

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 25, 2017**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 25, 2017, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>George B. Cole</b>	<b>Vice President</b>
<b>Robert B. Arlett</b>	<b>Councilman</b>
<b>Irwin G. Burton III</b>	<b>Councilman</b>
<b>Samuel R. Wilson Jr.</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore Jr.</b>	<b>County Attorney</b>

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

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 172 17  
Approve  
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to approve the agenda, as posted.

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**M 173 17  
Approve  
Minutes  
with  
Correction**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the minutes of April 11, 2017 be approved with the following correction to Motion M 167 17: delete the word "Delmar" and insert the word "Dunbar".

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Public  
Comments**

**Public Comments**

Bob Taney, Rick Coffman, Cathy Barnes, and Joyce Jason spoke in regards to a proposed water district for Winding Creek Village.

Jeffrey Frey and Chris Willey spoke in regards to the need for a Traffic Impact Study on Route 404/Seashore Highway.

**Public  
Comments  
(continued)**

**Paul Reiger commented on the membership of the Board of Adjustment and he referenced several applications that are before the Board of Adjustment.**

**Dan Kramer commented on the importance of the poultry business in Sussex County, and he commented on farms that sell ice cream.**

**M 174 17  
Approve  
Consent  
Agenda**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to approve the following items listed under the Consent Agenda:**

- 1. Wastewater Agreement No. 638-10  
Sussex County Project No. 81-04  
The Estuary – Phase 1C-1B (Construction Record)  
Miller Creek Sanitary Sewer District**
- 2. Wastewater Agreement No. 558-10  
Sussex County Project No. 81-04  
Peninsula Lakes – Phase 5 (Construction Record)  
Long Neck Sanitary Sewer District**
- 3. Wastewater Agreement No. 733-9  
Sussex County Project No. 81-04  
Bishop’s Landing – Phase 5 (Construction Record)  
Millville Expansion of the Bethany Beach 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**

**Recogni-  
tion of  
John  
Brady**

**The Council recognized John F. Brady for 14 years of elected service to Sussex County. Mr. Brady served as Register in Chancery from January 2, 2001 to January 7, 2003, Recorder of Deeds from January 7, 2003 to January 3, 2011, and Clerk of the Peace from January 2, 2013 to January 3, 2017.**

**Fair  
Housing  
Month**

**The Council presented a Proclamation entitled “Fair Housing Month” to representatives of the Sussex County Association of Realtors®.**

**Library  
Advisory  
Board**

**Mr. Lawson reported on the vacancy on the Library Advisory Board; the vacancy is the District 5 appointment.**

**M 175 17  
Approve  
Appoint-  
ment**

**A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Sussex County Council approves the appointment of Diana Young to the Sussex County Library Advisory Board, effective immediately, until such time that the term expires in June 2019.**

**Motion Adopted: 5 Yeas.**

**M 175 17  
(continued)**

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

**Board of  
Adjustment  
Membership**

**Mr. Lawson referenced the membership of the Board of Adjustment and reported that the District 5 appointment expired in June 2016; that Mr. Arlett has a nominee, Ellen Magee, for appointment to that position; and that a public interview will be scheduled for a future Council meeting.**

**Adminis-  
trator's  
Report**

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

**1. County Government Day – Wednesday, April 26<sup>th</sup>**

**The County is pleased to again sponsor the annual County Government Day on Wednesday, April 26<sup>th</sup>. At 9:30 a.m., high school juniors from Sussex County Girls and Boys State will meet in the County Council Chambers. A mock County Council session will occur, with the representatives assuming leadership roles. It is always an interesting experience to watch student representatives tackle County issues as presented by County department heads. This program can be seen and heard on the County's website.**

**2. Delaware State Police Activity Report**

**The Delaware State Police year-to-date activity report for February 2017 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 196 troopers assigned to Sussex County for the month of February.**

**3. Project Receiving Substantial Completion**

**Per the attached Engineering Department Fact Sheet, Solitude on Whites Creek – Phase 1A Sewer Construction received Substantial Completion effective April 17<sup>th</sup>.**

**4. Council Meeting Schedule**

**A reminder that Council will not hold its regular meeting next Tuesday, May 2<sup>nd</sup>, in order to meet for its annual budget workshop. The next regularly scheduled Council meeting will be held on May 9<sup>th</sup> at 10:00 a.m.**

