

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 10, 2020

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 10, 2020, 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

Call to Order **The Invocation and Pledge of Allegiance were led by Mr. Vincent.**

Mr. Vincent called the meeting to order.

M 102 20 **A Motion was made by Mr. Wilson, seconded by Mr. Burton, to amend the Agenda by striking “Introduction of Proposed Zoning Ordinances” and to Approve**
and **approve the Agenda, as amended.**
Agenda **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 25, 2020 were approved by consent.**

Corre- **Mr. Moore reported on correspondence received from the following:**
spondence **Delaware Adolescent Program, Inc. and Peninsula Regional Medical Center**
Foundation.

Director/ **Mr. Lawson reported on the interview and selection process for the position**
Planning & **of Planning and Zoning Director and he announced that the Council wishes**
Zoning **to appoint Jamie Whitehouse to that position.**

M 103 20 **A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the**
Appoint **Sussex County Council appoints Mr. Jamie Whitehouse to the position of**
Director **Planning and Zoning Director for Sussex County, effective immediately.**
of Planning
and Zoning **Motion Adopted: 5 Yeas.**

**M 103 20
(continued)**

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

**Adminis-
trator's
Report**

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

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

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet March 16th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. The Conference Planning Subcommittee will also meet at 11:30 a.m. to discuss planning for the May 8, 2020, conference. A copy of the agenda for each meeting is attached.

2. Blackwater Village Public Hearing

The Sussex County Engineering Department will be conducting a public hearing on the proposed boundary for the Blackwater Village Area of the Sussex County Unified Sanitary Sewer District on Friday, March 13th, starting at 6:00 p.m. at the Indian River High School Auditorium.

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

**Request to
Post
Notices/
Ocean Park
and Herola
Property
Annexations**

John Ashman, Director of Utility Planning, presented for Council's consideration two requests to prepare and post notices for proposed expansions to the Sussex County Unified Sanitary Sewer District.

The Proposed Ocean Park Expansion includes parcels on the corner of Plantation Road and Cedar Grove Road; the expansion would consist of 5.482 acres, more or less. A tentative public hearing has been scheduled for April 2020.

The Proposed Herola Expansion includes a parcel along Route 24 (John J. Williams Highway); the expansion would consist of 18.793 acres, more or less. A tentative public hearing has been scheduled for April 2020.

**M 104 20
Post
Notices/
Ocean
Park
Expansion**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, that the Sussex County Engineering Department is authorized to prepare and post notices for the Ocean Park Expansion of the Sussex County Unified Sanitary Sewer District to include parcels 334-12.00-50.00 and 51.00, located at the corner of Plantation Road and Cedar Grove Road, as presented.

Motion Adopted: 5 Yeas.

**M 108 20
(continued)**

Motion Adopted: 5 Yeas.

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

**M 109 20
Council-
manic
Grant**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to give \$500.00 (\$250.00 each from Mr. Hudson's and Mr. Burton's Councilmanic Grant Accounts) to the Police Unity Tour, Chapter 10, for the Annual Police Unity Memorial Bicycle Tour.

Motion Adopted: 5 Yeas.

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

Rules

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

**Public
Hearing/
Plantation
Medical
Annexation**

A Public Hearing was held to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include properties situated on the south side of County Road 275 - Plantations Road (Plantation Medical Expansion). The two parcels are the Plantation Medical Expansion and the Metropolitan Community Church. The Engineering Department sent letters to the neighboring parcels asking them if they wished to be included in the District at the same time; only the Metropolitan Community Church parcel requested to be included.

John Ashman, Director of Utility Planning, reported that the Engineering Department proposes the inclusion of two additional parcels for a total of four parcels, which would allow for a contiguous boundary. Parcels recommended to be included are 334-12.00-53.00/53.01/53.02/53.03.

There were no public comments.

The Public Hearing was closed.

**M 110 20
Adopt
R 004 20/
Plantation
Medical
Annexation**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to Adopt Resolution No. R 004 20 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), WEST REHOBOTH AREA, TO INCLUDE SEVERAL PARCELS OF LAND ALONG THE SOUTHWEST SIDE OF PLANTATION ROAD LOCATED IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE" (Plantation Medical Annexation).

Motion Adopted: 5 Yeas.

**M 110 20
(continued)**

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

**Public
Hearing/
Sycamore
Chase
Annexation**

A Public Hearing was held to consider expanding the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area, to include the Sycamore Chase Subdivision on Bayard Road (included are parcels 134-18.00-55, 134-19.00-5 and 6, and a community known as The Meadows at Bayard). The proposed annexation contains 55 acres, more or less.

