

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 20, 2018**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 20, 2018, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>George B. Cole</b>	<b>Vice President</b>
<b>Robert B. Arlett</b>	<b>Councilman</b>
<b>Irwin G. Burton III</b>	<b>Councilman</b>
<b>Samuel R. Wilson Jr.</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore Jr.</b>	<b>County Attorney</b>

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 093 18  
Amend  
and  
Approve  
Agenda**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to amend the agenda by deleting “William Pfaff, Economic Development Director – Discover Bank Presentation”, 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 February 6, 2018 were approved by consent.

**Public  
Comments**

**Public Comments**

Dan Kramer expressed thanks to the County for providing meeting videos via the County’s website (Public Meetings Archive).

William Kinnick commented on action that needs to be taken to ensure clean water is available to the residents of the County.

D.J. Hughes commented on the recent DelDOT workshops and the ranking of projects.

**Tribute/  
FFA**

A Tribute was presented to representatives of the Sussex Central FFA in celebration of National FFA Week.

**Wastewater Agreement** Mr. Lawson presented a wastewater agreement for the Council's consideration.

**M 094 18 Execute Wastewater Agreement** A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, for Sussex County Project No. 81-04, Agreement No. 1011-2, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and SB Saddle Ridge, LLC, for wastewater facilities to be constructed in Saddle Ridge – Phase 1B PS & FM, located in Goslee Creek Planning Area.

**Motion Adopted:** 5 Yeas.

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

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

**1. Sussex County Council Comprehensive Land Use Plan Workshop**

The next Sussex County Council Comprehensive Land Use Plan Workshop will be held on Wednesday, February 21<sup>st</sup>, at 9:30 a.m. in Council Chambers. A copy of the agenda is attached.

**2. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, Americana Bayside – Phase 13 and The Grove received Substantial Completion effective February 8<sup>th</sup> and February 15<sup>th</sup>, respectively.

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

**Public Hearing/  
Camp Arrowhead Area II Expansion** A Public Hearing was held to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD) Angola Neck Area, to include the Camp Arrowhead II Area (consisting of 25,875 square feet). John Ashman, Director of Utility Planning, reported that this is for a second section of the Camp requesting annexation in order to serve a proposed bathhouse. 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.

(continued) **There were no public comments.**

**The Public Hearing and public record were closed.**

**M 095 18**  
**Adopt**  
**R 013 18**

**A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to Adopt Resolution No. R 013 18 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) ANGOLA NECK AREA, TO INCLUDE THE CAMP ARROWHEAD II AREA, ON THE EAST SIDE OF CAMP ARROWHEAD ROAD LOCATED IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY DELAWARE”.**

**Motion Adopted: 5 Yeas.**

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

**Sussex Sports Center Foundation/ Construction Loan Agreement**

**Mr. Lawson presented for Council’s consideration a \$1.5 million Construction Loan Agreement with the Sussex Sports Center Foundation. He reported that the Foundation and the County entered into a Memorandum of Understanding (MOU) which was approved by the Council on January 23, 2018; in the MOU, the Foundation agrees to accept donated land (56 acres) for the construction of a sports center on the property which is located in the Town of Georgetown. Mr. Lawson reviewed the proposal, which he noted has not changed. The County would contribute to the sports center by making an interest-free loan in the amount of \$1,500,000 to the Foundation, subject to the terms set forth in the Loan Commitment Agreement, Note, Mortgage, Construction Loan Agreement, and Option to Purchase Agreement.**

**Bobby Horsey, President of the Sussex Sports Center Foundation, and Bill West, Mayor of the Town of Georgetown, were in attendance.**

**Mr. Lawson reported that the County will have the option to acquire the property and the facility after Year 10, and the property will be deed restricted to remain a public park into perpetuity. He also reported that this has been framed as a public-private partnership; the Foundation will raise money budgeted to be nearly \$4 million and of the \$4 million, they will raise nearly 60 percent of that funding from the private sector; the other 40 percent will come from public monies including monies coming from the County and the Town of Georgetown. The Town Council of the Town of Georgetown approved and executed a Memorandum of Understanding with the Foundation, which represents ten years of support (\$440,000 over the ten years), which includes a cash contribution as well as services provided by the Town (solid waste removal, lawn maintenance, snow removal, utilities, impact rebate, and grant eligibility**

