

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 19, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 19, 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	Vice President
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 082 19
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, 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**

Minutes

The minutes of February 5, 2019 were approved by consent.

**Corre-
spondence**

Correspondence

Mr. Moore read a letter into the record on behalf of Howard Gorrell regarding the lack of affordable housing.

**Public
Comments**

Public Comments

Jim Martin commented on homelessness and the lack of affordable housing in Sussex County and asked the Council to change zoning to allow for tiny homes and micro-apartments for the homeless in Sussex County.

Howard Gorrell's comments were read under correspondence.

Richard Borrasso, representing SARG (Sussex Alliance for Responsible Growth), questioned the reason for the draft ordinance relating to the "Coastal Area".

**Public
Comments
(continued)**

Dan Kramer referenced the draft ordinance relating to the Comprehensive Plan and stated that the letter from the Governor should be made available.

Paul Reiger complimented the County on the packets provided for the Sussex County Council and Planning and Zoning Commission meetings; he stated that packets are also needed for the Board of Adjustment meetings.

Kristen Homan commented on homelessness and the need for affordable housing for the homeless in Sussex County.

**Tribute/
FFA**

The Council presented a Tribute to members of the Sussex Central High School FFA in celebration of “National FFA Week”.

**Vinyard
Shipyard
Project**

Dan Bond and Sher Valenzuela gave a presentation on the Vinyard Shipyard Project in Milford. They discussed the history of the Shipyard, work that has taken place in restoring the buildings and bringing together historic artifacts, and its designation as a State Historic Landmark; they also discussed the acquisition of the historic Mulholland Spoon Factory. The presentation included information on the effort that is underway to ensure that these assets continue to be maintained and to expand their public use; this effort is a continuation of the expansion of the Mispillion Riverwalk Greenway. They stated that they have already presented to Kent County Levy Court and to the Milford City Council and secured a commitment for funding the project, and they asked that the Sussex County Council contribute \$20,000.00.

**Appoint-
ment/
Board of
Adjustment**

Mr. Lawson presented a recommended appointment to the Board of Adjustment for District 4 due to a vacancy created with Bruce Mears’ appointment to the Planning and Zoning Commission. Mr. Hudson nominated John Williamson. 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. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for January 2019 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of January.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Truitt Homestead – Phase 2 (Construction Record), effective January 28th; Peninsula –

**Administrator's
Report
(continued)**

Phase 1C – Sailside, effective February 12th; and Sea Star Village @ Millville by the Sea – Section 3, effective February 12th.

3. Kirk Miller

It is with sadness that we note the passing of County pensioner Kirk Miller on Wednesday, February 6th. Mr. Miller began his career with Sussex County in January 1991 where he worked in the EMS department until July 1995. Mr. Miller returned to the County in January 1998 and retired from EMS as a Paramedic II in July 2010 for a total of 17 years of service. We would like to extend our condolences to the Miller family.

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

**Foreign
Trade
Center
Designation**

William Pfaff, Director of Economic Development, referenced his presentation to the Council on November 13, 2018 regarding having the Delaware Coastal Airport, Business/Industrial Park designated as a Foreign Trade Zone (FTZ). At that meeting, an overview of a FTZ designation was given along with a presentation on the process for the designation, including the application process, the advantages of the designation, and the cost to set up the FTZ. On that date, the presentation/overview was given by Patti Cannon, Division of Small Business, State of Delaware, and Scott Taylor, Esquire, for Miller & Company, P.C., the firm used by the State for the application process. Mr. Pfaff stated that he is asking the Council for funding in the amount of \$25,000.00 to move forward with the designation.

**M 083 19
Authorize
Foreign
Trade
Center
Designation**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, that the Sussex County Council authorizes the Economic Development Director and Delaware Coastal Airport Director to work with Scott Taylor, Partner, Miller & Company P.C., to apply for the foreign-trade zone designation for the Delaware Coastal Airport, Delaware Coastal Business Park not to exceed \$25,000.00.

Motion Adopted: 5 Yeas.

