOSED ON ORDINANCE NO. 1532 FOR CHANGE OF ZONE NO. 1460, THE APPLICATION OF BUNTING-GRAY, LLC FOR “THE REFUGE AT DIRICKSON CREEK”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO INCREASE THE MAXIMUM NUMBER OF ALLOWABLE DWELLING UNITS FROM 343 UNITS TO 355 UNITS,

**Public
Hearing/
C/Z
No. 1755
(continued)**

OF WHICH NO MORE THAN 68 UNITS SHALL BE MULTI-FAMILY UNITS, AND TO ELIMINATE THE B-1 NEIGHBORHOOD BUSINESS USES PERMITTED BY ORDINANCE NO. 1532 ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.3494 ACRES, MORE OR LESS” (Change of Zone No. 1755) filed on behalf of Bunting – Gray, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on August 7, 2014 at which time action was deferred. On August 21, 2014, the Commission recommended that the application be approved with conditions.

(See the minutes of the Planning and Zoning Commission dated August 7 and 21, 2014.)

Mr. Abbott read a summary of the Commission’s Public Hearing and decision.

Copies of an Exhibit Book were provided by the Applicant and distributed to the Council. Proposed Findings of Fact and Conditions were also submitted.

Shannon Carmean-Burton and John Sergovic, Esquires; Coleman Bunting and Ron Gray, partners in Bunting-Gray, LLC; and Mike Wigley with Davis, Bowen and Friedel, Inc. were present on behalf of the application. They stated that, originally, 3.43 acres of the RPC were designated as B-1 and they have been unable to rent the property on a commercial basis; that in discussions with the homeowners, it was determined that it would be better suited for the project to turn this area into townhomes; that immediately contiguous to the property is a small shopping center that serves the needs of the community; that this is why they decided to seek approval for the residential use of the property for 20 townhomes; that they are proposing to amend condition #1 and to delete conditions #2 and #15 of Ordinance No. 1532; that the applicants have owned the property for over 10 years; that the original application was approved in 2002; that 3.43 acres of commercial area was set aside; that a total of 56 townhouse units are permitted; that the developers have only built 48 units; that they propose to build 20 additional units with a net increase of 12 units; that the site is in a developing area; that the proposed use is compatible to the area; that the proposed density is 1.91 units per acre; that 4 buildings with 5 units is proposed; that the revised plan doubles the amount of open space; that a 60-foot setback is proposed from Route 54; that the buildings will be 2-story with garages; that 3 parking spaces per unit are proposed; that access to the site will be from Leisure Drive; that there is no direct access to Route 54; that a Concept Plan has been submitted to the County Engineering Department; that the site is located within the Fenwick Island Sanitary Sewer District; that Artesian will provide central water to the site; that the site is within the Roxana Volunteer Fire Company fire protection area; that the fire department substation is 0.2 miles from the site; that the storm