**Sussex  
Sports  
Center  
Foundation/  
Con-  
struction  
Loan  
Agreement  
(continued)**

**from the Georgetown Recreation, Education and Arts Trust).**

**Mr. Lawson reported that the Foundation has met and amended their By-Laws to include two members of the Sussex County Council to be represented on the Foundation's Board.**

**Mr. Lawson reported that the loan documents have not changed and are as previously presented: \$1.5 million loan, 50 year term at 0 percent, no payments the first ten years. Further, there will be a lien placed on the property; a purchase option of \$1.00 on Year 10 of operations (if the County purchases the property for \$1.00 on Year 10, the loan will be forgiven - if it is not purchased, the loan will be repaid at \$37,500 per year); annual financial audits will be required by the County and reviewed by County staff; and the Foundation Board is responsible for the operations of the facility.**

**Mr. Lawson reported that the County's Attorney and the Foundation's Attorney have reviewed and approved the loan documents and he summarized those documents. The County plans to contribute to the sports center by making an interest free loan in the amount of \$1.5 million to the Sussex Sports Center Foundation subject to the terms set forth in the Loan Commitment Agreement, the Note, the Mortgage, the Construction Loan Agreement, and the Option to Purchase Agreement (collectively known as the Loan Documents). The Loan Commitment Agreement outlines the conditions that the Foundation must meet in order to receive the loan from the County. The conditions include but are not limited to the following: they must execute a requisite note, mortgage and construction loan documents, they must record the mortgage as security for the loan, they must present a copy of the deed evidencing the donation and required deed restrictions, and they must meet other conditions set forth by the previously approved MOU. The Note evidences the Foundation's obligation to repay the County for the borrowed funds and is based upon the standard form used in Sussex County. The Construction Loan Agreement provides the terms upon which the loan will be disbursed during the construction and converts this loan into a permanent loan upon completion of these improvements. In accordance with the MOU, the funds will begin to be disbursed after the Foundation has spent \$1.5 million in design, permitting and/or construction and has satisfied the other conditions set forth therein. The commercial mortgage document grants the County a lien against the property as security for the funds that are loaned. Consistent with the MOU, the Option to Purchase Agreement memorializes the County's option to purchase the property and all improvements thereon for the purchase price of \$1.00. Mr. Lawson noted that these terms are codified within the five documents.**

**The Council discussed the Sussex Sports Center Foundation proposal and the Construction Loan Agreement.**

**Sussex Sports Center Foundation (continued)**      **Mr. Lawson read the following Motion for the Council's consideration: Be It Moved that the Sussex County Council agrees to the terms set forth in the Loan Commitment Agreement, Note, Mortgage, Construction Loan Agreement, and Option to Purchase Agreement for the purposes of the design and construction of a sports facility, including the County's loan commitment of up to \$1.5 million to the Sussex Sports Center Foundation for the same purposes.**

**M 096 18**      **A Motion was made Mr. Arlett, seconded by Mr. Wilson, to defer action.**

**Defer Action/**      **Motion Denied:      3 Nays, 2 Yeas.**

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

**M 097 18**      **A Motion was made by Mr. Cole, seconded by Mr. Burton, that the Sussex County Council agrees to the terms set forth in the Loan Commitment Agreement, Note, Mortgage, Construction Loan Agreement, and Option to Purchase Agreement for the purposes of the design and construction of a sports facility, including the County's loan commitment of up to \$1.5 million to the Sussex Sports Center Foundation for the same purposes.**

**Agree to Terms of Loan Documents/ Sussex Sports Center Foundation**      **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**

**Criswell Annexation/ Request to Post Notices**      **John Ashman, Director of Utility Planning, presented a request to prepare and post notices for the Criswell Expansion of the Sussex County Unified Sanitary Sewer District (Johnson's Corner Area) consisting of 6.84 acres, more or less. The district expansion was requested by Billie and Daren Criswell, the property owners. The parcels will be responsible for System Connection Charges of \$6,360.00 based on current rates.**

