

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 9, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 9, 2018, 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 015 18
Amend
and
Approve
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to amend the agenda by deleting “Proclamation – Cape Henlopen Field Hockey Team” 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 January 2, 2018 were approved by consent.

**Public
Comments**

Public Comments

Dan Kramer commented on the availability of videos of meetings.

Betty McGrath commented on Council meeting procedures.

**M 016 18
Approve
Consent
Agenda
Items**

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

- 1. Wastewater Agreement No. 638-16
Sussex County Project No. 81-04
The Estuary – Phase 1C-3B (Construction Record)
Miller Creek Sanitary Sewer District**

- M 016 18**
Approve
Consent
Agenda
Items
(continued)
2. **Wastewater Agreement No. 1038-5**
Sussex County Project No. 81-04
Governors – Phase 2
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District
 3. **Wastewater Agreement No. 1017-4**
Sussex County Project No. 81-04
Showfield – Phase 4
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District
 4. **Wastewater Agreement No. 1017-5**
Sussex County Project No. 81-04
Showfield – Phase 5
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District
 5. **Wastewater Agreement No. 856-12**
Sussex County Project No. 81-04
Sea Star Village @ Millville By The Sea, Section 3
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

Adminis-
trator's
Report

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

1. **Martin Luther King Jr. Holiday**

County offices will be closed on Monday, January 15th, for the Martin Luther King Jr. holiday. Offices will reopen on Tuesday, January 16th, at 8:30 a.m., and Council will meet at 10:00 a.m.

Old
Business/
Labor
Unions
Ordinance

Under Old Business, the Council considered the Proposed Ordinance entitled "AN ORDINANCE TO ADD A NEW CHAPTER 117 TO SUSSEX COUNTY CODE ENTITLED "LABOR UNIONS" TO PROHIBIT CERTAIN UNION MATTERS IN PRIVATE SECTOR EMPLOYMENT, INCLUDING PROHIBITION OF MANDATORY UNION MEMBERSHIP AND PAYMENT OF UNION DUES OR FEES AS CONDITION OF EMPLOYMENT; INVOLUNTARY UNION PAY DEDUCTIONS; AND ACTS OF COERCION RELATED TO UNION SUPPORT OR MEMBERSHIP".

Everett Moore, County Attorney, presented highlights of his written Legal Opinion, dated January 5, 2018, which was previously distributed to Council members.

M 017 18 **A Motion was made by Mr. Arlett to defer action on the Proposed**
Defer Action **Ordinance for further review.**

Motion Died **Mr. Arlett's Motion died for the lack of a Second.**

M 018 18 **A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt the**
Adopt **Proposed Ordinance entitled "AN ORDINANCE TO ADD A NEW**
Proposed **CHAPTER 117 TO SUSSEX COUNTY CODE ENTITLED "LABOR**
Ordinance **UNIONS" TO PROHIBIT CERTAIN UNION MATTERS IN PRIVATE**
Relating to **SECTOR EMPLOYMENT, INCLUDING PROHIBITION OF**
Labor **MANDATORY UNION MEMBERSHIP AND PAYMENT OF UNION**
Unions **DUES OR FEES AS CONDITION OF EMPLOYMENT;**
/ **INVOLUNTARY UNION PAY DEDUCTIONS; AND ACTS OF**
Denied **COERCION RELATED TO UNION SUPPORT OR MEMBERSHIP".**

Motion Denied: **4 Nays, 1 Yea.**

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

M 019 18 **A Motion was made by Mr. Cole, seconded by Mr. Burton, to make**
Make **public the Legal Opinion prepared and presented by County Attorney**
Legal **Everett Moore.**
Opinion
Public