John Ashman, Director of Utility Planning, reported that the Sycamore Chase subdivision has received preliminary approval. Sycamore Chase is a proposed 104 lot subdivision; The Meadows at Bayard is a 10-lot subdivision that is currently restricted to 5 lots based on their existing on-site community septic system.

There were no public comments.

The Public Hearing was closed.

**M 111 20
Adopt
R 005 20/
Sycamore
Chase
Annexation**

A Motion was made by Mr. Riley, seconded by Mr. Wilson, to Adopt Resolution No. R 005 20 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), MILLER CREEK AREA, TO INCLUDE SEVERAL PARCELS OF LAND ALONG THE NORTH AND WEST SIDE OF BAYARD ROAD LOCATED IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE” (Sycamore Chase Expansion).

Motion Adopted: 5 Yeas.

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

**SCRWF
and
RB WTP
Project
Change
Orders**

Hans Medlarz, County Engineer, discussed the South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and the Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 – General Construction, Project C19-11. The Engineering Department requests acceptance of M.F. Ronca & Sons, Inc. Change Order for drainage network improvements in the amount of \$196,637.27 and BW Electric, Inc. Change Order for design change in the credit amount of \$6,800.00.

**M 112 20
Approve
C/O –
SCRWF
& RB WTP**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract C19-17, South Coastal Regional

M 112 20
(continued) **Wastewater Facilities Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contract amount by \$196,637.27, for a new contract total of \$39,723,037.27.**

Motion Adopted: 5 Yeas.

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

M 113 20
Approve
Change
Order/
SCRWF
& RB WTP **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. 2 for Contract C19-17, South Coastal Regional Wastewater Facilities Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2 – Electrical Construction, be approved, decreasing the contract amount by \$6,800.00, for a new contract total of \$21,412.499.20.**

Motion Adopted: 5 Yeas.

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

The Owl's
Nest
Pavement
Improve-
ments
Project **Hans Medlarz, County Engineer, presented the Final Balancing Change Order and request to grant Substantial Completion for The Owl's Nest Pavement Improvements Project, Project T20-01. The Final Balancing Change Order (#2), in the amount of \$2,892.74 for overrun/underrun in quantity. Final restoration was completed on January 30, 2020. A Public Hearing will be scheduled to adopt the assessment roll for the Chapter 96 Sussex Community Improvement project.**

M 114 20
Approve
Change
Order/
The Owl's
Nest
Pavement
Improve-
ments
Project **A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract T20-01, The Owl's Nest Pavement Improvements, be approved for Final Balancing, decreasing the total contract amount to \$84,760.91, and that Substantial Completion be granted effective January 30, 2020, and any held retainage be released in accordance with the Contract documents.**

Motion Adopted: 5 Yeas.

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

**Mallard
Creek
Sanitary
Sewer
Expansion/
Standalone
USDA
Engineering
Services
Agreement**

Hans Medlarz, County Engineer, presented a Standalone USDA Engineering Agreement for the Mallard Creek Sewer Expansion. George Miles & Buhr (GMB) provided a draft Base Owner-Engineer Professional Services Agreement for design and bidding services associated with the Mallard Creek Sewer Expansion Project, with an estimated total cost of \$177,780.00. For this project, GMB was asked to develop and submit a scope of work with fee estimate for preliminary design, final design, and bidding phase services. Additionally, a standalone project-based agreement for professional services is required with USDA funding; therefore, the Department worked with GMB to make necessary federal revisions to the original base agreement. The agreement, scope and cost were reviewed and forwarded to the USDA for concurrence. The Engineering Department recommends authorization of the professional services agreement with GMB at a not-to-exceed value of \$177,780.00, for design and bidding of the Mallard Creek Sewer Expansion, Project S20-26, contingent upon USDA approval.

**M 115 20
Approve
Engineering
Services
Agreement/
Mallard
Creek
Sewer
Expansion**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Engineering Services Agreement with George Miles & Buhr (GMB) be approved in the amount not to exceed \$177,780.00 for design and bidding phases of Sussex County Project S20-26, Mallard Creek Sewer Expansion, contingent upon approval by the U.S. Department of Agriculture (USDA).

Motion Adopted: 5 Yeas.

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

**Old
Business/
MOU
with
DelDOT**

Under Old Business, an update was given on the Memorandum of Understanding (MOU) between Sussex County and DelDOT regarding the process of land use applications. Vince Robertson, Assistant County Attorney; Marc Coté, Director of Planning for DelDOT, and Jamie Whitehouse, Sussex County Planning and Zoning Director, presented the update.