**M 098 18**      **A Motion was made by Mr. Arlett, seconded by Mr. Burton, that the Engineering Department is authorized to prepare and post notices for the Criswell Expansion of the Sussex County Unified Sanitary Sewer District (Johnson's Corner Area) to include Parcel 533-11.00-27.00, as presented.**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**Millville  
SSD/  
Northwest  
Expansion**

**Hans Medlarz, County Engineer, presented the Balancing Change Order and request to grant Substantial Completion for the Millville Sanitary Sewer District, Northwest Expansion II, Irons Lane and Pump Station #311 Project.**

**M 099 18  
Approve  
Change  
Order and  
Grant  
Substantial  
Completion/  
Millville  
SSD/  
Northwest  
Expansion  
Project  
15-10**

**A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Change Order No. 1 for Contract 15-10, Millville Sanitary Sewer District, Northwest Expansion II, Irons Lane and Pump Station No. 311, be approved which decreases the contract amount by \$106,283.40 for a new total of \$1,060,974.60, and that Substantial Completion be granted effective November 22, 2017 and any held retainage be released in accordance with the contract.**

**Motion Adopted: 5 Yeas.**

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

**Wolfe Neck  
RWF Pole  
Building**

**Hans Medlarz, County Engineer, presented the Balancing Change Order and request to grant Substantial Completion for the Wolfe Neck Regional Wastewater Facilities, Pole Building, Project No. 18-10.**

**M 100 18  
Approve  
Change  
Order and  
Grant  
Substantial  
Completion/  
Wolfe Neck  
RWF Pole  
Building**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Change Order No. 1 for Contract 18-10, Wolfe Neck Regional Wastewater Facilities Pole Building be approved which increases the contract amount by \$981.67 for a new total of \$120,980.67 and that Substantial Completion be granted effective January 18, 2018 and any held retainage be released in accordance with the contract documents.**

**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 1841**

**Under Old Business, the Council considered Change of Zone No. 1841 filed on behalf of Lemuel H. Hickman GST Exempt Trust fbo Brenton Archut.**

**The Planning and Zoning Commission held a Public Hearing on this application on December 21, 2017 at which time action was deferred. On January 11, 2018, the Commission recommended approval.**

**(See the minutes of the Planning and Zoning Commission dated December 21, 2017 and January 11, 2018.)**

**(continued) The Council held a Public Hearing on this application on January 30, 2018 at which time action was deferred.**

**M 101 18** A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt the  
**Adopt** Proposed Ordinance/ CZ 1841 **Proposed Ordinance/ CZ 1841** A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.29 ACRES, MORE OR LESS” (Change of Zone No. 1841) filed on behalf of Lemuel H. Hickman GST Exempt Trust fbo Brenton Archut.  
**Motion Denied**

**Motion Denied: 5 Nays.**

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

**Old Business/ Proposed Ordinance Relating to Special Events** Under Old Business, the Council discussed 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”.

The County Council held a Public Hearing on the Proposed Ordinance on January 16, 2018 at which time action was deferred and the record was left open for 30 days for submission of comments and information (written submissions only), including the economic development study by the University of Delaware.

Janelle Cornwell, Planning and Zoning Director, and Vince Robertson, Assistant County Attorney, were present to participate in the discussion.

Janelle Cornwell, Planning and Zoning Director, reported that the University of Delaware’s economic development study was not submitted. It was also noted that during the Public Hearing, a proffer of a noise study was made; however, the results of a noise study was not submitted.

Ms. Cornwell reported that all other comments received were previously submitted to the Council members.

Council discussed possible amendments to the Proposed Ordinance: (1) clarifying that certain groups and organizations are exempt, i.e. volunteer groups, Moose Lodges, VFWs, firehalls, etc., (2) clarifying permitted recreational uses/events on agriculture lands (i.e. sports); (3) clarifying that family gatherings are not regulated by the Proposed Ordinance; (4)

**Old Business/ Proposed Ordinance Relating to Special Events (continued)**

providing a synopsis with language clarifying the intent of the ordinance; (5) providing notice (County's website) of large special events (based on type and size of event / number of people expected to attend); (6) requiring that any costs associated with posting/advertising/inspections be paid by the special event being held; (7) requiring that a certain size event provide more information (if liquor will be served, adequate restroom facilities, adequate parking, State Police involvement, hours of operation, etc.), (8) requiring events to be site specific, and (9) requiring certain number of days' notice given to the County prior to event.