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

**Fencing
Services
Contract/
Change
Order**

Hans Medlarz, County Engineer, presented Change Order No. 3 to the Sussex County Fencing Services Project. The Change Order, in the amount of \$20,000.00, is for the installation of a new gate at the Piney Neck Facility and to install replacement fencing at three (3) pump stations.

**M 084 19
Approve
C/O**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 3 for Contract 17-14, Fencing Services, be approved,

M 084 19
Approve
Change
Order/
Fencing
Services
Contract
(continued)

increasing the contract amount by \$20,000.00 for a new contract total of \$90,767.30.

Motion Adopted: 5 Yeas.

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

Use of
Existing
Infra-
structure
Agreement/
Hyatt
Hotel

John Ashman, Director of Utility Planning, presented a Use of Infrastructure Agreement with Lewes Hotel, LLC. Under the proposed arrangement, the Hyatt Hotel project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure, Lewes Hotel, LLC will contribute \$37,713.00 for the financial catch-up contribution of the existing infrastructure to serve an additional 57.83 EDUs.

M 085 19
Approve
Use of
Existing
Infra-
structure
Agreement/
Hyatt
Hotel,
Lewes
Hotel LLC

A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Lewes Hotel, LLC for a capacity allocation in the regional transmission system, 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

Introduction
of Proposed
Ordinances/
Permitted
Uses/
Assisted
Living/
Coastal
Area
Designation/
Compre-
hensive
Plan

Janelle Cornwell, Planning and Zoning Director, and Vince Robertson, Assistant County Attorney, presented four (4) draft ordinances for possible introduction.

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES III AND XXVII, SECTIONS 115-15 AND 115-210 REGARDING A DETERMINATION BY THE SUSSEX COUNTY PLANNING & ZONING COMMISSION AS TO PERMITTED USES”.

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES IV, V, VI, VIII, IX, X, XI, XIA, AND XII, SECTIONS 115-22, 115-23, 115-31, 115-32, 115-39, 115-40, 115-55, 115-56, 115-63, 115-64, 115-71, 115-72, 115-77, 115-80, 115-83.2, 115-83.6, 115-87 AND 115-88” (ASSISTED LIVING FACILITIES ORDINANCE).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 62, ARTICLE III, SECTION 62-7, CHAPTER 72, ARTICLE I,

**Introduction
of Proposed
Ordinances
(continued)**

SECTIONS 72-4 AND 72-5, CHAPTER 115, ARTICLES IV, XXV AND TABLE 1 BY AMENDING SECTIONS 115-22, 115-25, 115-182, 115-183 AND 115-194.3 TO REPLACE ALL REFERENCES TO THE ‘ENVIRONMENTALLY SENSITIVE DEVELOPMENT DISTRICT’ WITH ‘COASTAL AREA’.

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND ORDINANCE #2620 ADOPTING THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY TO ADDRESS CHANGES TO THE COMPREHENSIVE PLAN RAISED BY THE STATE OF DELAWARE EXECUTIVE DEPARTMENT, OFFICE OF STATE PLANNING COORDINATION, IN A LETTER DATED JANUARY 18, 2019”. It was noted that the letter from the Office of State Planning Coordination would be made a part of the record.

The Proposed Ordinance will be advertised for Public Hearing.

**Subdivision
Appeal/
Streams
Edge
Estates
#2018-8**

The Council considered an appeal filed by Streams Edge on the Planning and Zoning Commission’s decision to deny its preliminary plat for a subdivision known as Streams Edge Subdivision #2018-8.

Mr. Moore explained that this is not a public hearing and that subdivision appeals are totally based on the record and that no new evidence or testimony would be allowed.

Mr. Moore reported that the Council shall review the record of the Hearing before the Commission and shall make a determination as to whether the Commission’s decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the chapter. The Council shall not substitute its own decision for that of the Commission.

Mr. Moore stated that if the Council finds that the Commission misapplied or misinterpreted the applicable sections of this chapter or that its findings were not the result of an orderly and logical review of the evidence and the applicable provisions of this chapter...”, the Council has the option of finding that the Commission’s decision is supported by the evidence and the law or finding that the Commission’s decision is not supported by the evidence and the law and thereby, reversing the decision of the Commission or remanding it back to the Commission for further review and consideration, or order a new hearing before the Commission.

