

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 9, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 9, 2021, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	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 046 21
Amend
and
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to amend the Agenda by deleting “Introduction of Proposed Zoning Ordinances” and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Approve
Minutes**

The minutes of February 2, 2021 were approved by consent.

**Corre-
spondence**

Mr. Moore read correspondence from the U.S. Census Bureau and the Delaware Agricultural Museum and Village.

**Adminis-
trator’s
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Peninsula Lakes, Phase 12B (Construction Record) received Substantial Completion effective February 4th.

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

**Proposed
Budget
Amendment
Ordinance**

Mrs. Jennings presented for consideration a Proposed Ordinance to amend the Annual Operating Budget Ordinance for Fiscal Year 2021 to incorporate additional Sussex County Realty Transfer Tax revenue and

**Proposed
Budget
Amendment
Ordinance
(continued)**

allowable expenditures by amending the Anticipated General Fund Revenues, the Anticipated General Fund Appropriations and the Anticipated Capital Project Fund Revenues and Expenditures in the Annual Operating Budget for the Fiscal Year Ending June 30, 2021.

Mrs. Jennings noted that the Fiscal 2021 Budget was conservative due to the uncertainty of COVID-19 impacts; a baseline budget was adopted with eight supplemental budgets that could be enacted when certain revenue milestones are reached. Also, Realty Transfer Tax was budgeted at 65 percent of what was expected to be collected. Mrs. Jennings reported that, after seven months into the Fiscal Year, it can be determined how revenues have been impacted by COVID and there is opportunity to amend the Budget by increasing Realty Transfer Tax eligible expenditures. As of January 31, 2021, there was a Year-to-Date Budget of \$13,125,000; the County actually has \$32,540,000 collected through January 31, 2021, a difference of \$19,415,000; supplementals were enacted in the amount of \$8,000,000, leaving \$11,415,000 of Realty Transfer Tax that was brought in but not anticipated.

Mrs. Jennings presented and explained her recommendation to adjust expenditures for the Realty Transfer Tax, as follows: land acquisition for future EMS stations (\$1,000,000), ambulance service (\$5,375,000), Economic Development Loan Program (\$3,000,000).

**Introduction
of Proposed
Ordinance**

Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2021 TO INCORPORATE ADDITIONAL REALTY TRANSFER TAX REVENUE AND ALLOWABLE EXPENDITURES”.

The Proposed Ordinance will be advertised for Public Hearing.

**DE Coastal
Airport/
Ground
Lease and
Hangar
Develop-
ment**

Hans Medlarz, County Engineer, and Bob Bryant, Airport Manager, presented an update on the Authorization to Issue a Request for Proposals (RFP) for the redevelopment of Lots A and B at the Delaware Coastal Airport. No proposals were received on the first RFP that was issued. Thereafter, the original RFP was revised and advertised; one single proposal was received from Schell Aviation LLC.

**M 047 21
Accept
Schell
Aviation,
LLC
Proposal**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council accepts the proposal submitted by Schell Aviation, LLC, contingent upon FAA approval of changes to the Airport Layout Plan.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

SCRWF & Rehoboth Beach WTP/ Electrical Construction Project

Hans Medlarz, County Engineer, presented Change Order No. 9 to the South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Process Capital Improvement Program, Phase 2, Electrical Construction, Project C19-17. The Change Order, is in the aggregate amount (two RFPs) of \$30,554.00.

M 048 21 Approve Change Order/ Contract C19-17

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 9, for Contract C19-17, South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Process Capital Improvement Program, Phase 2, Electrical Construction, be approved, increasing the Contract by \$30,554.00 for a new contract total of \$21,815,875.00.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

Ellendale Water District/ Bid Award and Contract Amendment

Hans Medlarz, County Engineer, presented the bid results for Project W20-17, Greater Ellendale Water District. Six bids were received; the lowest three bids received were from Pact One, LLC, JOAO & Bradley and George & Lynch. The Engineering Department reviewed all bids received and Davis, Bowen & Friedel (DBF) provided a recommendation based on their bid evaluation. Mr. Medlarz reported that the Engineering Department agrees with DBF's review and recommendation to award the bid to the lowest responsible bidder, Pact One, LLC, in the amount of \$4,779,550.00, contingent upon concurrence by the funding agency.