Based on information received on this date, Mr. Robertson stated that the next step will be to place the Proposed Ordinance, with any amendments, on a future Council agenda for consideration.

**M 102 18 Close Public Record/ Proposed Ordinance Relating to Special Events**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to close the public record on the Proposed Ordinance relating to special events.

**Motion Adopted: 5 Yeas.**

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

**Grant Requests**

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

**M 103 18 Councilmanic Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to give \$300.00 from Mr. Wilson's Councilmanic Grant Account to the Friends of the Georgetown Public Library for library programs.

**Motion Adopted: 5 Yeas.**

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

**M 104 18 Councilmanic Grant**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$1,300.00 from Mr. Cole's Councilmanic Grant Account to the Cape Henlopen Senior Center for a Rehoboth Concert Band fundraiser.

**Motion Adopted: 5 Yeas.**

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

**M 105 18 Councilmanic Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$1,500.00 from Mr. Arlett's Councilmanic Grant Account to the Greater Millsboro Chamber of Commerce for the Annual Stars & Stripes event.



**M 105 18  
(continued)**

**Motion Adopted: 5 Yeas.**

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

**M 106 18  
Council-  
manic  
Grant**

**A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$2,500.00 (\$1,750.00 from Mr. Arlett's Councilmanic Grant Account and \$750.00 from Mr. Cole's Councilmanic Grant Account) to the John M. Clayton Elementary School for the Student Mentoring Program.**

**Motion Adopted: 5 Yeas.**

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

**M 107 18  
Council-  
manic  
Grant**

**A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$500.00 from Mr. Burton's Councilmanic Grant Account to the Cape Henlopen School District for Youth Summit Expenses.**

**Motion Adopted: 5 Yeas.**

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

**Introduction  
of Proposed  
Ordinances**

**Mr. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.3443 ACRE, MORE OR LESS" (Conditional Use No. 2133) filed on behalf of Dr. Laima Anthaney and Dr. Michael Cahoon (Tax I.D. No. 335-8.14-47.00) (911 Address: 1200 Savannah Road, Lewes).**

**Mr. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRE, MORE OR LESS" (Conditional Use No. 2136) filed on behalf of Christine Degnon (Tax I.D. No. 335-8.18-4.00) (911 Address: 1409 Savannah Road, Lewes).**

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

**Introduction of Proposed Ordinances (continued)**      **PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.5739 ACRE, MORE OR LESS” (Conditional Use No. 2137) filed on behalf of John W. Ford (Tax I.D. No. 335-12.06-50.00) (911 Address: 1530 Savannah Road, Lewes).**

**The Proposed Ordinances will be advertised for Public Hearing.**

**Council Members’ Comments**

**Council Members’ Comments**

**Mr. Wilson commented on the many things the County does for the communities in the County through grant programs.**

**Mr. Arlett extended thoughts and prayers to the Greenwood Volunteer Fire Company for the loss of their Fire Chief.**

**Mr. Arlett extended thoughts and prayers to the community of the Florida school shooting.**

**Public Hearing on CZ 1770 Re-scheduled**

**Mr. Lawson announced that the Public Hearing on Change of Zone No. 1770, application of TD Rehoboth, LLC, scheduled for February 27, 2018 at 10:15 a.m. will not be held on that date/time. Mr. Lawson advised that there was an issue with the legal advertisement which will require the County to re-advertise and reschedule that public hearing for a future date.**

**M 108 18 Recess**

**At 11:48 a.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess until 1:30 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**

**M 109 18 Reconvene**

**At 1:36 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to 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 Council meetings.**

**Public Hearing/ CZ 1843**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR**

**Public  
Hearing/  
CZ 1843  
(continued)**

**A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.181 ACRES, MORE OR LESS” (Change of Zone No. 1843) filed on behalf of Shailesh Patel (Tax I.D. No. 132-2.00-325.01 (portion of) (911 Address: 11342 Circle Drive, Seaford).**

