

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 8, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 8, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Councilman
Douglas B. Hudson	Councilman
John L. Rieley	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 001 19
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**2019
Officers**

Mr. Lawson stated that the County Council must elect officers for 2019.

**M 002 19
Elect
President**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, that Michael H. Vincent serve as President of the Sussex County Council in 2019.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 003 19
Elect
Vice
President**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that I.G. Burton III serve as Vice President of the Sussex County Council in 2019.

Motion Adopted: 5 Yeas.

**M 003 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Vincent, Yea;
Mr. Burton, Yea**

**2019
Legal
Counsel**

Mr. Lawson referenced the appointment of Legal Counsel and the recommendation included in Council packets for this meeting, as follows: County Attorney – J. Everett Moore, Jr.; Assistant County Attorney – Vincent Robertson; Attorney for the Board of Adjustment – Moore & Rutt, P.A.; Attorney for Sussex County Government/Council – Moore & Rutt, P.A.; Attorney for the Planning and Zoning Commission – Parkowski, Guerke and Swayze.

**M 004 19
Approve
Legal
Counsel**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council approves the 2019 appointment of Legal Counsel, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Rules of
Procedure**

Mr. Lawson reviewed a proposed change to the Rules of Procedure recommended by staff and reviewed by Legal Counsel. Rule 10 is proposed to be expanded to include Rule 10A and Rule 10.7 is proposed to be moved to Rule 10A.3, with no changes to the language. New paragraphs 10A.1 and 10A.2. Paragraph 10A.1 memorializes the process we previously used for land use hearings when the Planning and Zoning Commission's recommendation was not received by the time the Council public hearing was held. This allows written comments once the Commission's recommendation is known.

Rule 10A was proposed to read as follows:

Rule 10A – Change of Zone and Conditional Use Ordinances

10A.1 In the event the Planning and Zoning Commission has not provided its recommendation report to the County Council prior to the County Council's hearing on a change of zone or conditional use application, the County Council shall accept and consider written comments only from the public on the Planning and Zoning Commission's recommendations to the County Council for a period of 5 calendar days following the Planning and Zoning Commission's issuance of its recommendations. This does not preclude the County Council from requesting additional information as otherwise permitted.

10A.2 The Rules of Procedure for County Council Zoning Hearings, as approved by the County Council, shall be announced prior to the commencement of the zoning hearings.

Rules of Procedure (continued)

10A.3 Following the placement of an ordinance for a change of zone or a conditional use on the table, the matter shall be placed on the agenda again only by the County Council member representing the district in which the application is located. If an ordinance for a change of zone or a conditional use is not placed on the agenda and acted upon within forty-five (45) days of the County Council's public hearing on the application, the matter may be placed on the agenda by the President.

**M 005 19
Approve
2019
Rules of
Procedure**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council approves the 2019 Rules of Procedure, as amended and as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**2019
Council
Member
Appoint-
ments**

Mr. Vincent commented on Council Member appointments for the Calendar Year 2019 and he referenced the recommendations included in Council packets for this meeting, as follows: Michael Vincent to the Delaware League of Local Governments; I. G. Burton as the Council's representative on the National Association of Counties Board of Directors; John Rieley to the Salisbury/Wicomico County MPO (District 5); Samuel Wilson as the Council's representative on the Sussex Conservation District Board of Directors; Doug Hudson as the Council's representative on the Sussex County Airport Committee; and I. G. Burton and John Rieley as the Council's representatives on the Sussex County Land Trust.

**M 006 19
Approve
2019
Council
Member
Appoint-
ments**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council approves the 2019 Council Member appointments, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of December 11, 2018 were approved by consent.

**Corre-
spondence**

Correspondence

**JUST A HAND UP, BRIDGEVILLE, DELAWARE.
RE: Letter in appreciation of grant.**

**NATIONAL COUNCIL ON AGRICULTURAL LIFE AND LABOR
RESEARCH FUND, INC., DOVER, DELAWARE.
RE: Letter in appreciation of grant.**

**Corre-
spondence
(continued)**

WHAT IS YOUR VOICE, INC., VOICES AGAINST DOMESTIC VIOLENCE , DOMESTIC VIOLENCE PEER SUPPORT ADVOCATES, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of grant.