**5. James Cannon, Sr.**

**It is with sadness that we note the passing of James Cannon, Sr., on Monday, April 10, 2017. Mr. Cannon began his career with Sussex County in August 1992 and retired with 16½ years of service as a Security Guard in January 2009. We would like to express our**

**Report  
(continued)**

**condolences to the Cannon family.**

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

**DSHA  
Funding  
Program**

**Ryan Stuart, County Constable, discussed a new funding program made available by the Delaware State Housing Authority for maintenance of vacant and abandoned properties in Sussex County. He reported that the County will receive a grant in the amount of \$100,000. The grant proceeds may be used to demolish, maintain, or otherwise address public safety and health issues related to vacant or abandoned properties in the County. All funds awarded must be disbursed by June 30, 2018.**

**Industrial  
Park  
(King Farm)  
Boulevard  
Phase I/  
Change  
Order**

**Hans Medlarz, County Engineer, referenced the County's purchase of the King Farm Industrial Park and the assumption of the engineering and construction contracts. Under this assumption, the County assumed two construction contracts with Melvin L. Joseph Construction Co., Inc. Their scope of work covered the initial, limited DelDOT entrance construction and the Phase I extension of the entrance boulevard for ±500 feet, allowing access to the Atlantis Industries facility. Georgetown Airport Center, LLC had utilized different engineering firms in the development of the site and entrance plans and Atlantis Industries Corporation utilized another firm for site design; this resulted in modifications to the design of the Boulevard Phase I Project, not reflected in the assumed base contract. Additionally, the Council requested an extension of the median island beyond the first boulevard intersection. Mr. Medlarz reported that Melvin L. Joseph Construction Co., Inc., in cooperation with the Engineering Department, identified the differences reflected in Change Order No. 1 for the Industrial Park Boulevard Project, Phase I, Project #17-15, in the amount of \$55,238.00.**

**M 176 17  
Approve  
Change  
Order/  
Industrial  
Park  
Boulevard  
Phase I**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Change Order No. 1 for Contract #17-15 be approved, which increases the total contract amount for the Sussex County Industrial Park Boulevard, Phase I, by \$55,238.00.**

**Motion Adopted: 5 Yeas.**

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

**General  
Labor &  
Equipment  
Contract/  
Change  
Order**

**Hans Medlarz, County Engineer, presented Change Order No. 4 to the General Labor & Equipment Contract, Project No. 17-01. Change Order No. 4 allows for site work at the airport including storm drainage repairs and improvements in addition to electrical site work associated with the two (2) electrical vaults previously awarded by Council. The Engineering Department recommends Council's approval of the scope modification and associated Change Order No. 4 in the amount of \$357,398.00.**

**M 177 17  
Approve  
Change  
Order/  
General  
Labor &  
Equipment  
Contract**

**A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 4 for Contract #17-01, FY 17 General Labor & Equipment Contract, be approved, which increases the Contract amount by \$357,398.00 for a new total of \$3,393,254.80.**

**Motion Adopted: 5 Yeas.**

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

**Proposed  
Boundary/  
Winding  
Creek  
Village  
Water  
District**

**Hans Medlarz, County Engineer, and John Ashman, Director of Utility Planning, presented information on the proposed boundary for the Optimized Water District for Winding Creek Village.**

**Mr. Medlarz commented on the situation associated with the petition submitted to organize a water district in Winding Creek Village; he noted that the Engineering Department has attempted to come up with a tolerable solution for those involved; and he noted that when the Department receives petitions, the Department is required, under Delaware Code, to entertain the petitions.**

**Mr. Ashman reported on the history of the proposed water district. In 2015, the County received 98 petitions in favor of submitting the question of organizing a water district to referendum. On October 13, 2015, the Council authorized the Engineering Department to proceed with the process. On February 13, 2016, the Engineering Department held a Public Hearing and presented preliminary cost estimates and estimated front foot assessment rates. Prior to the referendum date, the Engineering Department received 190 affidavits from residents of Winding Creek Village, representing over 50% of the parcels, in opposition to a community-wide water district. On May 3, 2016, Council passed a Motion to discontinue steps toward the creation of the community-wide water district. Mr. Ashman also reported that residents affected by the water quality issues formed a committee known as the Independent Owner Water Committee (IOWC); the Committee sent out a survey to the community and based on the results of the survey, they circulated new petitions. Thereafter, the IOWC submitted 142 notarized petitions to the Engineering Department in favor of submitting the question of organizing an optimized water district to referendum. Several concerned residents of Winding Creek Village submitted a FOIA request and challenged the petitions. A review of the challenge by the Engineering Department resulted in the removal of 13 petitions which did not meet the requirements of Delaware Code.**

