

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 14, 2017

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 14, 2017 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
George B. Cole	Vice President
Robert B. Arlett	Councilman
Irwin G. Burton III	Councilman
Samuel R. Wilson Jr.	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 061 17
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to amend the Agenda by deleting “Executive Session – 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of February 7, 2017 were approved by consent.

**Public
Comments**

Public Comments

Dan Kramer commented on the quality of the audio during the Planning and Zoning Commission meeting on February 9, 2017.

Chris Pollinger discussed ongoing issues in Heron Bay and the proposed Memorandum of Understanding between Sussex County Council and Louis Capano III.

**Public
Interview**

The Council conducted a public interview for Planning and Zoning Commission nominee Kimberly Hoey Stevenson.

M 062 17

A Motion was made by Mr. Cole, seconded by Mr. Arlett, that the Sussex County Council approves the appointment of Kimberly Hoey Stevenson to

**M 062 17
Appoint-
ment to
Planning
and Zoning
Commission
(continued)**

the Sussex County Planning and Zoning Commission, effective February 14, 2017, for the balance of the seat's current term until June 30, 2017.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

[Kimberly Hoey Stevenson will fill the seat vacated by I. G. Burton III who was elected to the Sussex County Council in November 2016 and took office on January 2, 2017.]

**Adminis-
trator's
Report**

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

1. 2016 National Safety Council Award

I am pleased to announce that Sussex County has received the 2016 Occupational Excellence Achievement Award which is presented by the National Safety Council. The award recognizes organizations with injury and illness records better than or equal to 50 percent of the Bureau of Labor Statistics for the County's specific Industry Classification Code. The National Safety Council measures both Total Recordable Case Rates and Total Lost Workday Incident Rates for this award.

I would like to commend the County's Safety Manager, Mr. Ron Verosko, and Human Resources Director, Ms. Karen Brewington and their staff, who worked diligently on the County's OSHA logs and claims management to reduce the County's incident rates. This is the first time that Sussex County has received such an award.

The Council presented the award to Mr. Ron Verosko, Ms. Karen Brewington, and Ms. Kim Beauchamp.

**Proposed
Amend-
ments to
Base
Engineering
Contract/
North
Coastal
Planning
Area**

Hans Medlarz, County Engineer, presented a request for the approval of Contract Amendments No. 10 and No. 1 to the Base Engineering Contract with Whitman Requardt and Associates, LLP in the amounts of \$430,102.00 and \$79,668.00 respectively for construction administration and inspection for the three (3) projects in the North Coastal Planning Area, contingent upon the concurrence of the respective funding agency. The three projects include the Angola Neck Sanitary Sewer District: Angola North Expansion, Millville Sanitary Sewer District: Millville Northwest Expansion II – Irons Lane and PS#311, and Route 54 Expansion of the Fenwick Island Sanitary Sewer District.

Mr. Medlarz presented two proposed Motions and noted that the Motions deal with the funding source differently.

M 063 17
Approve
Amendment
No. 10/
Base
Engineering
Contract/
North
Coastal
Planning
Area

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 10 to the Base Engineering Contract for the North Coastal Planning Area with Whitman Requardt and Associates, LLP be approved in the amount not to exceed of \$430,102.00 for Construction Administration and Project Inspection for the Angola North and Route 54 Expansion Projects, pending State Revolving Loan Fund approval.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

M 064 17
Approve
Amendment
No. 1/
Base
Engineering
Contract/
North
Coastal
Planning
Area

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 1 to the EJCDC Agreement with Whitman Requardt and Associates, LLP be approved in the amount not to exceed \$79,688.00 for Construction Administration and Project Inspection for the Millville Northeast Expansion, Irons Lane and Pump Station 3-11, pending USDA funding agency approval.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Proposed
MOU
Relating
to Heron
Bay

Hans Medlarz, County Engineer, presented a proposed Memorandum of Understanding (MOU) between Sussex County, Heron Bay Associates, LLC, and LC Homes Delaware, Inc. (LC Homes). The Engineering Department has been negotiating with Heron Bay Associates, LLC as well as LC Homes, the builder, to come up with an implementation plan for remaining drainage repairs and amenities in return for a controlled release of building permits. This arrangement, as well as remedial action for future driveway culvert issues has been incorporated in the MOU. The Engineering Department recommends approval in order to allow the completion of the remaining scope of work in a controlled process.

M 065 17
Approve
MOU
Relating
to Heron
Bay

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Memorandum of Understanding between Sussex County, Heron Bay Associates, LLC, and LC Homes Delaware, Inc. for the completion of the remaining correctional drainage work and the amenities in the Heron Bay Development, as presented.

Motion Adopted: 5 Yeas.

**M 065 17
(continued)**

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Request to
Prepare
and Post
Notices/
Mulberry
Knoll
Area**

John Ashman, Director of Utility Planning, presented a request to prepare and post notices for a Public Hearing on the boundary for the Proposed Mulberry Knoll Area of the Sussex County Unified Sanitary Sewer District (Mulberry Knoll/Bayshore Hills Civic Association). Mr. Ashman reported that petitions were circulated and a sufficient number of petitions have been received (52 out of approximately 80 parcels).

