

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 16, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 16, 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 038 18
Approve
Agenda**

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

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 9, 2018 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**Dale Dukes, President, Dukes Lumber Co., Inc., Laurel.
RE: Right to Work ordinance that was turned down.**

**Public
Comments**

Public Comments

Dan Kramer commented on the attendance of a group called SARG at the Comprehensive Land Use Plan workshops.

Paul Reiger referenced the many issues, i.e. issues within Section 115 of the Code, he has brought to Council's attention and he asked that they be fixed in the Code in the near future.

Report

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

**Adminis-
trator's
Report**

1. Sussex County Comprehensive Land Use Plan Workshop

The next Sussex County Council Comprehensive Land Use Plan Workshop will be held on Wednesday, January 17th, at 9:30 a.m. in Council Chambers. A copy of the agenda is attached.

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

A joint meeting of the Advisory Committee on Aging & Adults with Physical Disabilities and the Conference Planning Subcommittee will be held on Monday, January 22nd, at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. A copy of the agenda is attached.

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

**2017
Private
Activity
Bond
Volume
Cap**

Mrs. Jennings reported that the County has received correspondence from the State of Delaware Department of Finance requesting that the unused portion of the County's annual Private Activity Bond Volume Cap be reassigned to the State. The State plans to allocate it to the State Housing Authority. Private Activity Bonds (PABs) are tax-exempt bonds issued by 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 2017 unused Private Activity Bond Volume Cap of \$30,535,000 to the State of Delaware.

**M 039 18
Reassign
2017
Unused
Private
Activity
Bond
Volume
Cap**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council reassigns the County's 2017 unused Private Activity Bond Volume Cap of \$30,535,000 to the State of Delaware.

Motion Adopted: 5 Yeas.

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

**Asset
Manage-
ment
Phase III
Dewey
Water**

Hans Medlarz, County Engineer, presented Amendment No. 3 in the amount of \$12,948.00 to the Contract with KCI Technologies for Asset Management, Phase II – Dewey Beach Water Mapping System to develop an initial Geographic Information System (GIS) of the County's water system in the Dewey Beach area.

M 040 18
Approve
Amendment
No. 3 to
EJCDC
Contract/
Dewey
Water

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Amendment No. 3 to the EJCDC Contract for miscellaneous engineering services with KCI Technologies, Inc. be approved in an amount not to exceed \$12,948.00 for Phase II of the Asset Management Program Dewey Beach Water System Mapping.

Motion Adopted: 5 Yeas.

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

Delaware
Coastal
Business
Park/
Becker
Morgan
Group/
Scope
Amendment

Hans Medlarz, County Engineer, reported that Lease Area No. 2 in the Delaware Coastal Business Park (formerly known as the King Farm Industrial Park) is up for consideration of extending a stub road created for the intersection where the Atlantis stub road is; additionally, there is opportunity to do some considerations for stormwater management and stormwater over-management, which would allow for stormwater for either the existing park and/or for the new park. To accomplish the engineering tasks, a scope modification from Becker Morgan Group, Inc. is requested to design the new and realigned segments and the stormwater over-management in an amount not to exceed \$48,000.00.

M 041 18
Approve
Scope
Amendment
for
Delaware
Coastal
Business
Park

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Scope Amendment No. 1 with Becker Morgan Group, Inc. be approved in the amount not to exceed \$48,000.00 for the design of a new roadway including realignment with existing roadways and stormwater over-management at the Delaware Coastal Business Park.

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 reported on the Rules of Procedure for the Public Hearing.

Public
Hearing/
Proposed
Ordinance/
Special
Events

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES IV, VI, X, XI, XIA, and XII BY AMENDING SECTIONS §§115-20, 115-22,115-39, 115-69, 115-71, 115-77, 115-79, 115-83.2, 115-83.5, 115-85 and 115-87 TO AMEND AND CLARIFY CERTAIN SHORT-TERM “SPECIAL EVENTS” AS PERMITTED USES IN THE AR-1, GR, B-1, C-1, CR-1 and M DISTRICTS”.

Summary: “Special Events” are currently within the Conditional Use sections of several of the various zoning districts; however, in certain

**Public
Hearing/
Proposed
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Special
Events
(continued)**

circumstances the Code provides that they can be permitted without a Conditional Use. This ordinance moves the “permitted” Special Events to the “Permitted Uses” section of the districts. Then, if the proposal does not fall under the permitted use or is not approved as such, it will require a Conditional Use. This amendment also gives the Director greater discretion, clarity and guidance in determining whether to approve a special event request or require a Conditional Use application.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on October 26, 2017 at which time the Commission recommended to withdraw the Proposed Ordinance and to continue with a public workshop format.