**The Planning and Zoning Commission held a Public Hearing on this application on January 25, 2018 at which time action was deferred. On February 8, 2018, the Commission recommended that the application be denied.**

**(See the minutes of the Planning and Zoning Commission dated January 25 and February 8, 2018.)**

**It was determined that the Applicant was not in attendance.**

**Council asked that staff contact the Applicant.**

**Council proceeded with the next Public Hearing.**

**Public  
Hearing/  
CU 2114**

**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 SOLAR ARRAY FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 70.0 ACRES, MORE OR LESS” (Conditional Use No. 2114) filed on behalf of Spangler Strategic Advisers, LLC (Tax I.D. No. 133-6.00-123.00 (portion of) (911 Address: Not Available).**

**The Planning and Zoning Commission held a Public Hearing on this application on January 25, 2018 at which time action was deferred. On February 8, 2018, the Commission recommended approval with the following conditions:**

- A. No storage facilities shall be constructed on the site.**
- B. Lighting on the facility will consist of perimeter lighting for security purposes. All lighting shall be downward screened so it does not shine on neighboring properties or roadways.**
- C. One lighted sign, not to exceed 32 square feet in size, shall be permitted.**
- D. The site shall be secured by fencing with a gate with a “Knox Box” to accommodate emergency access by the local fire company or other emergency responders.**
- E. There shall be a vegetation buffer of no less than 30 feet around the entire perimeter of the site to screen it from neighboring properties and roadways.**
- F. All of the grounds, including the area outside of the fence, shall be maintained so that it does not become overgrown.**
- G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**Public  
Hearing/  
CU 2114  
(continued)**

**(See the minutes of the Planning and Zoning Commission dated January 25 and February 8, 2018.)**

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

**An Exhibit Booklet was previously provided by the Applicant and distributed to Council.**

**The Council found that Dennis Schrader, Attorney, was present with Dr. Kristi Shaw on behalf of the application. They discussed the proposed use of the property as a solar generation facility (solar farm), the site and the surrounding area, site design, wetlands and proposed buffers/fencing, and the design of the solar panel field.**

**They stated that one employee would be on site only when maintenance is required; that there are no environmental concerns; that there will be no disturbance of the wetlands; that there will be onsite septic and well; and that the Department of Transportation has given its letter of service report stating that the proposed use will not result in a noticeable increase in traffic on adjacent roadways.**

**Mr. Schrader commented on the application's compliance with the County's Comprehensive Land Use Plan and referenced the Strategies for State Policies and Spending Map and the site's designation as a Level 4 Area.**

**Public comments were heard.**

**Kenny Bounds, Deputy Secretary of the Delaware Department of Agriculture, commented on the need for pollinator plants and stated that the Department has worked with a lot of proposed solar projects with pollinator plants that do not interfere with solar production.**

**Two people spoke in opposition to the application. They expressed concern about the need for higher fencing (6 foot) and the need for a vegetative buffer on the perimeter along Route 113; commented on grass under the solar panels; questioned whether lines/cable would be aerial or buried; and expressed concern about the entrance and questioned if the entrance will be from Betts Lane or from Route 113.**

**There were no additional public comments.**

**The Public Hearing and public record were closed.**

**M 110 18  
Amend  
Conditions/  
CU 2114**

**A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend the conditions recommended by the Planning and Zoning Commission to include the following: All national industry standards shall be followed in the construction of the project.**

**M 110 18  
(continued)**

**Motion Adopted: 5 Yeas.**

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

**M 111 18  
Amend  
Conditions/  
CU 2114**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend the conditions recommended by the Planning and Zoning Commission to include the following: The Applicant shall cooperate with the Delaware Department of Agriculture for appropriate plantings for a bee habitat.**

**Motion Adopted: 5 Yeas.**

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

**M 112 18  
Amend  
Conditions/  
CU 2114**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend the conditions recommended by the Planning and Zoning Commission to include the following: The preference for the entrance shall be from Route 113, if permitted by DelDOT.**