Mr. Moore noted that Councilman Hudson was a member of the Planning and Zoning Commission at the time a hearing and decision were made on this matter and therefore, Mr. Hudson would be recusing himself from this matter. (Mr. Hudson left the meeting.)

Tim Willard, Attorney, was present on behalf of Streams Edge, the Applicant. Mr. Willard stated that the Applicant applied for a preliminary

**Subdivision
Appeal/
Streams
Edge
Estates
#2018-8
(continued)**

subdivision plan approval for the Streams Edge Subdivision, a 42-lot subdivision. Mr. Willard reported that the record includes the Appeal Letter, an Exhibit Book, letter from Duffield Associates, Feasibility Study, letter from DNREC, the public notice of the final remediation plan, and a transcript of the Commission's public hearing and decision.

Mr. Willard presented the Applicant's argument that the Commission's decision was not the result of an orderly and logical review of the evidence and involved the improper interpretation and application of the Chapter 99 requirements. Mr. Willard stated that the primary grounds for the appeal rests in the accuracy asserted in the Motion to deny and in the Commission's disregard for DNREC's conclusions, recommendations and statutory oversight. Mr. Willard asked that the Commission's decision be reversed because the Applicant has met the statutory requirements with the proposed conditions.

Vince Robertson, Legal Counsel for Sussex County Planning and Zoning, stated that the Commission's denial was based on the project's location being a brownfield. He stated that the question before Council is whether the record supports the Commission's denial and whether it is in accordance with Chapter 99. He also stated that, based on the record, he is confident that the Council will find that the Commission's decision was based on an orderly and logical review of the evidence. Mr. Robertson presented an overview of what is on the record and what supports the Commission's decision for denial.

**M 086 19
Defer
Action on
Subdivision
Appeal/
Streams
Edge
Estates
#2018-8**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to defer action on the subdivision appeal (Streams Edge Subdivision #2018-8).

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**

Mr. Hudson rejoined the meeting.

**Grant
Requests**

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

**M 087 19
Council-
manic
Grant**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to give \$2,000.00 (\$1,000.00 each from Mr. Vincent's and Mr. Rieley's Councilmanic Grant Accounts) to the Woodland School House Association for renovations to the Woodland School House.

Motion Adopted: 5 Yeas.

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

M 088 19 Councilmanic Grant A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to give \$500.00 (\$250.00 each from Mr. Vincent's and Mr. Rieley's Councilmanic Grant Accounts) to Laurel Elementary School for the Dog DayZ 5K Run/Wellness Walk fundraiser.

Motion Adopted: 5 Yeas.

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

M 089 19 Councilmanic Grant A Motion was made by Mr. Hudson, seconded by Mr. Burton, to give \$1,300.00 from Mr. Hudson's Councilmanic Grant Account to the Cape Henlopen Senior Center for The Rehoboth Concert Band fundraiser.

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. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS" (Conditional Use No. 2173) filed on behalf of Roy Richardson (Tax I.D. No. 234-9.00-6.02) (911 Address: 21170 Doddtown Road, Harbeson).

Mr. Rieley 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 3.38 ACRES, MORE OR LESS" (Conditional Use No. 2174) filed on behalf of Madeline Troescher (Tax I.D. No. 134-21.00-20.02) (911 Address: 37428 Dirickson Creek Road, Frankford).

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 AUTOMOTIVE REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.75 ACRE, MORE OR LESS" (Conditional Use No. 2175) filed on behalf of All Automotive, LLC (Tax I.D. No. 234-16.00-27.03) (911 Address: 28858 Harmons Hill Road).

Introduction of Proposed Zoning Ordinances (continued) Mr. Wilson 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 B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.827 ACRE, MORE OR LESS” (Change of Zone No. 1879) (William (Ulbio) Parraga (Tax I.D. No. 135-14.00-12.01) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

Council Members' Comments

Council Members' Comments

Mr. Vincent reported on the Governor's Complete Count Commission and his appointment of Michael Costello to serve as his designee on the Commission.