Todd Lawson, County Administrator; Vince Robertson, Assistant County Attorney; and Janelle Cornwell, Planning and Zoning Director, presented the Proposed Ordinance.

A presentation was given by Mr. Lawson and Mr. Robertson outlining the current County Code, new ordinance guidelines/considerations, and new ordinance construction. Mr. Lawson also referenced a White Paper prepared by former Planning and Zoning Director Lawrence Lank; the White Paper outlined some historic perspective on the County Code as it relates to special events.

Mr. Robertson presented an overview of the process. He reported that the Council asked staff to review the special events provisions in the Code, based on issues with how it is drafted and how it has been applied in the past. Mr. Robertson noted that Council never gave any direction to ban anything and what has been drafted does not ban anything. He stated that the drafted ordinance is intended to keep in line with what the current Code states and it is intended to keep it simple and easy without a lot of steps and red tape. Mr. Robertson noted that the current Code states that the Director of Planning and Zoning has the authority to approve special events and that the Proposed Ordinance states the same. He also noted that there is not a drastic change in what is proposed versus what is already in Code. Mr. Robertson clarified that the Proposed Ordinance does not ban or limit events at VFWs, fire halls, churches, or similar organizations or events within any municipalities. In fact, what it does is gives a property owner four different ways to get approval: a Director-approved special event, a Director-approved tent, a Conditional Use for an event, or a Board of Adjustment approved event/tent. It was noted that if a special event application is denied by the Planning and Zoning Director, an appeal would go to the Board of Adjustment, in accordance with State Law.

Council discussed what information is needed for a planned event: estimated number of people, liquor licensing, porta-potties, parking, lighting, music, and compliance with agencies such as the DeIDOT, State Police, ADA, Health Department, etc. Also discussed was how the public would know if the policy affects them; if inside events are covered in the

**Public
Hearing/
Proposed
Ordinance/
Special
Events
(continued)**

Proposed Ordinance; how for-profit and non-profit organizations would be affected; if events are based on use and if inside versus outside events are addressed; and regulations for special events in Kent County and New Castle County.

Ms. Cornwell reported that, since the Planning and Zoning Commission held their Public Hearing, three letters have been received expressing concerns about the Proposed Ordinance; additionally, an exhibit containing over 1,800 comments was received and was very site specific. These documents have been made a part of the record as has all documents submitted to the Planning and Zoning Commission.

Public comments were heard.

There were no public comments in support of the Proposed Ordinance.

Twenty-three people spoke in opposition to the Proposed Ordinance. They questioned how the Proposed Ordinance came about; questioned how non-profits would be affected; provided examples of special events on their properties; requested that it be clearly established in the ordinance that non-profits are grandfathered and exempt; stated that the proposed ordinance does not specifically exclude organizations such as VFW, American Legion, etc.; expressed concerns for veterans; stated that most special events are fundraisers; questioned the limit of 3 day events as well as 3 events per year; stated that the proposed ordinance will have a financial impact; stated that the current ordinance and the proposed ordinance are not well drafted and are not clear; stated that the proposed ordinance is a significant change; stated that special events do get regulated, i.e. DelDOT, OABCC, State Police, etc.; stated that there is not much guidance for the Director of Planning and Zoning in the existing ordinance; stated that the Council should not give absolute discretion to the Director of Planning and Zoning and that it exposes the Director to personal liability; stated that the existing ordinance does not give any real basis for denial; stated that many important activities will not be permitted under the proposed ordinance, i.e. 5Ks, marathons, youth athletics, concerts, haunted houses, fairs, weddings, parades, scouting events; stated that places are needed to hold events; reported on the history of Hudson Fields operating as an airport and event venue for over 50 years including air shows and parachuting events; stated that Hudson Fields serves the community; referenced the need for a grandfathering provision; stated that the proposed ordinance would shut down Hudson Fields; stated that the noise levels of the concerts are less than the noise levels from airplanes, helicopters and tractor trailers; referenced a new sports complex in Georgetown that would not have to follow the proposed ordinance; discussed the importance of non-profits to the community; commented on property rights and over-regulation; urged the Council to follow the recommendation of the Planning and Zoning Commission; and urged Council to table the proposed ordinance stating that it is not ready to be passed, as written.

M 042 18 **At 12:35 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to**
Recess **recess for 30 minutes.**

Motion Adopted: 5 Yeas.

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

M 043 18 **At 1:02 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton to**
Reconvene **reconvene.**

Motion Adopted: 3 Yeas, 2 Absent.