**Motion Adopted: 5 Yeas.**

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

**M 113 18  
Amend  
Conditions/  
CU 2114**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend Condition E recommended by the Planning and Zoning Commission to read as follows: There shall be a vegetation buffer of no less than 30 feet around the entire perimeter of the site to screen it from neighboring properties and roadways, with a 6 foot fence inside the land side of the buffer.**

**Motion Adopted: 5 Yeas.**

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

**M 114 18  
Adopt  
Ordinance  
No. 2549/  
CU 2114**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to Adopt Ordinance No. 2549 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 70.0 ACRES, MORE OR LESS" (Conditional Use No. 2114) filed on behalf of Spangler Strategic Advisers, LLC, with the following conditions:**

**M 114 18  
Adopt  
Ordinance  
No. 2549/  
CU 2114  
(continued)**

- A. No storage facilities shall be constructed on the site.**
- B. Lighting on the facility will consist of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- C. One lighted sign, not to exceed 32 square feet in size, shall be permitted.**
- D. The site shall be secured by fencing with a gate with a “Knox Box” to accommodate emergency access by the local fire company or other emergency responders.**
- E. There shall be a vegetation buffer of no less than 30 feet around the entire perimeter of the site to screen it from neighboring properties and roadways, with a 6 foot fence inside the land side of the buffer.**
- F. All of the grounds, including the area outside of the fence, shall be maintained so that it does not become overgrown.**
- G. All national industry standards shall be followed in the construction of the project.**
- H. The Applicant shall cooperate with the Delaware Department of Agriculture for appropriate plantings for a bee habitat.**
- I. The preference for the entrance shall be from Route 113 if permitted by DeIDOT.**
- J. 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 2113**

**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 AN ELECTRICAL GENERATION AND NUTRIENT RECOVERY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 16.71 ACRES, MORE OR LESS” (Conditional Use No. 2113) filed on behalf of CleanBay Renewables, LLC Sussex I (Tax I.D. No. 133-6.00-123.00 (portion of) (911 Address: Not Available).**

**The Planning and Zoning Commission held a Public Hearing on this application on January 25, 2018 at which time action was deferred. On February 8, 2018, the Commission recommended approval with conditions.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated January 25 and February 8, 2018.)**

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

**Ms. Cornwell reported on the petition of opposition that was received. She also reported on correspondence received in support of and in opposition to**

**Public  
Hearing/  
CU 2113  
(continued)**

**the application. (All documents have been made a part of the record.)**

**An Exhibit Booklet was previously provided by the Applicant and distributed to Council.**

**The Council found that Dennis Schrader, Attorney, was present with Andy Hallmark and Dr. Kristi Shaw on behalf of the application. They discussed the proposed use of the property as an electrical generation and nutrient recovery facility; stated that there will be no incineration of poultry waste; discussed the site selection process; commented on the previous application for the proposed use on Route 9 and the decision to withdraw the application following the Planning and Zoning Commission's recommendation of denial; discussed the process of the conversion of chicken litter to renewable energy and nutrient products; referenced permits/approvals required and issuing agencies; referenced air quality and water quality monitoring; discussed loading hours; reported on a similar plant which has been approved in Westover; referenced DelDOT's requirement that Breasure Road is to be used for the entrance due to the area being a Corridor Preservation Area; commented on the proximity to electrical services and a Power Purchase Agreement with Delaware Electrical Cooperative (5 megawatts of power would serve about 3,500 homes or 10,000 people); referenced the proposed facility that will be entirely enclosed; stated that there will be no onsite storage of anything; and addressed concerns about traffic, noise, odor, methane, etc.**

**Mr. Schrader commented on the application's compliance with the County's Comprehensive Land Use Plan, referenced the Strategies for State Policies and Spending Map and the site's designation as a Level 4 Area, and referenced the PLUS process.**

**Public comments were heard.**

**Kenny Bounds, Deputy Director of the Delaware Department of Agriculture, spoke in support of the application and addressed questions about poultry manure, commented on the removal of phosphorus which will be sent out of the Chesapeake Bay and Inland Bays watersheds, commented on poultry litter as a valuable soil amendment, and commented on the importance of the chicken industry. Mr. Bounds submitted a letter into the record.**

