

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 26, 2019**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 26, 2019, 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>Irwin G. Burton III</b>	<b>Vice President</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>John L. Rieley</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 146 19  
Approve  
Agenda**

A Motion was made by Mr. Burton, 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 March 19, 2019 were approved by consent.

**Corre-  
spondence**

**Correspondence**

**SUSSEX COUNTY 4-H, GEORGETOWN, DELAWARE  
RE: Letter in appreciation of grant.**

**CAPE HENLOPEN SENIOR CENTER, REHOBOTH BEACH,  
DELAWARE.**

**RE: Letter in appreciation of grant.**

**Public  
Comments**

**Public Comments**

**Jim Martin commented on the affordable housing crisis and the pilot construction of a tiny home village.**

**Paul Reiger commented on Board of Adjustment matters.**

**Public  
Comments  
(continued)**

**Patricia Cookson commented on the struggles and needs of the homeless.**

**Cathy Martin commented on the affordable housing crisis and the rights of the homeless.**

**Mary Ann Clayton commented on the importance of and the need for CHEER's Meals on Wheels program.**

**Greg Lake commented on the affordable housing crisis and opportunities for the homeless.**

**Dan Kramer commented on the availability of affordable housing and on CHEER's Meals on Wheels program.**

**Robert Viscount commented on land use matters and Council's discussion with representatives of DelDOT at the March 19, 2019 Council meeting. Mr. Viscount submitted written comments.**

**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 February 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 February.**

**2. Projects Receiving Substantial Completion**

**Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Bay Forest Club – Phase 5.2 (Construction Record), effective March 18<sup>th</sup>; Bishop's Landing (formerly Dove Landing) – Phase 1A, effective March 21<sup>st</sup>; and Bishop's Landing (formerly Dove Landing) – Phases 1B and 1C, effective March 21<sup>st</sup>.**

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

**Quarterly  
Pension  
Update**

**Mrs. Jennings presented the quarterly pension update (as of June 30, 2018) and she reported on the meeting of the Pension Committee on February 21, 2019.**

**Mrs. Jennings reported on the Actuary's Experience Study, which is performed every five years to review the assumptions in the annual actuarial report. Mrs. Jennings also presented the performance results of the Pension and OPEB Funds.**

**Quarterly Pension Update (continued)**

**Michael Shone of Marquette Associates, the County's Pension Investment Consultant, was present to discuss the market environment and to respond to questions relating to the economy, labor market, equity market, the quarterly performances of the Pension and OPEB Plans, and strategies for the Plans.**

**Mrs. Jennings presented the Committee's recommendation to change some of the assumptions used during the County's Annual Actuary Pension and OPEB Reports.**

**M 147 19 Pension and OPEB Annual Actuarial Studies/Change Assumptions**

**A Motion was made by Mr. Rieley, seconded by Mr. Wilson, that the Sussex County Council, based on the recommendation of the Pension Committee and Cheiron, the County's Actuary, change the following assumptions used during the Pension and OPEB annual actuarial studies, where applicable:**

- 1. update the Mortality Improvement Scale to MP-2018;**
- 2. update the retirement assumption for paramedics and dispatchers;**
- 3. update the termination assumption to a service-based table;**
- 4. change the marriage assumption to 65 percent of all members assumed to be married;**
- 5. change the COLA assumption to 1 percent;**
- 6. change the salary scale assumption to be service based; and**
- 7. change the discount rate to 7 percent.**

**Motion Adopted: 5 Yeas.**

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

**Delaware Coastal Airport & Business Park Property Maintenance RFP**

**Hans Medlarz, County Engineer, presented a recommendation to award the 2019 Delaware Coastal Airport & Business Park Property Maintenance RFP. Mr. Medlarz reported that the Engineering Department solicited, for a third time, proposals for annual site maintenance at the Delaware Coastal Airport and Business Park. For this bid solicitation, six proposals were received and the Engineering Department recommends the award of Base Bid 1 to Jakor Enterprises, LLC in the five (5) year accumulative amount of \$275,175.00, Base Bid 2 to Monkeys in Trees, LLC in the five (5) year accumulative amount of \$45,750.00, and to reject the only proposal received for Base Bids 3 and 4 upon the request of the bidder. The Sussex Conservation District indicated their interest to step in at or below the amount bid. The Engineering Department recommends award to the District for Calendar Year 2019 exclusively in an amount not to exceed \$6,800.00.**

**M 148 19 Award RFP**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the 2019 Delaware Coastal Airport and Business Park Property**

**M 148 19 Award Delaware Coastal Airport and Business Park Property Maintenance RFP (continued)** **Maintenance RFP, Base Bid 1, be awarded to Jakor Enterprises, LLC in the low bid of \$275,175.00 and Base Bid 2 to be awarded to Monkeys in Trees, LLC for their low bid of \$45,750.00, both being a five-year contract award with each year renewal based on performance; in addition, the Engineering Department recommends rejection of Base Bid 3 and Base Bid 4 and in place, award both bids to the Sussex Conservation District in an amount not to exceed \$6,800.00 for Calendar Year 2019.**

**Motion Adopted: 5 Yeas.**

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

**GHD Base Engineering Contract Amendment 17**

**Hans Medlarz, County Engineer, presented Amendment No. 17 to the GHD, Inc. Base Contract for professional engineering services for the design of a new sanitary sewer force main which will allow Pump Station No. 204 to flow to the City of Rehoboth's treatment plant.**