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

Public **Mr. Arlett and Mr. Wilson rejoined the meeting.**
Hearing/

Proposed **Public comments in opposition to the Proposed Ordinance continued.**
Ordinance/ **Opponents referenced that the proposed ordinance creates confusion, does**
Special **not provide quantitative measurements, and does not address yard sales,**
Events **family events, church sites, seasonal festivals, outdoor movies, Carey’s**
(continued) **Camp, etc.; stated that there is no grandfathering clause in the proposed**
 ordinance and that there should be; stated that there is no guidance as to
 how the County will monitor activities; stated that they question who will
 pay to monitor events; stated that the proposed ordinance does not
 reference any penalties if a permit is not acquired; stated that they question
 the basis for the number of events (3); stated that an economic impact study
 is needed; stated that special events such as the concerts at Hudson Fields
 benefit the economy; that the concerts at Hudson Fields generated \$1.6
 million per a University of Delaware Economic Development Study; stated
 that the proposed ordinance does not solve the issues of safety; stated that
 applications have been submitted in the past for Foodie Fest, lacrosse and
 concerts at Hudson Fields and no response was received from the County;
 stated that they question how the changes will be implemented; stated that
 as a result of the proposed ordinance, the County will need to be prepared
 for a large volume of applications; referenced a FOIA request and
 information received on the number of applications for special events the
 County has received over the past few years; questioned if the Nanticoke
 Indian Association’s events will be affected, i.e. the Annual Powwow and
 other events; stated that without special events, many organizations could
 not make money that is needed to help the community – raising funds and
 awareness for local charities; stated that special events fuels small business
 revenue and enhances quality of life; stated that more than three 3-day
 events should be permitted per year; questioned how the proposed
 ordinance would affect the Freeman Stage; stated that no one in attendance
 is in support of the proposed ordinance; stated that a committee should be

**Public Hearing/
Proposed Ordinance/
Special Events
(continued)**

set up to work on a redraft of the ordinance; and stated that the Council and County staff should meet with the community and get their perspective on this matter.

It was noted that, during the Public Hearing, it was found that there is some confusion regarding the Sussex County Special Events Application (Planning and Zoning) and the Sussex County Public Safety Services Special Event Application (EMS). It was further noted that the proposed Ordinance should reference both applications.

Submitted into the record were: a letter from John Paradee, Attorney, written to Martin Ross, Chairman, Sussex County Planning and Zoning Commission, regarding Hudson Fields; a letter from John Paradee, Attorney, to Michael Vincent, President of the Sussex County Council regarding the Proposed "Special Events" Ordinance; notes on the Special Events Ordinance from Kevin Burdette; letter from D. J. Hughes; 26 additional letters/emails submitted in opposition to the proposed ordinance; and a petition to "Save Hudson Fields Concerts!" with 2,263 signatures.

There were no additional public comments.

The Public Hearing was closed.

**M 044 18
Defer Action
on Proposed Ordinance/
Special Events**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to defer action on the Proposed Ordinance relating to Special Events and to leave the record open for 30 days for submission of comments and information (written submissions only), including the economic development study by the University of Delaware.

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**

**Introduction
of Proposed 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 LANDSCAPE BUSINESS, SALE AND STORAGE (EXTENSION OF CONDITIONAL USE NO. 1242) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 10.0011 ACRES, MORE OR LESS" (Conditional Use No. 2125) filed on behalf of RS Cordrey Farms, LLC (Tax I.D. No. 234-28.00-59.00 (portion of) and 234-28.00-60.00 (portion of) (911 Address: Not Available).

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR COMMERCIAL

Introduction of Proposed Ordinances (continued) **VEHICLE STORAGE AND CAR SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 9.54 ACRES, MORE OR LESS” (Conditional Use No. 2126) filed on behalf of Nikolajs Lituinenkous (Tax I.D. No. 233-11.00-172.00) (911 Address: 30028 Vines Creek Road, Dagsboro).**

Mr. Cole 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25.60 ACRES, MORE OR LESS” (Conditional Use No. 2127) filed on behalf of Wine Worx, LLC (Tax I.D. No. 134-11.00-53.00) (911 Address: 32512 Blackwater Road, Frankford).

The Proposed Ordinances will be advertised for Public Hearings.

M 045 18 **At 2:32 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Wilson, to**
Go Into **recess the Regular Session and go into Executive Session to discuss matters**
Executive **relating to land acquisition.**
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 2:35 p.m., an Executive Session of the Sussex County Council was held in**
Session **the Basement Caucus Room for the purpose of discussing matters relating**
to land acquisition. The Executive Session concluded at 3:12 p.m.

M 046 18 **At 3:13 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to**
Reconvene **come out of Executive Session and 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

There was no action on Executive Session matters.

M 047 18 **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to adjourn at**
Adjourn **3:13 p.m.**

Motion Adopted: 5 Yeas.

**M 047 18
(continued)**

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