During the Public Hearing on the MOU, several revisions were suggested; these suggestions followed the prior recommended changes from the Planning and Zoning Commission. After the Public Hearing, Mr. Robertson met with representatives of DelDOT to discuss the comments and recommended changes. Mr. Robertson and Mr. Coté reviewed the more significant changes and noted that the update does not include minor word changes, additions or deletions, or text revisions that are not substantive.

**Old
Business/
MOU
with
DelDOT
(continued)**

Mr. Robertson reviewed the following significant changes:

- **Generally accept the changes suggested by the Planning and Zoning Commission that are not modified here.**
- **Reorganize the MOU into a more readable format (instead of following the format of the 1988 MOU). This more clearly organizes the document by land use type and by traffic impact and the steps that follow each one.**
- **Reorganize certain areas into list, or outline form, whenever possible. Since this does not change the content, they are not all listed here. But, examples include the reformatting into list form the “Level of Service “explanation and the events that must occur prior to a hearing on a land use application.**
- **Change “Fee in Lieu” to “Area Wide Study Fee”. There was a public comment to replace the definition of “Area Wide Study Fee”, but the current definition is mandated by DelDOT’s requirements, so it should remain the DelDOT definition for consistency.**
- **There was a request to delete the existing statement that where staff and DelDOT agree that the traffic impact from a proposed change in land use is diminutive, staff can waive the Preliminary Traffic Analysis (“PTA”) requirement. Staff believes this should be left in, as it gives flexibility to waive the PTA at the beginning of the land use process if it is known to create little or no traffic impact.**
- **It is recommended to confirm that where traffic impact is “negligible”, no further traffic analysis will be necessary. That change will be made. But DelDOT has requested an additional line confirming that “DelDOT may still identify the need for a TOA in a subsequent plan review process”. In other words, as a project gets fine-tuned and goes through site plan review, additional information that comes in may warrant a TOA.**
- **It is recommended to permit developer to do its own TIS instead of payment of an Area Wide Study Fee.**
- **There was agreement from Planning and Zoning and several groups that commented to delete the reference to seasonal traffic counts. Instead, traffic counts are dictated by DelDOT’s manuals that are based on industry standards.**
- **There was a request to delete the ability of Sussex County to require a TIS as part of a proposed land use project. Staff recommends that this tool remain available to Sussex County should the need arise.**
- **There was a request to delete the ability to do an Area Wide Study Fee when DelDOT has determined that an area has already been the subject of a TIS or TOA. It is recommended to leave this in, as it allows greater flexibility in areas where the roads have already been sufficiently studied.**
- **It maintains that DelDOT should recommend phasing wherever and whenever appropriate for Sussex County’s consideration. But it should be clarified that this DelDOT recommendation should come in prior to Preliminary Site Plan approval. It should also be clarified**

**Old
Business/
MOU
with
DelDOT
(continued)**

that phasing can refer to a number of building permits and not just an area of land within a development.

- **Concerns were stated about Sussex County participating in DelDOT's "negotiations" with a developer, and what that means. "Negotiations" may not convey what was intended – Sussex County wants to be notified about, participate in and be aware of discussions and determinations between DelDOT and a developer with regard to a project. And, be aware of any changes that may occur. This paragraph should be revised to more clearly describe this.**

Mr. Robertson stated that the next step is to take what is outlined and put it into agreement form for submission to Council for discussion and possible adoption.

**M 116 20
Go Into
Executive
Session**

At 11:09 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session.

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 11:15 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 land acquisition. The Executive Session recessed at 12:05 p.m.

**M 117 20
Reconvene
Regular
Session**

At 12:09 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 118 20
Recess**

At 12:09 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to recess.

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 119 20
Reconvene**

At 1:35 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to reconvene.

**M 119 20
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 120 20
Go Into
Executive
Session**

At 1:37 p.m., a Motion was made by Mr. Burton, seconded by Mr. Rieley, to recess the Regular Session and to reconvene the Executive Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Executive
Session**

At 1:44 p.m., the Executive Session of the Sussex County Council reconvened in the Basement Caucus Room for the purpose of continuing the discussion on land acquisition matters. The Executive Session concluded at 2:28 p.m.

**M 121 20
Reconvene
Regular
Session**

At 2:31 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

E/S Action

There was no action on Executive Session matters.

**M 122 20
Adjourn**

At 2:33 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to adjourn.

Motion Adopted: 4 Yeas, 1 Absent.

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