Motion Adopted: **5 Yeas.**

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

Concord **Hans Medlarz, County Engineer, reported that Davis, Bowen and Friedel,**
Road **the Town of Blades' Engineer of Record, designed a USDA/RD/RUS funded**
Wastewater **water distribution system expansion in the same vicinity of Concord Road**
Expansion/ **as the County's sewer project (Concord Road Expansion of the Blades**
Loan **Sanitary Sewer District). On October 3, 2017, the Council approved a**
Resolution **construction agreement with the Town and an amendment with the**
and **engineer to complete both projects concurrently for a cost-effective**
Proposed **construction approach. The combined project was advertised and bid in**
Ordinance **one construction document with separate bid schedules for the County**
 Sewer Project and for the Blades Water Project. The Blades Town Council
 approved the alternate water bid on November 13, 2017 and County
 Council subsequently awarded the complete project on November 14, 2017
 to Zack's Excavating for a sewer base bid at \$1,605,824.75 and the alternate
 bid at \$797,957.25 for a total award of \$2,403,782.00, contingent upon
 USDA/RD concurrence which has since been received. The County
 received USDA obligation documentations with an offer of \$220,000 in loan
 and \$145,000 in grant funding. This funding is supplemental to the already
 committed \$729,000 in loan and \$449,000 in grant. The Finance and

(continued) **Engineering Departments recommend Council’s approval of the associated USDA Loan Resolution and introduction of the associated debt ordinance to be voted on after a public hearing. The Town of Blades is independently pursuing their supplemental funding through USDA.**

M 020 18
Approve
Loan
Resolution
and
Introduce
Proposed
Ordinance
Relating to
Concord
Road
Wastewater
Expansion

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, based upon the recommendation of the Engineering and Finance Departments, that the USDA Loan Resolution authorizing supplemental indebtedness for the Concord Road Utility Upgrade Project be approved and that the associated Debt Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$250,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF THE CONCORD ROAD WASTEWATER EXPANSION AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH” be introduced and be voted on after a prerequisite public hearing is conducted.

Motion Adopted: 5 Yeas.

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

Proposed
Camp
Arrowhead
Area II
Expansion/
SCUSSD

John Ashman, Director of Utility Planning, presented a request to prepare and post notices for the Camp Arrowhead Area II Expansion of the Sussex County Unified Sanitary Sewer District (consisting of 25,875 square feet). Mr. Ashman reported that this is for a second section of the Camp requesting annexation in order to serve a proposed bathhouse, an expansion of the Sussex County Unified Sanitary Sewer District (Angola Neck Area). The annexation request was submitted by the Diocesan Council for Camp Arrowhead. The Camp will be responsible for a pump station for their parcel and a force main to a connection point near the Woods on Herring Creek. There is an existing MOU in place that identifies what buildings on the Camp parcel can currently be connected. This bathhouse will be in addition to the buildings on the existing MOU. The parcels will be responsible for System Connection Charges of \$6,360.00 or the rate in place at the time of connection.

M 021 18
Authorize
Notices/
Proposed
Camp
Arrowhead
Area II
Expansion/
SCUSSD

A Motion was made by Mr. Cole, seconded by Mr. Arlett, that the Engineering Department is authorized to prepare and post notices for the Camp Arrowhead Area II Expansion of the Sussex County Unified Sanitary Sewer District (Angola Neck Area), as presented.

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/
CZ 1838**

Under Old Business, the Council considered Change of Zone No. 1838 filed on behalf of Two Farms, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2017 at which time the Commission recommended approval.

The County Council held a Public Hearing on this application on December 12, 2017 at which time action was deferred.

**M 022 18
Adopt
Ordinance
No. 2539/
CZ 1838**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, to Adopt Ordinance No. 2539 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.85 ACRES, MORE OR LESS" (Change of Zone No. 1838) filed on behalf of Two Farms, Inc.

Motion Adopted: 5 Yeas.

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

(It was noted that Mr. Burton was not in attendance at the Public Hearing on December 12, 2017; however, Mr. Burton stated that he has listened to the proceedings and reviewed the documentation in the record.)

**Grant
Requests**

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

**M 023 18
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$500.00 from Mr. Vincent's Councilmanic Grant Account to American Youth Football for uniforms and equipment for the Seaford Elite organization.

Motion Adopted: 5 Yeas.

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

**M 024 18
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$2,500.00 (\$500.00 from each Councilmanic Grant Account) to the Immanuel Shelter for utilities.