**Public
Hearing/
C/Z
No. 1755
(continued)**

water management concept has been approved by the Sussex Conservation District; that the applicants are the developers of the existing residential planned community known as The Refuge at Dirickson Creek; that the subject property is identified in the rezoning approval by Ordinance No. 1532 whereby CZ #1460 was approved subject to certain conditions, including but not limited to the following: (1) Condition No. 1 which provides that the maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units; (2) Condition No. 2 which provides the maximum area of commercial development shall be one acre per 100 dwelling units; and (3) Condition No. 15 which provides that there shall be no direct access from the commercial area onto Route 54, except from the existing entrance location serving the site; that to date, the subject property remains undeveloped; that Ordinance No. 1532 allows 56 multi-family units however only 48 units have been constructed; that the development is governed by the Declaration of Reservations, Restriction, Covenants and Easements for the development; that the subject property is identified as the commercial area and as such has separate rights from other lots and units in the development; that it is the position of the Association that the Declaration must be amended in order to change the use allowed on the site; that to change the use, a 2/3 vote must be obtained from the total number of lots and units; that trying to obtain the 2/3 vote may be difficult; that the applicants are requesting a six month time frame to obtain the necessary votes; that if the application is approved and they cannot obtain the 2/3 vote, the applicants request that the conditions revert back to those approved in Ordinance No. 1532; that the site is in an Environmentally Sensitive Developing Area; that a range of housing types are permitted in this district; that the applicants are seeking a downzoning from the approved commercial use area; that the proposed use complies with the Zoning Code; that the project is located along the Route 54 corridor where similar densities exist; that the revised plan creates more open space; that DelDOT did not require a Traffic Impact Study; that the Office of State Planning Coordination did not require PLUS review; that the Applicant's request to conditionally modify Condition No. 1 and to delete Conditions No. 2 and 15 imposed by Ordinance No. 1532 for Change of Zone 1460, to increase the allowable dwelling units from 343 to 355, of which no more than 68 units shall be multi-family units, and to eliminate the B-1 Neighborhood Business uses permitted by Ordinance No. 1532 is appropriate legislative action, subject to the condition that any approval shall be conditioned upon the applicant's ability to obtain the requisite number of votes of the Association members, lot owners and unit owners in the Refuge to amend the Declaration within six (6) months of the adoption of the Ordinance by County Council approving this application; that in the event that this condition is not satisfied within six (6) months of adoption of the Ordinance by County Council, the conditional amendment to Ordinance No. 1532 shall be void and Condition No. 1, as originally adopted, and Conditions No. 2 and 15, as originally adopted, shall be reinstated; that by deleting the commercial area, there will be less impervious area; that open space will double; that 277 single family lots have been sold and 48 multifamily have sold; that out of 315 property

**Public
Hearing/
C/Z
No. 1755
(continued)**

owners, 122 owners are in support of the change and 70 are opposed; that the Applicants feel that six months is enough time to obtain the owners' approval to amend the Declaration; that all owners were notified of the pending revisions; that the current market and demand contributed to the proposed revisions; that if the request is approved, 20 more owners will contribute to the homeowners' association; that the existing amenities will also be available to new owners; that 12 additional townhouses are proposed; that the Declaration and Restrictions will be amended if a 2/3 vote agrees to the change; that the proposed units will look the same as the existing units; that an architectural rendering of the design was submitted; that the new units' owners will become members of the Homeowners Association; and that if the applicants do not obtain the approval of the County, there is no need to try to obtain approval from the Homeowners Association.

It was noted that an approval by the Council would be contingent on the approved amendment to the Declaration and Restrictions and that if the Applicant does not obtain approval from the Association, this application would be voided for failure to meet the conditions and Condition Nos. 1, 2 and 15 as originally adopted would be reinstated.

There were no public comments and the Public Hearing was closed.

**M 482 14
Adopt
Ordinance
No. 2368/
C/Z
No. 1755**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to Adopt Ordinance No. 2368 entitled "AN ORDINANCE TO MODIFY CONDITION NO. 1 AND TO DELETE CONDITIONS NO. 2 AND NO. 15 IMPOSED ON ORDINANCE NO. 1532 FOR CHANGE OF ZONE NO. 1460, THE APPLICATION OF BUNTING-GRAY, LLC FOR "THE REFUGE AT DIRICKSON CREEK", A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO INCREASE THE MAXIMUM NUMBER OF ALLOWABLE DWELLING UNITS FROM 343 UNITS TO 355 UNITS, OF WHICH NO MORE THAN 68 UNITS SHALL BE MULTI-FAMILY UNITS, AND TO ELIMINATE THE B-1 NEIGHBORHOOD BUSINESS USES PERMITTED BY ORDINANCE NO. 1532 ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.3494 ACRES, MORE OR LESS" (Change of Zone No. 1755) filed on behalf of Bunting – Gray, LLC., with the following conditions:

- A. The development of the former commercial area into residential dwellings shall require site plan approval from the Sussex County Planning and Zoning Commission.
- B. The new residential area shall be interconnected with the existing residential development. No direct vehicular access to it shall occur from Route 54. It shall also be connected by sidewalks or some type of multi-modal path to the rest of the development, preferably in a manner that provides the shortest and most direct walk to the rest of the development and its amenities. This shall be shown on the site plan submitted to the Planning and Zoning Commission.