**Michelle Schmidt, Watershed Coordinator for the Delaware Center for the Inland Bays, read a letter of support into the record and submitted the letter into the record.**

**Mark Nielson, Delaware Electric Cooperative (DEC), spoke in support of the application and commented on DEC's Power Purchase Agreement with CleanBay, commented on the economic and generation perspective, commented on the number of homes that would be served by this facility's continuous production of 5 megawatts, and commented on the**

**Public  
Hearing/  
CU 2113  
(continued)**

**interconnection with DEC's distribution system.**

**Fifteen people spoke in opposition to the application and expressed concerns about noise from the proposed plant and truck traffic noise, odor, dust, groundwater and air pollution; expressed concerns about the content of the chicken litter; commented on the number of people in opposition to the proposed project compared to the number of people in support; commented on the area where the application is proposed stating that residents are already dealing with an asphalt plant and a sand plant; that the road is too narrow for trucks; that truck traffic on Breasure Road was prohibited for the borrow pit application and should be prohibited for this application; that there are several daycare centers in the area and safety is a concern; that the proposed use is an industrial use and is not compatible with a residential area; that the proposed use will impact traffic and cause more traffic problems; that property values will be negatively affected; that the proposed use will cause health problems for area residents; that wells will need to be drilled deeper; that the conversion of chicken litter to methane is industrial in scope; that Council needs to consider the residential impact of this application; that the proposed use is for an industrial plant and it should be constructed on lands already zoned industrial; that there should be specifications for water monitoring; that if the application is approved, water should be tested every month; that if the application is approved, additional buffers should be required; that they question who will enforce the conditions placed on an approval of the application; that DNREC is not responsive to complaints; that an autistic child lives on Melson Road and receives transportation from a DART bus; that tractor trailers should not be allowed on Melson Road; that emissions from the generators and a buildup of methane is a concern; that methane and related explosions are a concern; that trucks to this facility will share the road with trucks going in and out of the sand plant which will compound traffic problems; that they question if residents will be safe; that additional conditions are needed requiring DNREC testing; that residents did not find out about the application and public hearing on the application until two days prior; that sending letters to property owners within 200 feet of the site is insufficient and that it should be extended to property owners within five miles; that the sign posted on the site was missing; that the proposed use will probably start small and become bigger; that the proposed use is not consistent with the zoning; that references were made to other similar sites/plants; that the County is already dealing with a lot of water contamination; and referenced several approved applications that are not in compliance with the conditions.**

**By a show of hands, 47 people indicated their opposition to the application and 5 people indicated their support of the application.**

**A letter from Eric Sackett was read and submitted into the record.**

**There were no additional public comments.**



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

**M 115 18** A Motion was made by Mr. Cole, seconded by Mr. Burton, to defer action  
**Defer** on Conditional Use No. 2113 filed on behalf of CleanBay Renewables, LLC  
**Action/** Sussex I.  
**CU 2113**

**Motion Adopted: 5 Yeas.**

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

**Continue** In regard to the Public Hearing on the Proposed Ordinance entitled “AN  
**Public** ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF  
**Hearing/** SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL  
**CZ 1843** DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR  
A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD  
CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.181 ACRES,  
MORE OR LESS” (Change of Zone No. 1843) filed on behalf of Shailesh  
Patel, it was found that the Applicant was still not present.

**M 116 18** A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt the  
**Adopt** Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE  
**Proposed** COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN  
**Ordinance/** AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1  
**CZ 1843** COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL  
OF LAND LYING AND BEING IN BROAD CREEK HUNDRED,  
SUSSEX COUNTY, CONTAINING 2.181 ACRES, MORE OR LESS”  
(Change of Zone No. 1843) filed on behalf of Shailesh Patel.

**Motion**  
**Denied**

**Motion Denied: 5 Nays.**

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

**This application was denied due to the lack of a record due to the fact that  
the Applicant did not appear.**

**M 117 18** A Motion was made by Mr. Arlett, seconded by Mr. Cole, to adjourn at  
**Adjourn** 5:00 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.}*