M 090 19 Go Into Executive Session

At 12:04 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session to discuss matters relating to land acquisition and pending litigation.

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 12:14 p.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 concluded at 12:59 p.m.

M 091 19 Reconvene Regular Session

At 1:03 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 3 Yeas, 2 Absent.

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

M 092 19 Negotiate Land Acquisition

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to authorize the County Administrator to negotiate and enter into a contract and go to closing on a parcel identified as Land 2019-A.

Motion Adopted: 3 Yeas, 2 Absent.

**Public
Hearing/
CU 2155
(continued)**

the application site and the purpose of the application which is for the excavation of a borrow pit, extraction, processing and removal of sand, gravel or stone. They stated that the property consists of wooded and tilled areas and is currently being used and has been used for agricultural purposes; that the application site consists of two tax parcels totaling 158.75 acres; that there are other businesses in the general area, including eight chicken houses on an adjacent parcel; that the project is located in Investment Level 4 according to the Strategies for State Policies and Spending; that the poultry houses have a berm on the property which will protect the application site; that there are wetlands on the property; that no offsite materials will be brought to the site; that no fuel tanks will be stored on site; that only approximately 14 acres of the 28 acres of trees will be disturbed; that no Traffic Impact Study was required; that they will install a dry hydrant which will be accessible by the local fire company; that the property is bordered by State-owned lands; and that there will be an estimated 100 trips per day. Also reviewed was the boring location plan and the plans for the entranceway which will include a gate and fencing.

There were no public comments in support of or in opposition to the application.

**M 095 19
Adopt
Ordinance
No. 2633/
CU 2155**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2633 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 158.75 ACRES, MORE OR LESS" (Conditional Use No. 2155) filed on behalf of Stockley Materials, LLC, with the following conditions:

- A. No materials shall be brought from off the site for processing, mixing or similar purposes.
- B. The excavated area shall not exceed 112 acres.
- C. Water or a water truck shall be available to control dust from road traffic when conditions require.
- D. The only entrance to the pit shall be a paved road from Seashore Highway (Route 18). The entrance shall be fenced or gated to prevent access.
- E. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
- F. The project shall meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices and Best Available Technologies. 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.

**M 095 19
Adopt
Ordinance
No. 2633/
CU 2155
(continued)**

- G. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 2:00 p.m. on Saturdays. No Sunday hours shall be permitted.**
- H. No materials shall be stored on any access roads or within any buffer area.**
- I. No fuel shall be stored on site.**
- J. No stumps, branches, debris or similar items shall be buried or placed on the site of the borrow pit.**
- K. The proposed pit will have a 3:1 side slope down to a 10 foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level the borrow pit shall have 2:1 slopes. The depth of the proposed borrow pit will not exceed 65 feet.**
- L. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance and protect existing and future developments.**
- M. The Applicant shall comply with all State and County erosion and sediment control regulations.**
- N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.**
- O. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.**
- P. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.**
- Q. No wetlands on the site shall be disturbed.**
- R. This approval shall terminate upon the expiration of fifty (50) years from the date of adoption.**
- S. Equipment within the borrow pit area shall be equipped with bbs-tek white sound alarms or a similar system that adjusts to the ambient noise that provides a warning of imminent danger.**
- T. 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. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1870**

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

**Public
Hearing/
CZ 1870
(continued)**

DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.001 ACRES, MORE OR LESS” (Change of Zone No. 1870) filed on behalf of Coroc/Rehoboth III, LLC (Tax I.D. No. 334-13.00-325.36) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2019 at which time action was deferred. On February 14, 2019, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated January 24 and February 19, 2019.)