**Public
Comments**

Public Comments

Paul Reiger commented on appointments to the Planning and Zoning Commission (addresses, districts, political affiliation).

Dan Kramer commented on appointments to the Planning and Zoning Commission, noting that no two members can reside in the same Councilmanic District. Mr. Kramer also commented on one person serving on more than one board.

Rich Borasso, representative of Sussex Alliance for Responsible Growth (SARG), commented on the status of the 2018 Comprehensive Plan and implementation strategies.

**M 007 19
Approve
Consent
Agenda
Items**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to approve the following items listed under the Consent Agenda:

- 1. Wastewater Agreement No. 1076
Sussex County Project No. 81-04
The Residences at Rehoboth Bay (AKA Love Creek Marina)
Angola Neck Sanitary Sewer District**
- 2. Wastewater Agreement No. 925-3
Sussex County Project No. 81-04
Seabrook (AKA Deerbrook) – Phase 2
Long Neck Sanitary Sewer District**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Planning
& Zoning
Commission
Appoint-
ment**

Mr. Lawson reported that due to Mr. Hudson's election to the Sussex County Council he has submitted his resignation from the Sussex County Planning and Zoning Commission. Therefore, a nominee needs to be announced to replace him on the Commission. Mr. Hudson nominated John Bruce Mears. Mr. Lawson stated that the interview process will be initiated.

**Adminis-
trator's
Report**

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

- 1. Projects Receiving Substantial Completion**

Adminis-
trator's
Report
(continued)

Per the attached Engineering Department Fact Sheets, The Landings at Pepper Creek (a/k/a The Marina at Pepper's Creek) – Phase 3-6 and Warrington Creek – Phase 7 (a/k/a Sawgrass South) received Substantial Completion effective December 19th and December 26th, respectively.

2. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County

The Advisory Committee on Aging & Adults with Physical Disabilities Conference Planning Subcommittee will meet January 14th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. The Subcommittee will continue to discuss planning for the upcoming conference scheduled for May 9, 2019. A copy of the agenda is attached.

3. Ruth Ann Beideman

It is with sadness that we note the passing of Ruth Ann Beideman on Tuesday, December 25th. Ms. Beideman was Chairperson of the Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County. We would like to extend our condolences to the Beideman family.

4. Jason M. Faulkner, Sr.

It is with sadness that we also note the passing of County employee Jason M. Faulkner, Sr. Jason worked at the Sussex County Emergency Operations Center as a Dispatcher for over 15 years. He passed away unexpectedly on Tuesday, January 1st. We would like to extend our condolences to the Faulkner family.

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

Con-
dolences

Councilmembers extended condolences to the families of Bill Bryan, Helen Kruger, and Ronald Waller.

Bank
Resolutions

Mrs. Jennings reported that, with the change in County Council leadership, the signers on the County's bank accounts will need to change.

M 008 19
Adopt
R 001 19

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Resolution No. R 001 19 entitled "AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH M & T BANK BEARING THE FACSIMILE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G. BURTON III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR, PROVIDED CHECK OR WITHDRAWAL IS LESS THAN OR EQUAL TO \$5,000 AND BEARING THE SIGNATURES OF ANY

M 008 19
(continued)

TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G BURTON III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL GREATER THAN \$5,000”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 009 19
Adopt
R 002 19

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Resolution No. R 002 19 entitled “AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE WILMINGTON TRUST COMPANY BEARING THE FACSIMILE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G. BURTON III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 010 19
Adopt
R 003 19

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Resolution No. R 003 19 entitled “AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE SUSSEX COUNTY FEDERAL CREDIT UNION BEARING THE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G. BURTON III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 011 19
Adopt
R 004 19

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Resolution No. R 004 19 entitled “AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE COMMUNITY BANK DELAWARE BEARING THE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G. BURTON III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A