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(continued)**

- C. The Commission recognizes that this change in the design of the “Refuge at Dirickson Creek” will require an amendment to the project’s recorded governing documents. The Commission also recognizes that for this type of amendment, the developer or condominium or homeowners’ association likewise could not amend the governing documents without approval from Sussex County for the underlying zoning change. It is a unique situation. Therefore, as a result, it is appropriate for this amendment to Ordinance No. 1532 (as represented in this CZ #1755) to only take effect upon the recordation of an amendment to the recorded governing documents of the “Refuge at Dirickson Creek” allowing conversion from commercial to residential use within 6 months of approval of CZ #1755. Proof of recording this amendment must be provided to the Assistant Sussex County Attorney representing the Sussex County Planning and Zoning Commission within 6 months of County Council’s approval of CZ #1755. If this does not occur, CZ #1755 shall automatically be declared null and void and of no further force and effect without further action of the Sussex County Planning and Zoning Commission or the Sussex County Council, and Conditions No. 1, 2 and 15 of Ordinance No. 1532 shall be reinstated as they previously existed in that Ordinance.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
C/Z
No. 1756**

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 AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 13.57 ACRES, MORE OR LESS” (Tax Map I.D. # 233-5.00-135.00, 136.00, 137.01, and Part of 125.00) (Change of Zone No. 1756) filed on behalf of Delmarva Power & Light Company.

The Planning and Zoning Commission held a Public Hearing on this application on August 7, 2014 at which time action was deferred. On August 21, 2014, the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated August 7 and 21, 2014.)

Mr. Abbott read a summary of the Commission’s Public Hearing and decision.

**Public
Hearing/
C/Z**

**No. 1756
(continued)**

Copies of an Exhibit Book were provided by the Applicant and distributed to the Council. Proposed Findings of Fact were also submitted.

The Council found that Shannon Carmean-Burton, Esquire, and Chuck Moore with Delmarva Power and Light were present on behalf of the application. They stated that this is an application to amend the Zoning Map from an AR-1 and C-1 district to a CR-1 district; that the applicants are proposing to expand their existing district office and to provide additional storage area of utility related equipment, vehicles, and materials; that an Exhibit Booklet was submitted; that the rezoning application is for 4 parcels total; that the district office has been in use since 1971; that the other parcels were purchased in 2002, 2007 and 2013; that the site will be used as one parcel; that they propose to continue to use the property and not offer it for sale; that they are not opposed to combining the parcels into one parcel but prefer to keep them as separate parcels; that the intent is to bring the parcels into compliance from a zoning perspective and to expand the existing facility to better serve their customers and to increase safety measures; that there is an existing entrance off of Route 113; that they have talked with DelDOT about a new entrance further from the intersection for DP&L vehicles; that a new entrance is not required; that the site is located within an area identified by the Sussex County Comprehensive Plan Update (June 2008) as a growth area and specifically a Town Center district; that smaller scale, low impact industrial uses are permitted; that the rezoning is appropriate and compatible to the area; that the proposed rezoning is in character with surrounding zoning; that the property is located in close proximity to large-scale commercial uses; that there will not be any detrimental impacts to adjoining properties or the area; that U.S. Route 113 is a major arterial roadway which supports CR-1 zoning; that a Traffic Impact Study was not required at this time; that the applicants went through the Preliminary Land Use Service (PLUS); that the site is in an Investment Level 2 Area according to the State; that there are no known archaeological sites on the subject site; that there are no regulated wetlands on the site; that the applicants responded to the PLUS comments; and that the proposed rezoning is an appropriate legislative action.

There were no public comments and the Public Hearing was closed.

**M 483 14
Adopt
Ordinance
No. 2369/
C/Z
No. 1756**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to Adopt Ordinance No. 2369 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 13.57 ACRES, MORE OR LESS” (Change of Zone No. 1756) filed on behalf of Delmarva Power & Light Company.

Motion Adopted: 5 Yeas.

**M 486 14
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

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