Motion Adopted: 5 Yeas.

**M 024 18
(continued)**

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

**Emergency
Funding**

A discussion was held regarding emergency funding for homeless shelters.

**Introduction
of Proposed
Ordinances**

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 RETIREMENT COMMUNITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 43.748 ACRES, MORE OR LESS” (Conditional Use No. 2123) filed on behalf of Mark Yoder, Jr. (Tax I.D. No. 530-9.00-4.00 & 530-4.00-23.00) (911 Address: 6939 Hickman Road, Greenwood).

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 AGRICULTURAL EDUCATIONAL FACILITY WITH COMMERCIAL KITCHEN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.9785 ACRES, MORE OR LESS” (Conditional Use No. 2124) filed on behalf of Jeri Berc (Tax I.D. No. 235-22.00-424.00) (911 Address: 16040 Hudson Road, Milton).

Mr. Arlett 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 HR-1 HIGH - DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS” (Change of Zone No. 1849) filed on behalf of Batson Oaks, LLC (Tax I.D. No. 533-11.00-82.00) (911 Address: 36161 Zion Church Road, Frankford).

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Members’
Comments**

Council Members’ Comments

Mr. Burton referenced comments previously made by Paul Reiger (during the public comment period on January 2, 2018) regarding the clarity of items placed on agendas. The Council discussed this matter with Mr. Lawson and Ms. Cornwell.

Mr. Cole discussed allocating additional emergency funding for homeless shelters. Mr. Lawson and Mrs. Jennings will discuss the matter and come back to Council with a recommendation.

M 025 18 **At 11:39 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session to discuss matters relating to potential litigation and land acquisition.**
Recess/
Go Into
Executive
Session **Motion Adopted: 5 Yeas.**

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

Executive **At 11:42 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to potential litigation and land acquisition. The Executive Session concluded at 12:55 p.m.**
Session

M 026 18 **At 12:58 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.**
Reconvene

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

E/S Action **There was no action on Executive Session matters.**

M 027 18 **At 12:58 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to recess until 1:30 p.m.**
Recess

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 028 18 **At 1:35 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to reconvene.**
Reconvene

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

Rules **Mr. Moore read the rules of procedure for public hearings.**

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A

**Public
Hearing/
CU 2108
(continued)**

LANDSCAPING BUSINESS WITH OUTDOOR STORAGE AND A RETAIL GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK AND BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.004 ACRES, MORE OR LESS” (Conditional Use No. 2108) filed on behalf of Bella Terra, LLC. (Tax I.D. No. 230-27.00-70.00) (911 Address: 13482 Spicer Road, Ellendale)

The Planning and Zoning Commission held a Public Hearing on this application on December 14, 2017 at which time action was deferred. On December 21, 2017, the Commission recommended approval for the following reasons and with the following conditions:

- 1. The property is a large parcel consisting of 30.004 acres more or less and is located in a Low Density Area which designation recognizes that business development should be largely confined to businesses that address the needs of single family residences and agriculture.**
- 2. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business with outdoor storage and a retail garden sales center is consistent with the underlying agricultural zoning.**
- 3. The use will not adversely affect the nature of the area or neighboring properties.**
- 4. The intended use of the property as a material storage and landscaping sales facility is of a public or semi-public character that will benefit the residents and visitors of Sussex County.**
- 5. With the conditions and limitations placed upon the use, it will not have an adverse impact upon traffic roadways or area population.**
- 6. This recommendation is subject to the following conditions:**
 - A. The use shall be limited to landscaping business with outdoor storage and a retail garden sales center. Storage and sale of mulch is permitted.**
 - B. No manufacturing shall occur on the site. This prohibition includes the chipping, shredding, or grinding of any materials and also includes the dyeing of mulch or similar materials.**
 - C. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - D. The Applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
 - E. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**
 - F. Except as otherwise provided, all materials shall be stored in bins on a concrete or hot mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties, or adversely affect groundwater on the site.**