M 011 19 **FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR**
(continued) **WITHDRAWAL”.**

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 012 19 **A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt**
Adopt **Resolution No. R 005 19 entitled “AUTHORIZING THE PAYMENT**
R 005 19 **FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT**
 WITH THE FULTON BANK BEARING THE SIGNATURES OF ANY
 TWO OF MICHAEL H. VINCENT, PRESIDENT; IRWIN G. BURTON
 III, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE
 DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED
 ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL”.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

2018 **Mrs. Jennings reported that the County has received correspondence from**
Private **the State of Delaware Department of Finance requesting that the unused**
Activity **portion of the County’s Annual Private Activity Bond Volume Cap be**
Bond **reassigned to the State. The State plans to allocate it to the State Housing**
Volume **Authority. Private Activity Bonds (PABs) are tax-exempt bonds issued by**
Cap **public entities to provide low cost financing for private projects that serve a**
 public purpose. Federal tax law imposes a number of restrictions and
 requirements on the issuance of PABs. These bonds are for private entities
 and have no impact on Sussex County government. IRS requires state and
 local governments to serve as conduits for these tax-exempt bonds so they
 will be regulated properly. Mrs. Jennings reported that, typically, every
 year at this time, the County reassigns its unused portion to the State and
 she recommended that the Council reassign the County’s 2018 unused
 Private Activity Bond Volume Cap of \$31,140,000 to the State of Delaware.

M 013 19 **A Motion was made by Mr. Wilson, seconded by Mr. Burton, that the**
Reassign **Sussex County Council reassigns the County’s 2018 unused Private Activity**
2018 **Bond Volume Cap of \$31,140,000 back to the State of Delaware.**
Unused

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

Private
Activity
Bond
Volume
Cap

**MOU/
Beebe
Medical
Center**

Ed Engdahl, Education Coordinator, Sussex County EMS, presented a Memorandum of Understanding (MOU) with Beebe Medical Center for paramedic education rotations in the operating room. The MOU provides for an expansion of an existing agreement for the purposes of education with Beebe Medical Center; this MOU will open other departments within the hospital to Sussex County paramedics for additional learning opportunities. Under this new MOU, paramedics will be afforded clinical learning opportunities under physician supervision in the Operating Room and Cardiac Catheterization Lab, as well as the Emergency Room, to maintain a high level of proficiency in advanced airway management and intravenous access skills. This agreement carries no cost.

**M 014 19
Approve
MOU/
Beebe
Medical
Center**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council approves the Memorandum of Understanding between Sussex County and Beebe Medical Center, Inc. to allow for additional educational opportunities within the hospital.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Mainte-
nance
Garage
Project/
C/O**

Hans Medlarz, County Engineer, presented Change Order No. 3 for the Sussex County Maintenance Garage, Project No. 17-09. Change Order No. 3 is for an additional interior wall, underground drainage improvements and other minor credits/additions in the amount of \$5,815.01. Completion of the project is projected to be in Spring 2019.

**M 015 19
Approve
C/O for
Mainte-
nance
Garage
Project**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon the recommendation of the Engineering Department, that Change Order No. 3 for Contract 17-09, Sussex County Maintenance Garage, be approved, which increases the contract amount by \$5,815.01, for a new contract total of \$2,081,092.50.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Blades
Sewer
Expansion
Route 13
Commercial
Contract
Amend-
ment**

Hans Medlarz, County Engineer, presented Amendment No. 3 to the EJCDC Base Agreement for the Blades Sanitary Sewer District, Route 13 Commercial Expansion. Contract Amendment No. 3, in the not to exceed amount of \$25,000.00, will cover work related to the final design of the Route 13 sewer crossing, including existing utility line locates and all related permit submittals and regulatory approvals. The authorization further includes contract administration and part time inspection of the construction work authorized by Council under Amendment No. 3.