**Mr. Ashman stated that, based on this information, the Engineering Department requested permission to prepare and post notices for a Public Hearing on the Optimized Water District Boundary. He reported that two-**

**Proposed  
Boundary/  
Optimized  
Winding  
Creek  
Village  
Water  
District  
(continued)**

thirds of the parcels in the proposed boundary have submitted petitions in favor of proceeding with the process of organizing a water district to the vote of electors; that the proposed boundary does not include all of the parcels that submitted petitions in favor; and that some of the parcels that did not submit petitions need to be included to maintain a contiguous and common sense boundary. Mr. Ashman presented a map depicting the proposed boundary based on the new petitions.

Mr. Medlarz noted that the HOA would have only one single vote, which would have to be backed by a Board Resolution.

Mr. Ashman stated that, with Council's approval, the Engineering Department would prepare estimated costs for this boundary, post and advertise in accordance with Delaware Code, and proceed with a referendum.

**M 178 17  
Post  
Notices/  
Proposed  
Boundary/  
Optimized  
Winding  
Creek  
Village  
Water  
District**

A Motion was made by Mr. Cole, seconded by Mr. Burton, based on the receipt of petitions submitted pursuant to Del.C. §6503, that Sussex County Council hereby grants permission for the Engineering Department to prepare and post notices for a public meeting to establish a proposed boundary for the Optimized Winding Creek Village Water District.

**Motion Adopted: 5 Yeas.**

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

**Old  
Business/  
CU 2068**

Under Old Business, the Council considered Conditional Use No. 2068 filed on behalf of Charles J. Short.

The Planning and Zoning Commission held a Public Hearing on this application on February 23, 2017 at which time action was deferred. On March 9, 2017, the Commission recommended that the application be approved with the following conditions:

- A. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- B. Security lighting shall be downward screened and shall be directed away from the neighboring properties and roadways.
- C. Any dumpsters shall be screened from view of neighbors and the roadways. The dumpster locations shall be shown on the Final Site Plan.
- D. All repairs shall be performed indoors. No automobile parts shall be stored outside.
- E. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.
- F. No more than 10 cars shall be on the site for repairs at any one time.
- G. The area of the Conditional Use shall be limited to the "Paved

**Old  
Business/  
CU 2068  
(continued)**

**Driveway”, the “Stone Driveway/Entrance” and existing “Metal Building” shown on the “Conditional Use Plan” submitted with the Conditional Use application or approximately 2 acres. These areas shall be clearly identified on the Final Site Plan as “Area of Use”. The use shall not expand beyond these areas without an additional public hearing.**

- H. The rear perimeter of the Conditional Use area shall be screened from view of neighboring properties with a fence or vegetation. This screen shall be shown on the Final Site Plan.**
- I. No cars shall be sold on the property.**
- J. The site shall be subject to all DelDOT entrance and roadway requirements.**
- K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**The County Council held a Public Hearing on this application on April 11, 2017 at which time action was deferred.**

**Janelle Cornwell, Director of Planning and Zoning, responded to questions raised during the April 11th Public Hearing. She stated that a building permit for a pole building was issued per Zoning Code and that there are no regulations regarding the use of pole barns, which are accessory structures.**

**Mr. Moore commented on the fact that the Applicant is only asking to use 2 acres of the total 25 acres, and he suggested the following amendment to the recommended Condition K, as follows:**

- K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall depict the boundaries of the 2 acres, more or less, subject to the Conditional Use as set forth in Condition G and upon Final Site Plan approval, the Conditional Use granted on the remainder of the parcel shall terminate.**

**Mr. Cole commented on the number of cars that would be permitted to be parked outside and the lighted sign.**

**M 179 17  
Amend  
Condition**

**A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition F to read as follows: No more than 7 cars shall be on the site for repairs at any one time.**

**(Rescinded)**

**Mr. Cole and Mr. Button rescinded their Motions.**

**M 180 17  
Amend  
Condition**

**A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition F to read as follows: No more than 7 cars shall be parked outside on the site for repairs at any one time.**

**Motion Adopted: 5 Yeas.**

**M 180 17  
(continued)**

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

**M 181 17  
Amend  
Condition**

**A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition A to read as follows: One non-illuminated sign, not to exceed 32 square feet per side, shall be permitted.**