**Public
Hearing/
CU 2108
(continued)**

- G. Any chemicals related to this Conditional Use shall be stored in a building, shed, or covered structure so that chemicals are not left outside.**
- H. Repairs of any tools, equipment, machinery, vehicles, devices, or any other instruments used in the operation of the business shall be performed in a building, shed, or covered structure.**
- I. One lighted sign, not to exceed 32 square feet per side shall be permitted.**
- J. The area permitted under this Conditional Use is limited to the front portion of the property closer to Spicer Road and shall not include the rear portion of the property where there are existing woodlands. The area of the Conditional Use must be clearly marked on the Final Site Plan.**
- K. The Applicant shall be permitted to store up to 30 work trucks with trailers.**
- L. The landscape business shall only operate between the hours of 6:00 a.m. until 8:00 p.m., Monday through Saturday. The retail garden center shall operate between the hours of 6:00 a.m. until 8:00 p.m., Monday through Sunday.**
- M. The parking and storage areas shall be shown on the Final Site Plan, and clearly marked on the site itself.**
- N. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated December 14 and 21, 2017.)

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

The Council found that Michael Schimmel was present on behalf of the application. He stated that he is the owner of a landscape business; that he has been in business for 15 years; that his business has outgrown its current location; that he has purchased a larger parcel and is hoping to grow his own plant material and open a retail garden center along with the landscaping business; that he has no plans for the land at the back of the property which has been select cut prior to his purchase of the property; that a garden center would be located in front of the patch of trees; that additional greenhouses would be built and installed; that he has approximately 30 trucks/trailers plus employee vehicles on the site; that there is approximately 1 1/2 to 2 acres of parking area; that hours of operation are proposed to be 6:00 a.m. to 8:00 p.m. with additional hours for snow removal services only; that no crews start work prior to 7:00 a.m.; and that the Applicant agrees that his work vehicles will primarily use Route 16.

There were no public comments.

(continued) The Public Hearing and public record were closed.

M 029 18 A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend the
Amend Planning and Zoning Commission's Reason #5 by adding the following
Condition sentence at the end: "The Applicant agreed that his work vehicles will
primarily use Route 16."

Motion Adopted: 3 Yeas, 2 Nays.

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

M 030 18 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to strike the
Amend Planning and Zoning Commission's wording in Condition K and replace it
Condition with the following: "There is a snow removal operation that is incidental in
use to this operation. The snow removal operation will be exempt from
hours of operation."

Motion Adopted: 5 Yeas.

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

M 031 18 A Motion was made by Mr. Burton, seconded by Mr. Cole, to amend
Amend Condition L recommended by the Planning and Zoning Commission to read
Condition as follows: "The landscape business shall only operate between the hours of
6:00 a.m., which shall include operation of work equipment, vehicles and
any repairs and preparation of equipment, until 8:00 p.m., Monday through
Saturday. The retail garden center shall operate between the hours of 6:00
a.m. until 8:00 p.m., Monday through Sunday."

Motion Adopted: 5 Yeas.

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

M 032 18 A Motion was made by Mr. Burton, seconded by Mr. Cole, to add the
Amend following sentence at the end of Condition M recommended by the Planning
Condition and Zoning Commission: "Dumpsters shall be screened from neighboring
uses and properties."

Motion Adopted: 3 Yeas, 2 Nays.

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

**M 033 18
Adopt
Ordinance
No. 2540/
CU 2108**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to Adopt Ordinance No. 2540 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE AND A RETAIL GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK AND BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.004 ACRES, MORE OR LESS” (Conditional Use No. 2108) filed on behalf of Bella Terra, LLC., for the following reasons and with the following conditions, as amended:

- 1. The property is a large parcel consisting of 30.004 acres more or less and is located in a Low Density Area which designation recognizes that business development should be largely confined to businesses that address the needs of single family residences and agriculture.**
- 2. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business with outdoor storage and a retail garden sales center is consistent with the underlying agricultural zoning.**
- 3. The use will not adversely affect the nature of the area or neighboring properties.**
- 4. The intended use of the property as a material storage and landscaping sales facility is of a public or semi-public character that will benefit the residents and visitors of Sussex County.**
- 5. With the conditions and limitations placed upon the use, it will not have an adverse impact upon traffic roadways or area population. The Applicant agreed that his work vehicles will primarily use Route 16.**
- 6. This recommendation is subject to the following conditions:**
 - A. The use shall be limited to landscaping business with outdoor storage and a retail garden sales center. Storage and sale of mulch is permitted.**
 - B. No manufacturing shall occur on the site. This prohibition includes the chipping, shredding, or grinding of any materials and also includes the dyeing of mulch or similar materials.**
 - C. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - D. The Applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
 - E. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**
 - F. Except as otherwise provided, all materials shall be stored in bins on a concrete or hot mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties, or adversely affect groundwater on the site.**

**M 033 18
Adopt
Ordinance
No. 2540/
CU 2108
(continued)**

- G. Any chemicals related to this Conditional Use shall be stored in a building, shed, or covered structure so that chemicals are not left outside.**
- H. Repairs of any tools, equipment, machinery, vehicles, devices, or any other instruments used in the operation of the business shall be performed in a building, shed, or covered structure.**
- I. One lighted sign, not to exceed 32 square feet per side shall be permitted.**
- J. The area permitted under this Conditional Use is limited to the front portion of the property closer to Spicer Road and shall not include the rear portion of the property where there are existing woodlands. The area of the Conditional Use must be clearly marked on the Final Site Plan.**
- K. There is a snow removal operation that is incidental in use to this operation. The snow removal operation will be exempt from hours of operation.**
- L. The landscape business shall only operate between the hours of 6:00 a.m., which shall include operation of work equipment, vehicles and any repairs and preparation of equipment, until 8:00 p.m., Monday through Saturday. The retail garden center shall operate between the hours of 6:00 a.m. until 8:00 p.m., Monday through Sunday.**
- M. The parking and storage areas shall be shown on the Final Site Plan, and clearly marked on the site itself. Dumpsters shall be screened from neighboring uses and properties.**
- N. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2109**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOLISTIC TREATMENT CENTER INCLUDING MASSAGE, ACUPUNCTURE, AND CHIROPRACTOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.55 ACRE, MORE OR LESS” (Conditional Use No. 2109) filed on behalf of Quakertown Wellness Center (Tax I.D. No. 335-8.14-49.00 and 335-8.00-35.00) (911 Address: 1204 Savannah Road, Lewes).

**Public
Hearing/
CU 2109
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on December 14, 2017 at which time action was deferred. On December 21, 2017, the Commission recommended approval with the following conditions.

- A. The project shall be served by a publicly regulated central water system providing drinking water and fire protection as required by applicable regulations.**
- B. As stated by the Applicant, there shall be no more than 3,500 square feet of holistic health and professional office space on the site.**
- C. One lighted sign, not to exceed 32 square feet per side shall be permitted.**
- D. Trash generated by the business shall be managed by residential trash bins in a fashion similar to trash bins for residential usage.**
- E. All entrances, intersections, roadway improvements, and multi-modal facilities required by DeIDOT shall be completed by the Applicant as required by DeIDOT.**
- F. A fence and 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 facility will be screened from view from any residential properties. The fence and landscape buffer must be located on the project site. The Final Site Plan shall contain a landscape plan showing the planned vegetation within this buffer area.**
- G. Any security lighting shall be low-level lighting on a timer and downward screened so that it does not shine onto neighboring properties or roadways.**
- H. Hours of operation shall be between 7 a.m. and 9:00 p.m., Monday through Saturday with limited Sunday hours by appointment provided that there shall be no appointments after 5 p.m. on Sundays.**
- I. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- 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 December 14 and 21, 2017.)