As Engineer of Record, the Department requested DBF to provide a scope and fee for construction phase services to support administration, management, and inspection of the Project. The Department has reviewed DBF's proposal and recommends that Council award Amendment No. 2 of the Professional Services Agreement with DBF dated November 5, 2019, for additional construction phase services related to the Greater Ellendale Water District, Sussex County Project W20-17, in the amount of \$388,000.00.

M 049 21 Greater Ellendale Water District/ Award Contract W20-17

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract W20-17, Greater Ellendale Water District, be awarded to PACT One, LLC for their total amount of \$4,779,550.00, contingent upon concurrence by the State Funding Agency.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 050 21
Approve
Contract
Amendment
No. 2/
Ellendale
Water
District

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 2 to the Base Engineering Contract for the Ellendale Water District with Davis Bowen & Friedel be approved in the amount not to exceed \$388,000.00 for additional construction phase and inspection services.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Blackwater
Village
Area of the
SCUSSD

John Ashman, Director of Utility Planning and Design, reported on the Proposed Blackwater Village Area of the Sussex County Unified Sanitary Sewer District. The Council approved the final boundary of the Proposed Blackwater Village Area on December 1, 2020. A referendum was held on January 22, 2021 and the results of the referendum was as follows: 91 in favor and 61 opposed.

M 051 21
Adopt
R 005 21

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Resolution No. R 005 21 entitled "BLACKWATER VILLAGE AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65, OF THE DELAWARE CODE".

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Grant
Request

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

M 052 21
Council-
manic
Grant

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,300.00 (\$460.00 from each Councilmanic Grant Account) to Race4Warriors for fundraiser event expenses.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 053 21
Go Into
Executive
Session

At 10:43 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Green, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to potential litigation and land acquisition.

Motion Adopted: 4 Yeas, 1 Absent.

- M 053 21**
(continued) **Vote by Roll Call:** **Mrs. Green, Yea; Mr. Schaeffer, Absent;**
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- Executive Session** **At 10:50 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 potential litigation and land acquisition. The Executive Session concluded at 11:55 a.m.**
- M 054 21**
Reconvene **At 12:01 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to come out of Executive Session and to reconvene the Regular Session.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Green, Yea; Mr. Schaeffer, Absent;**
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- E/S Action** **There was no action on Executive Session matters.**
- M 055 21**
Recess **At 12:03 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until 1:30 p.m.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Green, Yea; Mr. Schaeffer, Absent;**
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- M 056 21**
Reconvene **At 1:31 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to reconvene the Regular Session.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Green, Yea; Mr. Schaeffer, Absent;**
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- Rules** **Mr. Moore read the rules of procedure for public hearings on zoning matters.**
- Public Hearings/
Brickyard
Apartments
LLC** **A combined Public Hearing was held on the following three (3) Proposed Ordinances: “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLN IN RELATION TO TAX PARCEL NO. 132-2.00-264.00 (PORTION OF)”;** **“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.093 ACRES, MORE OR LESS” (Change of**

Public Hearings/ Brickyard Apartments LLC/ Proposed Land Use Ordinance/ CZ 1910/ CU 2212 (continued)

Zone No. 1910); and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (48 APARTMENTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.05 ACRES, MORE OR LESS” (Conditional Use No. 2212) filed on behalf of Brickyard Apartments, LLC (Tax I.D. No. 132-2.00-264.00) (911 Address: 9329 Brickyard Road, Seaford).

The Planning and Zoning Commission held a combined Public Hearing on these three matters on January 7, 2021 at which time action was deferred. On January 21, 2021, the Commission recommended approval of the three (3) Proposed Ordinances. The Commission’s recommendation of approval of Conditional Use No. 2212 was subject to the following conditions:

- a) There shall be no more than 48 units within this apartment development consisting of six buildings containing four, one-bedroom apartments, and six buildings with four, two-bedroom apartments.**
- b) All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements.**
- c) The Conditional Use shall be served by central sewer.**
- d) The Conditional Use shall be served by central water.**
- e) Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.**
- f) Interior street design shall meet or exceed Sussex County’s street design requirements. There shall also be sidewalks on at least one side of all streets within the Conditional Use and the sidewalk design shall take into account the location of a school bus stop.**
- g) The developer shall coordinate with the Seaford School District about the location of a centralized school bus stop within the development. If requested by the Seaford School District, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.**
- h) Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- i) Construction activities, including sitework and deliveries, shall only occur between 7:30 a.m. and 7:00 p.m. Monday through Friday, and 8:00 a.m. through 5:00 p.m. on Saturdays.**
- j) There shall be an on-site management office within the community.**
- k) The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- l) The Applicant on its assigns shall be responsible for the maintenance of interior drives and parking areas, buildings, buffers, stormwater management, amenities and all open space.**

Public Hearings/
Brickyard Apartments LLC/
Proposed Land Use Ordinance/
CZ 1910/
CU 2212
(continued)

- m) This recommendation is contingent on Sussex County Council approving the amendment of the Future Land Use Map so that this entire parcel is identified as being within the Development Area.
- n) 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 January 7 and 21, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the applications.

Mr. Whitehouse noted that one letter of support has been received.

The Council found that John Paradee, Attorney, was present on behalf of the Applicant with Sherry Hockstedler of George Miles & Buhr. He stated that the revised designation of this property under the Comprehensive Plan and the proposed rezoning are consistent with the Comprehensive Plan; that approving this application would resolve a split-zoning of the property that currently exists; that approval of this project would help meet the County's affordable housing objectives; that all requisite infrastructure is already in place and the area is appropriate for the use; the Applicant is agreeable to all of the conditions recommended by the Commission, except they ask that Condition "j" on Conditional Use No. 2212 be amended to read as follows: "There shall be an on-site management office within the Community, *provided that, so long as the owner of the adjoining property presently approved by a Manufactured Housing Community (MHC) shall approve and permit such an arrangement. The management office for the community may be located on the site of the adjoining MHC property, otherwise the management office must be located on-site within the community.*"; that this property is already approved by a Manufactured Housing Community on an adjacent property owned by the same ownership group; that they already have an office of sufficient size on the adjoining property and they would like to coordinate and have all of their management in the same office; that if the ownership separates at some point in time and that condition could no longer be satisfied, then they would have to place a management office on-site, which they agree to; that the Office of State Planning Coordination supports the application; that the Planning and Zoning Commission recommended approval; and that a letter of support was received from a neighbor and there has been no community opposition.

Mr. Vincent questioned if the Applicant has obtained approval from DNREC and obtained a CPCN (Certificate of Public Convenience and Necessity) from the Public Service Commission for water and sewer service.

Mr. Paradee and Ms. Hockstedler stated that they were unsure if these approvals have been received. Ms. Hockstedler noted that they have a permit through Mobile Gardens Manufactured Home Community.

**Public Hearings/
Brickyard
Apartments
LLC
(continued)**

Mr. Vincent stated that he would like to see DNREC’s authorization for Mobile Gardens to provide wastewater services for this property and documentation that the Public Service Commission has granted a CPCN for Mobile Gardens to provide drinking water.

There were no public comments.

The Public Hearing was closed.

**M 057 21
Defer
Action on
Proposed
Ordinance
Amending
Future
Land Use
Map**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 132-2.00-264.00 (PORTION OF)” and to leave the record open for the purpose of obtaining information from DNREC and the Public Service Commission.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 058 21
Defer
Action on
CZ 1910**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson, to defer action 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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.093 ACRES, MORE OR LESS” (Change of Zone No. 1910) filed on behalf of Brickyard Apartments, LLC, and to leave the record open for the purpose of obtaining information from DNREC and the Public Service Commission.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 059 21
Defer
Action on
CU 2212**

A Motion was made by Mr. Vincent, seconded by Mrs. Green, to defer action on “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (48 APARTMENTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.05 ACRES, MORE OR LESS” (Conditional Use No. 2212) filed on behalf of Brickyard Apartments, LLC, and to leave the record open for the purpose of obtaining information from DNREC and the Public Service Commission.

**M 059 21
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 060 21
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mrs. Green, to adjourn at
1:55 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Absent;
Mr. Hudson, Yea; Mr. Rieley, 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.}