**Motion Adopted: 5 Yeas.**

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

**M 182 17  
Amend  
Condition**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend Condition K to read as follows: The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall depict the boundaries of the 2 acres, more or less, subject to the Conditional Use as set forth in Condition G and upon Final Site Plan approval, the Conditional Use granted on the remainder of the parcel shall terminate.**

**Motion Adopted: 5 Yeas.**

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

**M 183 17  
Adopt  
Ordinance  
No. 2493/  
CU 2068**

**A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt Ordinance No. 2493 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 24.9784 ACRES, MORE OR LESS" (Conditional Use No. 2068) filed on behalf of Charles J. Short, with the following conditions, as amended:**

- A. One non-illuminated sign, not to exceed 32 square feet per side, shall be permitted.**
- B. Security lighting shall be downward screened and shall be directed away from the neighboring properties and roadways.**
- C. Any dumpsters shall be screened from view of neighbors and the roadways. The dumpster locations shall be shown on the Final Site Plan.**
- D. All repairs shall be performed indoors. No automobile parts shall be stored outside.**
- E. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.**
- F. No more than 7 cars shall be parked outside on the site for repairs at**



**M 183 17  
Adopt  
Ordinance  
No. 2493/  
CU 2068  
(continued)**

- any one time.
- G. The area of the Conditional Use shall be limited to the “Paved Driveway”, the “Stone Driveway/Entrance” and existing “Metal Building” shown on the “Conditional Use Plan” submitted with the Conditional Use application or approximately 2 acres. These areas shall be clearly identified on the Final Site Plan as “Area of Use”. The use shall not expand beyond these areas without an additional public hearing.**
  - H. The rear perimeter of the Conditional Use area shall be screened from view of neighboring properties with a fence or vegetation. This screen shall be shown on the Final Site Plan.**
  - I. No cars shall be sold on the property.**
  - J. The site shall be subject to all DelDOT entrance and roadway requirements.**
  - K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall depict the boundaries of the 2 acres, more or less, subject to the Conditional Use as set forth in Condition G and upon Final Site Plan approval, the Conditional Use granted on the remainder of the parcel shall terminate.**

**Motion Adopted: 5 Yeas.**

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

**Old  
Business/  
CU 2069**

**The Council discussed Conditional Use No. 2069 filed on behalf of Rudolf Joseph Johnson.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 9, 2017 at which time the Commission deferred action. On March 23, 2017, the Commission recommended that the application be approved with the following conditions:**

- A. The use shall be limited to an exercise / yoga studio within the 800 square feet building shown on the plan submitted during the public hearing.**
- B. The Applicant shall submit a Final Site Plan showing all entrance and parking areas.**
- C. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.**
- D. As stated by the Applicant, the hours of operation shall be between 9:00 a.m. and 5:00 p.m., Monday through Friday.**
- E. Any security lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The Applicant shall comply with all DelDOT requirements concerning entrance and roadway improvements.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Old  
Business/  
CU 2069  
(continued)**

**Mr. Burton read proposed changes to the conditions recommended by the Planning and Zoning Commission:**

**In Condition A, insert the following at the end of the sentence. “The activities permitted by this Conditional Use shall not be permitted in any other structure on the premises.”**

**In Condition B, insert the following at the end of the sentence. “Only one entrance shall be granted for this Conditional Use. No parking shall be permitted in the front yard setback.”**

**In Condition C, delete the sentence in its entirety and substitute with the following sentence: “One non-illuminated sign shall be permitted not to exceed 32 square feet per side.”**

**In Condition G, insert the following at the end of the sentence: “, which shall have all of the conditions clearly set forth.”**

**M 184 17  
Amend  
Condition**

**A Motion was made by Mr. Burton, seconded by Mr. Arlett, to amend Condition A by inserting the following at the end of the sentence: “The activities permitted by this Conditional Use shall not be permitted in any other structure on the premises.”**

**Motion Adopted: 5 Yeas.**

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

**M 185 17  
Amend  
Condition**

**A Motion was made by Mr. Burton, seconded by Mr. Arlett, to amend Condition B by inserting the following at the end of the sentence: “Only one entrance shall be granted for this Conditional Use. No parking shall be permitted in the front yard setback.”**

**Motion Adopted: 5 Yeas.**

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

**M 186 17  
Amend  
Condition**

**A Motion was made by Mr. Burton, seconded by Mr. Cole, for Condition C, delete the sentence and substitute with the following: “One non-illuminated sign shall be permitted not to exceed 32 square feet per side.”**