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

The Council found that Kim Furtado was present on behalf of the application and stated that the Quakertown Wellness Center business has been in operation since 2001; that they were operating their practice down the street from this location; that this location (Parcels 35 and 49) will provide 3,500 square feet of professional healthcare space; that they are losing their lease at their existing site and found this new site; that they will have to make adjustments to the property based on ADA and the Fire Marshal; that they propose one lighted sign not to exceed 32 square feet per

**Public Hearing/
CU 2109
(continued)**

side; that there will be a buffer along the southwestern side; that parking exists on Parcel 35; that they propose 18 parking spaces, per the Fire Marshal; and that fencing will be added along the parking area boundary.

The Council found that Harry Parsons (owner of the property) was present and stated that the Conditional Use is compatible with the area.

There were no public comments.

The Public Hearing and public record were closed.

**M 034 18
Amend
Condition
/
Denied**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to strike Condition H relating to hours of operation (recommended by the Planning and Zoning Commission).

Motion Denied: 4 Nays, 1 Yea.

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

**M 035 18
Adopt
Ordinance
No. 2541/
CU 2109**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt Ordinance No. 2541 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOLISTIC TREATMENT CENTER INCLUDING MASSAGE, ACUPUNCTURE, AND CHIROPRACTOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.55 ACRE, MORE OR LESS” (Conditional Use No. 2109) filed on behalf of Quakertown Wellness Center, with the following conditions:

- A. The project shall be served by a publicly regulated central water system providing drinking water and fire protection as required by applicable regulations.**
- B. As stated by the Applicant, there shall be no more than 3,500 square feet of holistic health and professional office space on the site.**
- C. One lighted sign, not to exceed 32 square feet per side shall be permitted.**
- D. Trash generated by the business shall be managed by residential trash bins in a fashion similar to trash bins for residential usage.**
- E. All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT.**
- F. A fence and 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 facility will be screened from view from any residential properties. The fence and landscape buffer must be located on the project site. The Final Site**

**M 035 18
Adopt
Ordinance
No. 2541/
CU 2109
(continued)**

- Plan shall contain a landscape plan showing the planned vegetation within this buffer area.**
- G. Any security lighting shall be low-level lighting on a timer and downward screened so that it does not shine onto neighboring properties or roadways.**
 - H. Hours of operation shall be between 7 a.m. and 9:00 p.m., Monday through Saturday with limited Sunday hours by appointment provided that there shall be no appointments after 5 p.m. on Sundays.**
 - I. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
 - 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/
CZ 1835**

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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.484 ACRES, MORE OR LESS” (Change of Zone No. 1835) filed on behalf of HKLS, LLC (Tax I.D. No. 334-12.00-51.00) (911 Address: Not Available).

The Planning and Zoning Commission held a Public Hearing on this application on December 14, 2017 at which time action was deferred. On December 21, 2017, the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated December 14 and 21, 2017).

Janelle Cornwell, Planning and Zoning Director, presented the Change of Zone application.

An Exhibit Booklet was previously submitted by the Applicant.

The Council found that Robert Gibbs, Attorney, was present with Ring Lardner of Davis Bowen and Friedel along with Keith and Sherry Martin, two of the owners. Mr. Gibbs and Mr. Lardner stated that the property is currently vacant and is located on the southeast corner of Plantation Road; that DelDOT issued a Letter of No Objection to the 2009 application (a conditional use application for medical offices which did not move forward); that a Traffic Impact Study was not required for the rezoning; that there are no federal wetlands on the site; that Sussex County will

**Public
Hearing/
CZ 1835
(continued)**

provide sewer service and Tidewater will provide water; that there are other commercial uses in the area and this application would be compatible with the area as there is a fair amount of this type of development on this corridor; that the property is located in the Environmentally Sensitive Development Area where development is anticipated and planned; and that there has been discussion about this application and the application for a potential assisted living facility to have a shared access / interconnection.

There were no public comments.

The Public Hearing and public record were closed.

**M 036 18
Adopt
Ordinance
No. 2546/
CZ 1835**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2546 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.484 ACRES, MORE OR LESS” (Change of Zone No. 1835) filed on behalf of HKLS, LLC.

Motion Adopted: 5 Yeas.

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

**M 037 18
Adjourn**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to adjourn at 2:50 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.}