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

The Council found that Jim Fuqua, Attorney, was present with Charles Worsham; also present was Ring Lardner with Davis Bowen & Friedel. They reported that the application is to rezone a 10 acre parcel from AR-1 to C-3; that the parcel is located to the rear of Tanger Seaside Outlets; that many area properties are zoned commercial; that nearby is a Royal Farms and the Iron Hill Brewery; that the land to the rear of the parcel is owned by the State of Delaware on which is a portion of the Junction and Breakwater Hiking and Biking Trail; that the site has an area for overflow parking for connection to the Breakwater Trail and the Applicant will continue to permit access to the trail and will permit parking on the parcel if feasible; that the application site is clear and vacant except for three stormwater ponds; that the site will be served by County sewer and water from Tidewater Utilities; that the site fronts on Holland Glade Road and would have access to Holland Glade Road by way of a new entrance which would be constructed in accordance with DelDOT requirements; that the site would also have access by way of the Seaside Outlets; that DelDOT will determine if a Traffic Impact Study or Traffic Operational Analysis is required once they review the site plan showing the entrance; that DelDOT proposes a traffic light at the intersection of Holland Glade Road and Route 1; that the site’s stormwater management will be designed and constructed in accordance with DNREC regulations and the Sussex Conservation District and will utilize Best Management Practices; that there are three stormwater management basins already located on the site; that there are no wetlands on the site; that the site is located in an Investment Level 2 Area according to the Strategies for State Policies and Spending; that the site is located within two growth areas – the Environmentally Sensitive Development Growth Area and the Highway Commercial Growth Area; that the area would be appropriate for hotels, motels, and other large scale commercial uses; that the Applicant has not made a decision on the development of the site at this time; that possibilities for the use are a hotel or an entertainment establishment, i.e. health club, fitness center, or retail stores; that residential uses are not appropriate for this area; that the purpose of the C-3 District is a perfect match for this 10 acre parcel at this

**Public
Hearing/
CZ 1870
(continued)**

location; and that the application is in compliance with the Investment Level designation, the Comprehensive Plan, the Future Land Use Map, and the Zoning Code.

Public comments were heard.

There were no public comments in support of the application.

Mark Godwin, Former Senator John Still, and Linda Kauffman spoke in opposition to the application. They commented on and expressed concerns about traffic, safety of children, the negative impact of additional retail in the area; environmental impact; the Investment Level Area (which is actually a combination of Level 2 and 3) according to the Strategies for State Policies and Spending; that other zoning classifications could be used; that the statement that there are no residential properties is inaccurate; that part of the area is environmentally sensitive; that if approved, the application site should be reduced; that there is no service road extending northwest from the Holland Glade Road parallel to Route One; that Epworth United Methodist Church is nearby and is home to many children's activities; and that there should be no more development without additional capacity. Mr. Still commented on the PLUS meeting and stated that no one from DNREC showed up at that meeting.

The Public Hearing was closed.

**M 096 19
Defer
Action/
CZ 1870**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to defer action on Change of Zone No. 1870 filed on behalf of Coroc/Rehoboth III, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2157**

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 LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.26 ACRES, MORE OR LESS" (Conditional Use No. 2157) filed on behalf of Country Lawn Care & Maintenance, LLC (c/o Gerald and Stephania Dougherty) (Tax I.D. No. 234-11.00-78.07) (911 Address: 30435 Hollymount Road, Harbeson).

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2019 at which time action was deferred and the record was left open to allow the Applicant to submit the requested information relating to the deed restrictions on the property. On February

**Public
Hearing/
CU 2157
(continued)**

14, 2019, the Commission deferred action again.

(See the minutes of the Planning and Zoning Commission dated January 24 and February 14, 2019.)

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

An Exhibit Book was previously sent electronically and hard copies of the Book were distributed on this date.

The Council found that Shannon Carmean Burton, Attorney, was present on behalf of the Applicant with the owners (Gerald and Stephania Dougherty); and Alan Decktor of Pennoni. Ms. Burton stated that the Applicant operates a lawn care business; that the Dougherty's live on the property and operate the business from the property and they wish to continue to do so; that in addition to the residential dwelling, the property is improved with accessory structures that are currently used for the Applicant's personal use as well as for their family-owned and operated landscaping business; that the Sussex County Planning and Zoning Commission issued a notice of violation for operating the business on the property; that there are other business uses and commercial zonings in the area; that they have ten employees that come to the site in the morning and return in the evening (7:00 a.m. and 7:00 p.m.); that no activities occur before 7:00 a.m.; that Stephania Dougherty is the only employee who remains on the site during the day; that extended hours may be necessary for snow removal and/or to service customers during inclement weather conditions or emergency situations; that there is no foot traffic; that there are no mechanics on-site; that they do not make repairs to equipment on-site; that only routine maintenance is done on-site; that no bulk products are stocked; that there is a natural forested buffer and privacy fence around the property along the side and rear of the property; that the business does not impact neighboring properties; that no Traffic Impact Study was required; that they plan to remove smaller buildings on the site and consolidate under one roof / one building; that they have received support from some of the neighboring property owners; and that there will be no adverse impact on traffic.