**Motion Adopted: 5 Yeas.**

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

**M 187 17  
Amend  
Condition**

**A Motion was made by Mr. Burton, seconded by Mr. Cole, for Condition G, add the following at the end of the sentence: “, which shall have all of the conditions clearly set forth.”**

**Motion Adopted: 5 Yeas.**

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

**M 188 17  
Adopt  
Ordinance  
No. 2494/  
CU 2069**

**A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2494 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WORKOUT STUDIO TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21,962 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2069) filed on behalf of Rudolph Joseph Johnson. with the following conditions as amended:**

- A. The use shall be limited to an exercise / yoga studio within the 800 square feet building shown on the plan submitted during the public hearing. The activities permitted by this Conditional Use shall not be permitted in any other structure on the premises.**
- B. The Applicant shall submit a Final Site Plan showing all entrance and parking areas. Only one entrance shall be granted for this Conditional Use. No parking shall be permitted in the front yard setback.**
- C. One non-illuminated sign shall be permitted not to exceed 32 square feet per side.**
- D. As stated by the Applicant, the hours of operation shall be between 9:00 a.m. and 5:00 p.m., Monday through Friday.**
- E. Any security lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The Applicant shall comply with all DelDOT requirements concerning entrance and roadway improvements.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission, which shall have all of the conditions clearly set forth.**

**Motion Adopted: 5 Yeas.**

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

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

**M 189 17 Councilmanic Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$3,000.00 (\$1,000.00 each from Mr. Cole's, Mr. Burton's, and Mr. Arlett's Councilmanic Grant Accounts) to Delaware Celebration of Jazz for operating expenses.**

**Motion Adopted:      5 Yeas.**

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

**M 190 17 Councilmanic Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$3,000.00 (\$1,500.00 each from Mr. Cole's and Mr. Arlett's Councilmanic Grant Accounts) to the Lower Sussex Little League to assist youth with membership costs.**

**Motion Adopted:      5 Yeas.**

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

**M 191 17 Councilmanic Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$1,000.00 (\$500.00 each from Mr. Cole's and Mr. Arlett's Councilmanic Grant Accounts) to Lord Baltimore Lions Charities for the medical equipment program.**

**Motion Adopted:      5 Yeas.**

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

**M 192 17 Councilmanic Grant**      **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$750.00 from Mr. Wilson's Councilmanic Grant Account to Lincoln Cemetery Association for a fundraising effort.**

**Motion Adopted:      5 Yeas.**

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

**M 193 17 Councilmanic Grant**      **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$2,000.00 from Mr. Wilson's Councilmanic Grant Account to Georgetown Little League for equipment costs and field maintenance.**

**Motion Adopted:      5 Yeas.**

**M 193 17  
(continued)**

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

**Introduction  
of Proposed  
Zoning  
Ordinances**

**Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.199 ACRES, MORE OR LESS” (Conditional Use No. 2077) filed on behalf of Joy Marshall Ortiz (Tax I.D. No. 234-28.00-56.04) (911 Address: None Available).**

**Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL GENERATION AND NUTRIENT RECOVERY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 23.12 ACRES, MORE OR LESS” (Conditional Use No. 2079) filed on behalf of Clean Bay Renewables, LLC, Sussex II (Tax I.D. No. 135-15.00-55.01) (911 Address: 22349 Lewes-Georgetown Highway, Georgetown).**

**Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL GENERATION AND NUTRIENT RECOVERY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 29.38 ACRES, MORE OR LESS” (Conditional Use No. 2080) filed on behalf of Clean Bay Renewables, LLC, Sussex I (Tax I.D. No. 135-15.00-55.01) (911 Address: 22349 Lewes-Georgetown Highway (Route 9), Georgetown).**

**Mr. Arlett introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0218 ACRES, MORE OR LESS” (Conditional Use No. 2087) filed on behalf of John F. and Brenda L. Fegelein Trustees (Tax I.D. No. 533-6.00-18.01) (911 Address: Not Available).**

**Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SHOP FOR PAINTING BUSINESS AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER**

**Introduction of Proposed Zoning Ordinances (continued)**

**HUNDRED, SUSSEX COUNTY, CONTAINING 1.4583 ACRES, MORE OR LESS” (Conditional Use No. 2090) filed on behalf of Edgar Reyes Hernandez (Tax I.D. No. 234-14.00-30.01) (911 Address: 25203 Zoar Road, Georgetown).**

**Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTING OFFICE WITH STORAGE OF VEHICLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 4.13 ACRES, MORE OR LESS” (Conditional Use No. 2091) filed on behalf of William Hall (Tax I.D. No. 231-11.00-17.00) (911 Address: 17865 Hudson Lane, Georgetown).**

**Mr. Arlett introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PRODUCE STAND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.9 ACRES, MORE OR LESS” (Conditional Use No. 2092) filed on behalf of Timothy Robinson (Tax I.D. No. 332-1.00-67.01) (911 Address: 32129 Gordy Road, Laurel).**

**Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.4789 ACRE, MORE OR LESS” (Change of Zone No. 1825) filed on behalf of Clarksville Auto Service Center, Inc. (Tax I.D. No. 134-11.00-154.00) (911 Address: 34455 Atlantic Avenue, Ocean View).**

**Council Members’ Comments**

**Council Members’ Comments**

**Mr. Cole referenced short term rentals which was discussed recently at the Delaware Association of Counties’ meeting; was referenced in an article in NACo’s County News; and is also a matter of consideration in the State’s budget.**

**M 194 17 Go Into Executive Session**

**At 11:41 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation, land acquisition, personnel, and job applicants’ qualifications.**

**Motion Adopted: 5 Yeas.**

**M 194 17  
(continued)**      **Vote by Roll Call:**    **Mr. Arlett, Yea; Mr. Burton, Yea;  
Mr. Wilson, Yea; Mr. Cole, Yea;  
Mr. Vincent, Yea**

**Executive Session**      **At 11:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation, land acquisition, personnel, and job applicants' qualifications. The Executive Session concluded at 12:42 p.m.**

**M 195 17  
Reconvene  
Regular  
Session**      **At 12:45 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted:**    **3 Yeas, 2 Absent.**

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

**M 196 17  
Negotiate  
Contract/  
Land  
Acquisition**      **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to authorize the County Administrator to negotiate and enter into a contract for the purchase of a parcel of land identified as Land 2017-C, and if successful in negotiations on the contract, to proceed to closing.**

**Motion Adopted:**    **3 Yeas, 2 Absent.**

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

**M 197 17  
Recess**      **At 12:50 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to recess until 1:30 p.m.**

**Motion Adopted:**    **3 Yeas, 2 Absent.**

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

**M 198 17  
Reconvene**      **At 1:36 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to reconvene the Regular Session.**

**Motion Adopted:**    **5 Yeas.**

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

**Rules**      **Mr. Moore read the Rules of Procedure of Public Hearings.**

**Public  
Hearing/  
CU 2071**

**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 COMPOSTING, INCLUDING POULTRY BY-PRODUCTS; GREENHOUSES; MIXING, BLENDING AND BAGGING COMPOST AND POTTING SOIL PRODUCTS; TRUCKING PRODUCTS; ALL WHOLESALE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 31.9478 ACRES, MORE OR LESS” (Conditional Use No. 2071) filed on behalf of Blessing Greenhouses and Compost (Tax I.D. No. 230-15.00-34.00 & 35.00) (911 Address: 9372 Draper Road, Milford).**

**The Planning and Zoning Commission held a Public Hearing on this application on March 23, 2017 at which time the Commission deferred action for additional information from DNREC and the Sussex Conservation District. On April 6, 2017, the Commission acknowledged the receipt of a response from DNREC and the Sussex Conservation District; action was deferred again. On April 20, 2017, the Commission deferred action again.**

**(See the minutes of the Planning and Zoning Commission dated March 23, April 6, and April 20, 2017.)**

**Janelle Cornwell, Director of Planning and Zoning, provided a summary of the Commission’s Public Hearing.**

**It was noted that an Exhibit Booklet for the Conditional Use application for Blessings Greenhouse and Composting was previously distributed to the Council members.**

**The Council found that Tim Willard, Attorney, was present with Bruce Blessing, Applicant; Brian Jerosse of Agrilab Technologies; Bill Stephens of Stephens Environmental Consulting; and Nelson Widell of The Peninsula Compost Group. They stated that the Applicant operates a greenhouse and composting facility on approximately 28 acres of AR-1 zoned land at 9372 Draper Road; the Applicant leases these lands described as Tax Parcel 230-15.00-34.00 and part of 35.00 (lands owned by Frank & Marilyn Draper (Parcel 34) and Red Fox Farms (parcel 35); the Applicant’s operations provides a vital service to the County for poultry industry waste, yard waste, wood waste and vegetable waste, which are converted to certified organic compost blends for various beneficial uses, thereby eliminating the need to dispose of the materials in less environmentally conscientious ways; since operations began, the Applicant has worked with State agencies to improve the environmental character of the operations, while simultaneously expanding market demand for end products; and the Applicant now seeks to obtain a Conditional Use to construct a state-of-the-art facility that will eliminate any remaining environmental concerns and improve production.**