**M 066 17
Authorize
Posting of
Notices/
Mulberry
Knoll Area**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based on receipt of petitions submitted pursuant to 9 Del. C. §6503, the Sussex County Council hereby grants permission for the Sussex County Engineering Department to prepare and post notices for a Public Hearing to establish a boundary for the Proposed Mulberry Knoll Area of the Sussex County Unified Sanitary Sewer District.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Grant
Request**

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

**M 067 17
Council-
manic
Grant**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$500.00 (\$250.00 each from Mr. Burton's and Mr. Wilson's Councilmanic Grant Accounts) to Delmarva Clergy United in Social Action Foundation (DCUSA Foundation) for the Dolls Tea Program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Introduction
of Proposed
Ordinance**

Mr. Wilson introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 141.086 ACRES, MORE OR LESS" (Change of Zone No. 1817) filed on behalf of Liborio Ellendale, LLC (Tax I.D. No. 230-26.00-115.00, 115.04, 122.00; and 230-31.00-33.00, 33.01) (911 Address: None Available).

The Proposed Ordinance will be advertised for Public Hearing.

**Public
Hearing/
CU 2062
(continued)**

- view of any residential properties.
- E. The site shall not be used for the storage or delivery of medical supplies, devices or products or other items sold as part of the mail order medical supply business.**
 - F. All inventory for the mail order medical supply business shall be maintained at a different location.**
 - G. Only one unlit sign shall be permitted on the property and shall not exceed 32 square feet per side.**
 - H. All vehicles parking shall be clearly shown on the final site plan and clearly marked on the site.**
 - I. The site shall not be used for any on-site retail business sales.**
 - J. The final site plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated January 12 and 26, 2017.)

Janelle Cornwell, Director of Planning and Zoning, presented a summary of the minutes of the Planning and Zoning Commission's public hearing, the Commission's recommendation, and a staff analysis.

Etta Mayers, Attorney with Tunnell & Raysor, P.A., was present with the Applicant, Richard Swear. They stated that the proposed use is for office space for a mail order medical supply business; that there will be no distribution from the site; that they have outgrown their existing location; that there is a house located on the property which they will utilize; that no new buildings are necessary; that the parking area has been graveled; and that no customers will come to the site.

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

**M 070 17
Adopt
Ordinance
No. 2481/
CU 2062**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2481 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25,163 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2062) filed on behalf of RDK&A Investments, LLC, with the following conditions:

- A. There shall not be any building contractor or subcontractor's office or workshop on the site.**
- B. No medical supply, device or product shall be manufactured, created, or assembled, or stored on the property except that such medical supplies, devices or products which are customarily found in an office setting shall be permitted on this premises.**
- C. Any security lighting shall be downward screened so that it doesn't shine on any neighboring properties or roadways.**
- D. A landscape buffer of Leyland Cypress or similar vegetation shall be**

**M 070 17
(continued)**

maintained or planted along the boundaries of the project adjacent to any residential properties so that the office shall be screened from the view of any residential properties.

- E. The site shall not be used for the storage or delivery of medical supplies, devices or products or other items sold as part of the mail order medical supply business.**
- F. All inventory for the mail order medical supply business shall be maintained at a different location.**
- G. Only one unlit sign shall be permitted on the property and shall not exceed 32 square feet per side.**
- H. All vehicles parking shall be clearly shown on the final site plan and clearly marked on the site.**
- I. The site shall not be used for any on-site retail business sales.**
- 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing
CU 2063**

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 AN OFFICE AND STORAGE AREA FOR U-HAUL VEHICLES AND TRAILERS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 34,788 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2063) filed on behalf of Michael and Faith Whaley (Tax I.D. No. 330-15.00-60.01) (911 Address: 7512 and 7524 Cedar Creek Road, Lincoln).

The Planning and Zoning Commission held a Public Hearing on this application on January 12, 2017 at which time the Commission recommended approval with the following conditions:

- A. There shall not be any building contractors’ or subcontractors’ offices or workshops within the site.**
- B. There shall not be any storage of building materials or other construction materials on the site.**
- C. Any security lighting shall be downward screened so that it does not shine onto neighboring properties or roadways.**
- D. A landscape buffer of Leyland Cypress or similar vegetation shall be maintained or planted along the boundaries of the project adjacent to any residential properties so that the storage areas are screened from view from any residential properties.**
- E. No U-Haul vehicles shall be parked or stored within the front yard setbacks of the property.**
- F. Only one [lighted] sign shall be permitted on the property. It shall not**

**Public
Hearing
CU 2063
(continued)**

- exceed 32 square feet in size per side.
- G. All vehicle and trailer parking areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself.**
 - H. Hours of operation shall be between 10:00 a.m. and 4:30 p.m., Monday – Friday, and Sundays 6:00 a.m. to 9:00 a.m.**
 - I. No more than 2 (20) U-Haul vehicles or trailers (or similar vehicles and trailers for rent) may be stored on the site at any one time. And, some months there will be none at all.**
 - J. No vehicle or trailer repairs shall be performed on the site.**
 - K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated January 12, 2017.)