(continued) **Funding will be provided through previously collected sewer connection charges.**

M 016 19 A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon
Approve the recommendation of the Engineering Department, that Amendment 3 to
Contract the EJCDC Engineering Base Contract with Davis Bowen & Friedel be
Amend- approved in the amount not to exceed \$25,000.00 for final design of the
ment/ Blades Sanitary Sewer District Route 13 Commercial Expansion.
Blades

Sewer Motion Adopted: 5 Yeas.

Expansion Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Route 13 Mr. Wilson, Yea; Mr. Burton, Yea;
Commercial Mr. Vincent, Yea

Agreement Hans Medlarz, County Engineer, presented Amendment No. 2 to the
for Waste- Agreement for Wastewater Services with the Lewes Board of Public Works
water (BPW). In March 2018, the BPW requested an amendment to the
Services/ Agreement allowing BPW's service area tie-in(s) to the County's system
Lewes and on March 20, 2018, Council approved the amendment allowing
BPW/ wastewater to be transmitted and treated in the most cost effective manner.
Amendment The Engineering Department approached the BPW with a request to
increase the flow contributions (presented to the Board on September 26,
2018). At that meeting, the Board instructed its Legal Counsel to draw up
the proposed amendment. The Engineering Department requests
concurrence with the amended Agreement for Wastewater Services with the
Lewes Board of Public Works.

M 017 19 A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon
Approve the recommendation of the Engineering Department, that the County
Amendment Council approves the revised Agreement for Wastewater Services with the
to Agree- Lewes Board of Public Works, as presented.
ment for

Wastewater Motion Adopted: 5 Yeas.

Services/ Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Lewes Mr. Wilson, Yea; Mr. Burton, Yea;
BPW Mr. Vincent, Yea

Construct Hans Medlarz, County Engineer, presented Change Order No. 1 to the
Parallel Construct Parallel Taxiway D Project, Phase 2 (Project No. 18-03). This
Taxiway D project allows for the development of several corporate size hangars and a
Phase 2/ large apron for aircraft parking. The bid for the project was awarded to
Project C/O George & Lynch.

M 018 19 A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon
Approve the recommendation of the Engineering Department, that Change Order
Project C/O No. 1 for Contract 18-03, Construct Parallel Taxiway D, Phase 2, be
approved, which increases the Contract amount by \$22,135.00 for a new

M 018 19 **Contract total of \$5,561,324.30.**
(continues)

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Grant
Requests

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

M 019 19
Council-
manic
Grant

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent’s Councilmanic Grant Account to the City of Seaford for the Seaford Police Department’s 2019 Citizens Police Academy.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

M 020 19
Countywide
Youth
Grant

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to give \$1,000.00 from Countywide Youth Grants to the Boy Scouts of America, Delmarva Council, for program expenses.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Introduction
of Proposed
Zoning
Ordinances

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENT VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 8.99 ACRES, MORE OR LESS” (Conditional Use No. 2165) filed on behalf of Vanderwende Acres, LLC (Tax I.D. No. 531-6.00-72.00 (portion of) (911 Address: 22304 Atlanta Road, Seaford).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE AND BUSINESS SERVICES AND RESIDENCE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS” (Conditional Use No. 2166) filed on behalf of Deborah Townsend (Tax I.D. No. 134-11.00-226.01) (911 Address: 34745 Burbage Road, Frankford).

Introduction of Proposed Zoning Ordinances (continued)

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OPEN OUTDOOR SALES (YARD SALE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.073 ACRES , MORE OR LESS” (Conditional Use No. 2167) filed on behalf of Karen Ann Muller (Tax I.D. No. 234-23.00-10.00) (911 Address: 31977 Eagle Lane, Millsboro).

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AMENDMENTS TO CONDITIONS OF APPROVAL OF CU 1645 (ORDINANCE NO. 1843) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS” (Conditional Use No. 2168) filed on behalf of Michael Mears (Tax I.D. No. 133-10.00-10.16) (911 Address: 22159 Paradise Road, Georgetown).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO ALLOW FOR AMENDMENTS TO CONDITIONS OF APPROVAL FOR CZ 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS” (Change of Zone No. 1873) filed on behalf of Captain’s Way Development, LLC (Tax I.D. No. 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00) (911 Address: None Available).