**Public  
Hearing/  
CU 2071  
(continued)**

**An overview of the application was provided including Blessings' products, markets and services; applicable law and legal justification for the application; a description of the area, including zonings, residential dwellings, and woodlands/wetlands; site location, description and conditions; proposed site plan layout including proposed landscaping/buffers, stormwater management, entrances and new construction proposed; design and system features of the proposed composting facilities including the phasing of the buildings proposed; odor elimination/reduction; sampling and monitoring of wells and streams; the advanced design of the compost buildings proposed; how the Applicant addresses odor reduction/elimination; and wetlands delineation.**

**They stated that the proposed use is an agriculture related industry which is permitted in an AR-1 Agricultural Residential District, and that it is a composting operation, not a mulching operation.**

**In regard to legal justification for the project, Mr. Willard referenced the letter from Mr. Churchill of DNREC, dated March 31, 2017, which was submitted to the Planning and Zoning Commission and has been made a part of the record.**

**Questions were raised and a discussion ensued regarding a violation notice issued by the County in April 2012, an Agreement and Secretary's Order between DNREC and Blessing Greenhouses and Compost Facility, dated March 19, 2012, and an Amended Agreement and Secretary's Order, dated July 14, 2014.**

**Public comments were heard.**

**There were no public comments in support of the application.**

**Maria Payan stated that she works for Socially Responsible Agricultural Project (SRAP); that they are called on by communities facing various issues relating to agriculture industrial; that she was contacted by a member of the community that is being impacted by Blessings; that the community has been impacted for 14 years by this operation; that they question how the Applicant will finance the proposed project; that the Applicant leases land owned by two different property owners; that the Applicant disregards laws, rules and regulations since starting his business in 2005. Ms. Payan talked about the offensive smell, many environmental concerns, and insufficient monitoring; she questioned materials being received on the site; and she stated that the site is located in a flood zone.**

**Ms. Payan advised that the Applicant has been violated multiple times and DNREC's responses are inadequate. She referenced a letter from April 27, 2012 from Sussex County Planning and Zoning Department regarding "Illegal Recycling/Mulching Business "Blessings Blends"" and referenced records of DNREC, including the Applicant's application to DNREC that was for only one parcel and the application is on two parcels. She reported**

**Public  
Hearing/  
CU 2071  
(continued)**

**that the Applicant has stated that the site was a former commercial use and the commercial zone was grandfathered.**

**Ms. Payan presented an overview of the Blessing operations including a permitting timeline. She referenced the 2012 and 2014 Consent Orders, a deficiency letter, and a 2014 Agreement. She noted that DNREC did not enforce the Agreements. Ms. Payan distributed copies of the 2012 and 2014 Consent Orders between DNREC and Blessing. She noted that the required Bonds were never put up and therefore, DNREC has been unable to shut the operation down; and that this needs to be done before anything is approved.**

**Ms. Payan asked that the record remain open for a month for submittal of additional information.**

**Carol Tani, Connie Zuck, Sharon Stevens, Alan Bennett, and Jay Stevens spoke in opposition to the application. They commented on their many environmental concerns, and the odor and bugs caused by the Blessings operation. They stated that there are a lot of residences in the area; that there is complete negligence on the part of the Applicant; that the Applicant should not be allowed to expand his operations until he fixes what is wrong; that they question how the Applicant will finance the proposed expansion; that the Applicant has had 50 judgements served against him by the County Sheriff's Office; that they are concerned about all of the waste that has been sitting on the property for more than five years; that they question what is in the stockpiles of waste; that an analysis of the monitoring shows that there is contamination; that a wetlands delineation should be required; that the property is in a 100 year flood zone and coastal flood zone; that the facility was constructed prior to the Applicant receiving approval; that there should be a strict timeline for Phase I of the project and the Applicant should come forth with a plan for other phases, not just Phase I; that the Applicant has not been compliant nor a good neighbor; that periodic inspections should be required as well as new public hearings to periodically hear what the public has to say; that the pictures submitted show the problems/violations; that the large pile has not been reduced in size as required; that in April 2010, they came to the County and were told that the County is looking into it; that they have received no help from the County or the State (DNREC); that the Applicant is operating outside the law; that they do not believe he has any intention of creating what he is proposing, and hopefully, any approval will require that the facility looks just like it is proposed and operates as they say it will; and that they would like to see flood zone compliance, a bond requirement, and a performance bond requirement.**