Janelle Cornwell, Director of Planning and Zoning, presented a summary of the minutes of the Planning and Zoning Commission’s public hearing, the Commission’s recommendation, and a staff analysis.

Michael and Faith Whaley were present on behalf of their application. Mr. Whaley stated that he proposes to rent out U-Haul equipment consisting of trucks and trailers; that there is currently a small business on the property (hair salon); that he proposes to have 9 to 10 U-Haul trucks or trailers at a time; that they will come and go on a regular basis and there will be times when there will be no equipment on the property; and that he has three parcels and the Conditional Use will be contained to one parcel.

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

Mr. Burton questioned Condition “I” recommended by the Commission and the reference to “2” U-Haul vehicles. Ms. Cornwell researched the matter and reported that the number should have been “20”.

The Council discussed the number of vehicles to be permitted on the property. It was noted that, during the site plan review process, if it is determined that 20 vehicles/parking places would not fit, then 20 vehicles would not be permitted. However, the maximum allowed would be 20. Ms. Cornwell clarified that the total number of parking places/vehicles would be approved as part of the final site plan process.

**M 071 17
Amend
Condition**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to approve Condition A through K, with Condition I being amended as follows: “No more than 20 U-Haul vehicles or trailers (or similar vehicles and trailers for rent) may be stored on the site at any one time. And, some months there will be none at all.”

Mr. Cole again questioned the number of parking places for the trucks and trailers. Ms. Cornwell responded that the number of U-Hauls will be contingent upon the number of parking places available and that the

M 071 17 **Planning and Zoning Commission will have to approve the site plan.**

Motion

Withdrawn **Mr. Wilson and Mr. Arlett withdrew their Motions.**

M 072 17 **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to amend**
Amend **Condition I, as follows “No more than 20 U-Haul vehicles or trailers (or**
Condition I **similar vehicles and trailers for rent) may be stored on the site at any one**
 time, subject to the Planning and Zoning Commission’s final site plan
 review. And, some months there will be none at all.”

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Vincent, Yea

M 073 17 **A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt**
Adopt **Ordinance No. 2482 entitled “AN ORDINANCE TO GRANT A**
Ordinance **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**
No. 2482/ **RESIDENTIAL DISTRICT FOR AN OFFICE AND STORAGE AREA**
CU 2063 **FOR U-HAUL VEHICLES AND TRAILERS TO BE LOCATED ON A**
 CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK
 HUNDRED, SUSSEX COUNTY, CONTAINING 34,788 SQUARE FEET,
 MORE OR LESS” (Conditional Use No. 2063) filed on behalf of Michael
 and Faith Whaley, with the following conditions, as amended:

- A. There shall not be any building contractors’ or subcontractors’ offices or workshops within the site.**
- B. There shall not be any storage of building materials or other construction materials on the site.**
- C. Any security lighting shall be downward screened so that it does not shine onto neighboring properties or roadways.**
- D. A landscape buffer of Leyland Cypress or similar vegetation shall be maintained or planted along the boundaries of the project adjacent to any residential properties so that the storage areas are screened from view from any residential properties.**
- E. No U-Haul vehicles shall be parked or stored within the front yard setbacks of the property.**
- F. Only one [lighted] sign shall be permitted on the property. It shall not exceed 32 square feet in size per side.**
- G. All vehicle and trailer parking areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself.**
- H. Hours of operation shall be between 10:00 a.m. and 4:30 p.m., Monday – Friday, and Sundays 6:00 a.m. to 9:00 a.m.**
- I. No more than (20) U-Haul vehicles or trailers (or similar vehicles and trailers for rent) may be stored on the site at any one time, subject to the Planning and Zoning Commission’s final site plan review. And, some months there will be none at all.**
- J. No vehicle or trailer repairs shall be performed on the site.**

**M 073 17
(continued)**

K. 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1811**

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 LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.079 ACRES, MORE OR LESS” (Change of Zone No. 1811) filed on behalf of Dustin Yoder (Tax I.D. No. 430-3.00-11.01 (Part of) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on January 12, 2017 at which time the Commission recommended approval.

(See the minutes of the meeting dated January 12, 2017.)

Janelle Cornwell, Director of Planning and Zoning, presented a summary of the minutes of the Planning and Zoning Commission’s public hearing, the Commission’s recommendation, and a staff analysis.

Dustin Yoder was present on behalf of his application and stated that a majority of the property is already zoned LI-2; that he is seeking an expansion of the zoning; and that he proposes an expansion of an existing business.

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

**M 074 17
Adopt
Ordinance
No. 2483/
CZ 1811**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Ordinance No. 2483 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.079 ACRES, MORE OR LESS” (Change of Zone No. 1811) filed on behalf of Dustin Yoder.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**M 075 17
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 2:13 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, 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.}