Council Members’ Comments

Council Members’ Comments

Mr. Vincent welcomed the two new Councilmembers, Doug Hudson and John Rieley.

M 021 19 Go Into Executive Session

At 10:55 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

Executive Session

At 11:00 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 Land Acquisition and Pending Litigation. The Executive Session

- (continued) concluded at 12:16 p.m.**
- M 022 19 Reconvene** At 12:18 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to come out of Executive Session and to reconvene the Regular Session.
- Motion Adopted:** 3 Yeas, 2 Absent.
- Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Absent;
Mr. Vincent, Yea
- E/S Action** There was no action on Executive Session matters.
- M 023 19 Recess** At 12:19 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until 1:30 p.m.
- Motion Adopted:** 3 Yeas, 2 Absent.
- Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Absent;
Mr. Vincent, Yea
- M 024 19 Reconvene** At 1:30 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to reconvene the Regular Session.
- Motion Adopted:** 4 Yeas, 1 Absent.
- Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea
- Rules** Mr. Moore read the rules of procedure for public hearings on zoning applications.
- Council Member Recusal** Mr. Hudson left the meeting as he needed to recuse himself from the public hearings and the votes on Change of Zone No. 1863, Change of Zone No. 1864 and Change of Zone No. 1862 since he participated in the public hearings on these application as a member of the Planning and Zoning Commission. (Mr. Hudson has resigned from the Commission following his election to the Sussex County Council.)
- Public Hearing/
CZ 1863** 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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.51646 ACRES, MORE OR LESS” (Change of Zone No. 1863) filed on behalf of Triumpf I, LLC (Tax I.D. No. 134-11.00-805.01) (911 Address: None Available).

**Public
Hearing/
CZ 1863
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2018 at which time action was deferred. On November 29, 2018, the Commission recommended approval of the application.

(See the minutes of the Planning and Zoning Commission dated November 15 and 29, 2018.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

An Exhibit Booklet was previously submitted into the record.

The Council found that Shannon Carmean Burton, Attorney, was present with Ken Christenbury with Axiom Engineering, LLC. They stated that the proposed commercial zoning of the subject property is compatible and consistent with neighboring uses; that the majority of the parcels located in close proximity to the subject property are zoned C-1 or CR-1 (Hocker's Super Center and Bob's Marine); that the proposed use will have no adverse impact on neighboring areas or uses; that the proposed use will have no significant impact upon traffic in the area and that DeIDOT advised that a Traffic Impact Study is not required at this time; that the Applicant currently has no plans to develop the property but is seeking a rezoning of the property to a CR-1 District in order to allow for permitted commercial uses, including a commercial office and retail uses. Mr. Christenbury presented an overview of the application including the surrounding area, the amount of commercial zoning in the area; and the availability of water and sewer in the vicinity of the property. Mrs. Burton and Mr. Christenbury referenced the application's compliance with the Comprehensive Zoning Map, the 2008 Comprehensive Plan, and the Zoning Code.

There were no public comments.

The Public Hearing and public record were closed.

**M 025 19
Adopt
Ordinance
No. 2624/
CZ 1863**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to Adopt Ordinance No. 2624 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 0.51646 ACRES, MORE OR LESS" (Change of Zone No. 1863) filed on behalf of Triumpf I, LLC.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1864**

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 C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.9 ACRES, MORE OR LESS” (Change of Zone No. 1864) filed on behalf of Scott and Monica Shubert (Tax I.D. No. 532-14.00-6.05) (911 Address: 11133 Iron Hill Road, Delmar).

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2018 at which the Commission recommended approval of the application.

(See the minutes of the Planning and Zoning Commission dated November 15, 2018.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found that Scott Shubert was present on behalf of his application. He stated that they would like to use this site to allow for small businesses to rent out space; that he has talked with his neighbors and has agreed to buffers along the properties; that he has already started planting trees for a buffer; that he and a neighbor have talked about (1) leaving a portion of the land as agriculture and (2) a landscape buffer; and that he currently owns a landscape company and he continues to maintain it.