**Mr. Bennett referenced the various emails and documents he previously submitted to the Council by email. The emails and documents have been made a part of the record.**

**Public  
Hearing/  
CU 2071  
(continued)**

**Mr. Stevens referenced the presentation made by Kathy Martin at the Planning and Zoning Commission's Public Hearing as well as Ms. Martin's resume. Ms. Cornwell stated that the powerpoint presentation was included in Council's packet of information for this Public Hearing and has been made a part of the record.**

**Mr. Stevens stated that he also had water testing done and he presented a copy of the test results for the record.**

**Mr. Stevens submitted copies of emails from DNREC and the Applicant for inclusion in the record.**

**(Mr. Wilson left the meeting.)**

**Brian Churchill of DNREC stated that he was not speaking in favor of, or opposition to, the application. He addressed and clarified some matters relating to environmental impact and activities at the site referenced by both sides in their testimony on this date.**

**Mr. Churchill stated that DNREC's primary goal as it relates to this facility is to reduce the impacts to groundwater and surface water. He reported that the bunkers were created to keep the compost from contacting stormwater, which prevents impact to Slaughter Creek; this has been done by creating the berm, impounding the stormwater, and with periodic removal from the facility and applying it to farmland. Mr. Churchill stated that land application is done in accordance with an approval, with guidelines. Mr. Churchill reported that, over the years, there has been great improvement at the facility; that his observations have been that if there has been any impact to Slaughter Creek, it has been minimal. He noted that the main concern is groundwater beneath the compost facility.**

**Mr. Churchill commented on a Notice of Violation issued by DNREC requiring the removal of all compost material from the soil surface; when those requirements were not met, the alternative in the Department's Notice of Violation was to install a network of groundwater monitoring wells and those were installed. Mr. Churchill reported on the monitoring wells and test results. He also reported on the nitrogen cycle and the minimal impact of the facility on groundwater. Mr. Churchill reported on the materials on the soil surface and the reduction of the quantity of the materials; on materials that have left the site; and on the monitoring wells that are showing improvement.**

**Mr. Churchill reported on past violations of the compost facility. He noted that land application stopped in 2015 and he believes a lot of the complaints about odor was from land application. He acknowledged that some odors are from the compost facility and he commented on the odors and causes.**

**Mr. Churchill discussed the materials that are in the stockpile and noted that a small portion does contain biosolids, and he noted that there are**

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(continued)**

regulations and documentation requirements for composting biosolids. He further noted that Mr. Blessing uses Mountaire materials to compost materials in the stockpile. Mr. Churchill discussed the sampling process. He reported on recently received groundwater testing results, which show the stream is still impaired; however, he does not believe it is from the facility but rather, from agricultural activities surrounding the stream.

Mr. Churchill addressed the comments about the \$250,000 bond requirement and the fact that Mr. Blessing could not afford that. He explained DNREC's regulations and noted that the minimum amount required by Department regulations, is \$10,000.

In conclusion, Mr. Churchill reported that DNREC is working with Mr. Blessing to reduce the stockpile and to continue to reduce the impact to the environment and surrounding community. He stated that DNREC is waiting to see what the County decides on this application and, if the application is denied, DNREC will have to consider how to proceed.

The Public Hearing was closed.

**M 199 17  
Defer  
Action on  
CU 2071  
and to  
Leave  
Record  
Open for  
Specified  
Period of  
Time**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action and leave the record open on Conditional Use No. 2071 for 15 days for additional public comment, in writing only, until the close of business on May 10th; thereafter, the record will remain open for an additional 15 days for written comment only from either side on information submitted during the first 15-day period, until the close of business on May 25; thereafter, the record will remain open for an additional 15 days for Council to ask questions of staff or agencies, until the close of business on June 9th; thereafter, Council may vote to leave the record open for an additional period of time for the purpose of receiving responses from staff or agencies, if needed.

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**M 200 17  
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 5:49 p.m.

**Motion Adopted: 4 Yeas, 1 Absent.**

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