Ms. Carmean stated that around the time the applicants received the notice of violation from Sussex County, they found out that their property along with three neighboring properties were subject to certain deed restrictions imposed by the Developer of the four properties; that the opponents claim that the use is not permitted due to the deed restrictions; that when the applicants purchased the home, they were not advised by the realtor about the deed restrictions; that the deed does not specifically reference the book and page of the deed restrictions; that they were not given a copy of the title search nor the deed restrictions before or after closing on the home; that they relied on the professionals to give them all the necessary information; that the former owner operated a similar business on the property for over eleven (11) years; that the neighboring lot owners have never sought to

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enforce the restrictive covenants so it is their (the applicants) position that they acquiesced to the commercial use and they have waived that right; that they are seeking to amend the restrictive covenants on the four (4) lots; and that Council can approve the application with a condition to address the restrictive covenants.

Mr. Dougherty described the property and the use of the property for the business. He stated that six other businesses are run out of the Spring Breeze development and that there are other violations of the restrictive covenants.

Mr. Decktor presented and reviewed the site plan, and the adjacent properties and the area.

Ms. Burton concluded by stating that the use is in compliance with the Zoning Code and the Comprehensive Plan; that the use is permitted in the AR-1 District; that there has been a history of commercial use on this property; that the four (4) lot subdivision with the restrictive covenants is a unique situation; and that because of the lapse of time without complaints, the Court of Chancery would find that the restrictive covenants are not enforceable.

Public comments were heard.

Christopher Moore, a neighbor, spoke in support of the application and commented on the previous owner running a business on the property. He stated that the operation of the business on the site is not visible and there are no adverse effects on the surrounding area.

James Miller, Paul Reiger, Albert and Lynn Stanley, Gary Leonard, John Conley, and Mario Mancusi spoke in opposition to the application. They questioned a business operating in a subdivision; that the first business on the site may have been a home occupation; that other businesses in the nearby development may also be home occupations; that the property has deed restrictions and they are required to be in compliance with them; that no one should be able to submit an application for something that is prohibited by a deed restriction; that permitting the business use with deed restrictions on the property would set a precedent; that there is no way they could not have known about the restrictive covenants; that there are a number of covenants that the Applicant has violated, i.e. storage of hard scape materials, tanks, piles of debris, buildings, dumping of asphalt millings, stone and rock); that he was previously provided a copy of the covenants; that the site is an eyesore; that there is concern that the Applicant will purchase the adjacent property and expand the business; that they question if the EPA has sanctioned the storage of the materials; that just because the business has been operating for 14 years does not make it right; and that the Applicant is aware that the law has been broken and is still seeking permission to continue to do so. (A copy of the restrictive covenants and pictures of the site were submitted into the

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record.) Opponents also commented on fire hazards and other safety concerns: exposed tanks of diesel fuel and pesticides, etc. on the site and storage of piles of asphalt, concrete, mulch and debris.

There were no additional public comments.

The Public Hearing was closed.

The public record will remain open for the recommendation of the Planning and Zoning Commission and thereafter, for five calendar days for the submission of written comments only.

**M 097 19
Defer
Action/
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A Motion was made by Mr. Burton, seconded by Mr. Wilson, to defer action on Conditional Use No. 2157 filed on behalf of Country Lawn Care & Maintenance, LLC (c/o Gerald and Stephania Dougherty).

Motion Adopted: 5 Yeas.

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

**M 098 19
Adjourn**

A Motion was made by Mr. Burton, seconded Mr. Hudson, to adjourn at 4:14 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; 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.}