In response to questions, Ms. Cornwell read the Planning and Zoning Commission’s Reason for Approval No. 8: “As proffered by the Applicant, it is recommended that Sussex County Council delete the 200-feet of the western side of the property from the C-3 Zoning District.”

There were no public comments.

The Public Hearing and public record were closed.

**M 026 19
Amend
P&Z
Reason for
Approval
for CZ 1864**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, to amend the Planning and Zoning Commission’s recommendation and Reason for Approval No. 8 to read as follows: “As proffered by the Applicant, the 200 feet from the western side of the property is deleted from the C-3 Zoning District and remains in its current zoning.”

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 027 19
Adopt
Ordinance
No. 2625/
CZ 1864**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to Adopt Ordinance No. 2625 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.9 ACRES, MORE OR LESS” (Change of Zone No. 1864) filed on behalf of Scott and Monica Shubert, with the amendment to the Planning and Zoning Commission’s recommendation and Reason for Approval No. 8 to read as follows: “As proffered by the Applicant, the 200 feet from the western side of the property is deleted from the C-3 Zoning District and remains in its current zoning.”

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1862**

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 C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.82 ACRES, MORE OR LESS” (Change of Zone No. 1862) filed on behalf of Old Orchard Ventures, LLC c/o Barry J. Baker (Tax I.D. No. 335-8.00-29.00 (portion of) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2018 at which time action was deferred. On November 29, 2018, the Commission recommended denial.

(See the minutes of the Planning and Zoning Commission dated November 15 and 29, 2018.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

An Exhibit Booklet was previously submitted in the record.

Ms. Cornwell noted that a number of correspondence was received in opposition to the application and was made a part of the record.

The Council found that Larry Fifer, Attorney; Barry Baker with Old Ventures, LLC; Robert Palmer with Beacon Engineering; Patrick Ryan, Architect; and Walt Bryan, land use consultant, were present on behalf of the application. Mr. Fifer and Mr. Palmer stated that the application is for the development of new medical and professional office facilities on Old Orchard Road; that the project site is only a portion of a 9.80 acre parcel;

**Public
Hearing/
CZ 1862
(continued)**

that the property is split-zoned with the 3.98 acres fronting Old Orchard Road (zoned C-1) and the rear 5.81 acres of the property is zoned AR-1; that the intent of the proposal is to change the AR-1 portion of the site to C-2; that designating the parcels within a single zoning district or complementary zoning districts leads to cohesive planning and design, making the choice to rezone appropriate; that the application site is located among several residential communities including the proposed Oyster Cove duplex development, the proposed Tranquility at Breakwater skilled nursing facility, as well as already established commercial properties; that the proposed medical and professional office facilities will complement the current surrounding aesthetic while providing additional services to a growing and aging population; and that the site is accessed from Old Orchard Road, designated as a local road, and lies primarily within Level 2 with a small portion in Level 1 of the Investment State Strategies Map. Mr. Palmer presented information on: the proposed use as a skilled nursing facility and professional office building, permitted uses, wetlands, buffers, DelDOT's plans for an extensive Traffic Impact Study, water and sewer, passive and open space, and the entrance. It was noted that, as of this time, no approvals have been received from DelDOT. Mr. Fifer referenced the Planning and Zoning Department's staff analysis and their agreement with that analysis.

Public comments were heard.

There were no public comments in support of the application.

Jan Allmaras, Robert Viscount, Carole Kohr, and David Horwat spoke in opposition to the application. Ms. Allmaras (representing a working group of homeowners from The Villages of Five Points) provided an overview of the area, a list of approved, preliminarily approved, and proposed development and infrastructure projects in the area; a comprehensive view of Old Orchard Ventures, LLC's three phase development plan (combined 27 acre development proposal), site plan, a comparison of the Applicant's proposal to other professional/medical buildings and complexes in the area, and a detailed map showing key intersections and entrances along Old Orchard Road. Ms. Allmaras also identified three major issues associated with the rezoning of the partial parcel and the design of Old Orchard Plaza: adverse effect of increased traffic on the surrounding neighborhoods; expanded commercial area is not consistent with the area; and addition of unique entrance for Old Orchards Plaza creates an unnecessary hazard to neighborhoods in the area. Ms. Allmaras reported that the Applicant selectively provided site information at the Planning and Zoning Commission's public hearing as well as on the projected traffic impact on the surrounding area (assessment of Average Daily Trips for the project). Ms. Allmaras provided a perspective on the size of the proposed Orchard Plaza buildings.

**Public
Hearing/
CZ 1862
(continued)**

Mr. Viscount (representing a working group of homeowners from The Villages of Five Points) reported that a preliminary Traffic Impact Study indicates Orchard Plaza will result in a 25% increase in average daily trips on Old Orchard Road; that the study does not include traffic data for several key projects that will have a direct, significant, and adverse impact on Old Orchard Road; that DelDOT's strategy to deal with the Five Points intersection congestion is to divert traffic off of Route One onto secondary roads – specifically New Road and Wescoats, which will further increase traffic volumes on Old Orchard Road; and that the addition of a unique entrance for Orchard Plaza in an already compressed roadway area creates a substantial risk. Mr. Viscount reviewed four major issues that are traffic related:

- **information from the preliminary Traffic Impact Study indicates that the Average Daily Trips (ADT) generated by Orchard Plaza will be even higher than originally projected for this commercial project**
- **missing traffic data (Minos Conaway, Old Orchard Road realignment, Brittingham Project, Governors Development, Cape Henlopen High School Expansion, and Covered Bridge Trails Development)**
- **Route 1 traffic diversion impacts**
- **addition of unique entrance for Orchard Plaza creates a substantial risk factor for cars, trucks, bikers, and pedestrians in a roadway segment with many ingress and egress points for motor vehicles, bikes, and pedestrians**

Mr. Viscount showed a video of activity/traffic/pedestrians on Old Orchard Road referencing safety concerns and noting that there are no shoulders or sidewalks on that road.

The Opposition stated that the Council needs to “tap into comprehensive thinking about the area rather than spot approval approach”; that approval of this application would be spot approval; that the project proposes no open space, only parking lots and buildings; that each building is proposed to be three stories high; that traffic will be negatively impacted; that there will be an adverse effect of increased traffic on surrounding neighborhoods; that with C-2 zoning, the County loses control; that the area has become residential and an expanded commercial area is not consistent with the area; that they question the hours of operation for this clinic facility; that there is concern about safety issues associated with the location of a large commercial entity so close to the newly established bike/pedestrian pathway; that property values will be negatively impacted; that no spot zoning should occur until the results of a comprehensive Traffic Impact Study has been reviewed and approved; that C-2 commercial zoning permits a broad scope of allowable business types; and that no control on traffic volumes is inappropriate for this parcel.

**Public
Hearing/
CZ 1862
(continued)**

Mr. Viscount and Ms. Allmaras submitted their presentations into the record. Ms. Carole Kohr submitted a letter into the record.

Paul Reiger commented on the three phases of the project and he referenced the Applicant's application before the Board of Adjustment. Mr. Reiger also commented on the lack of a public hearing sign on the project site.

There were no additional public comments.

Marc Cote and Jennifer Cinelli-Miller of DelDOT were in attendance to answer questions raised by the Council regarding the scheduling of projects in the Capital Transportation Program.

The Public Hearing and public record were closed.

**M 028 19
Defer
Action on
CZ 1862**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to defer action on Change of Zone No. 1862 filed on behalf of Old Orchard Ventures, LLC c/o Barry J. Baker.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Absent; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 029 19
Adjourn**

At 4:19 p.m., a Motion was made by Mr. Burton, seconded by Mr. Rieley, to adjourn.

Motion Adopted: 4 Yeas, 1 Absent.

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