**M 149 19 Approve Amendment 17 to the Base Engineering Contract with GHD**

**A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 17 to the Base Engineering Contract with GHD, Inc. be approved in the amount not to exceed \$195,047.96, for design and bidding services for the Pumping Station Interconnect Diversion, as part of the Rehoboth WWTF Capital Improvements Upgrade, Phase 2.**

**Motion Adopted: 5 Yeas.**

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

**Request to Post Notices/ Tanager Woods Annexation**

**John Ashman, Director of Utility Planning, presented a request to post notices for the Tanager Woods Annexation of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area). The annexation was requested by Solutions IPEM on behalf of their clients, Bryton Homes of Delaware, LLC, for Parcels 234-6.00-58.00 & 85.00; to connect the project to existing infrastructure installed by the County. An Infrastructure Use Agreement will be required. The expansion will consist of 56.46 acres, more or less. The property owner(s) will be responsible for System Connection Charges of \$6,360.00 per EDU based on current rates. A tentative date for a Public Hearing is April 30, 2019.**

**M 150 19 Authorize Posting of Notices/ Tanager Woods**

**A Motion was made by Mr. Wilson, seconded by Mr. Burton, that the Engineering Department is authorized to prepare and post notices for the Tanager Woods Expansion of the Sussex County Unified Sanitary Sewer District to include Parcels 234-6.00-58.00 & 85.00 located along Robinsonville Road, as presented.**

**M 150 19  
(continued)**

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

**Under Old Business, the Council considered the Subdivision Appeal presented on February 19, 2019. The appeal was filed by Streams Edge on the Planning and Zoning Commission's decision to deny its preliminary plan for a subdivision known as Streams Edge Subdivision #2018-8.**

**On February 19, 2019, Tim Willard, Attorney, presented on behalf of Streams Edge, the Applicant. 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.**

**On February 19, 2019, 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.**

**Mr. Burton read the following prepared statement:**

**On February 19, 2019, Council heard the appeal of Streams Edge Subdivision #2018-8 from the Planning and Zoning Commission's denial of its subdivision application. Sussex County Zoning Code §99-39B states that the appeal to Council "shall be an appeal on the record of the hearing before the [Planning and Zoning] Commission." Therefore, Council's decision must be only based on the evidence which is already in the record. No new evidence was allowed for consideration.**

**Standard of Review**

**Council must determine whether:**

- (1) the Commission properly applied and interpreted the applicable sections of Chapter 99; and**

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(continued)

(2) the Commission’s findings were the result of an orderly and logical review of the evidence and the applicable provisions of Chapter 99.

**Findings**

After careful review of the record, including documentation and testimony, I find that the Planning and Zoning Commission properly applied and interpreted the applicable sections of Chapter 99. I also find that the Commission’s decision to deny this application “was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of [Chapter 99].”

The Planning and Zoning Commission held a public hearing on this application on July 26, 2018.

Prior to the hearing, the Commission was provided a notebook of materials in support of the application.

The Applicant presented its case. Then the opposition presented its case.

Based on the materials provided, along with the Applicant’s presentation and testimony before the Planning and Zoning Commission, the Commission raised many questions, to wit:

- a. It had general concerns that it is a “health, safety and welfare issue for Sussex County.”
- b. The Commission questioned whether a Brownfield site within a subdivision was compatible.
- c. In 2009, there was a prior subdivision approval of the site. However, the contaminated area at that time was disclosed as being only .28 acre and which is currently approximately 6 acres. That is an increase from 1.3% of the site to 28% of the site – a significant difference in total area which is now over 1/4 of the entire site.
- d. The Site Plan the Applicant provided to the Commission contained many inconsistencies, including incorrect lot numbers.
- e. The Site Plan the Applicant provided showed extensive vegetation on the contaminated area which contradicted DNREC’s directive that no trees be planted there.
- f. Applicant’s environmental consultant testified that the trees depicted on the Site Plan would have to be removed.
- g. There are inconsistencies in the volume of contaminated soils that need to be removed ranging from 396 to 1,027 cubic yards of material. There were also estimates that the contaminated soils would fill from 18-20 dump truck loads according to testimony and 33 dump truck loads according to the Duffield Report.
- h. The Commission questioned why the contaminated soil could not be removed from the site thereby removing the risk to the residential neighborhood. The Applicant responded, “Cost, cost, cost is one reason.”

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(continued)**

- i. Applicant was told that no landfill in Delaware would accept the contaminated material. However, Applicant could remove and haul it to another state's landfill but has chosen not to because of the financial burden.**
- j. The Commission questioned whether it would be appropriate for the contaminated material to remain in a residential subdivision when no Delaware landfill would accept the contaminated material.**
- k. The testimony showed that the Applicant was going to create its own landfill on the site by removing the soils from various "hot spots" and relocating them to the proposed "open space" in the development but provided no information on how to do it. This would require extensive soil removal of an unknown quantity.**
- l. When the Commission questioned how the contaminated area was going to be covered, the Applicant stated that it had not been designed yet. Moreover, the Duffield Report submitted by the Applicant confirmed that this remedy "will not alter the volume or toxicity of the substances of environmental concern."**
- m. There was testimony that residents could play basketball or tennis on the area once it has been capped. However, it is not yet known who will own the area which means it may not be part of the HOA. In addition, DNREC's Long Term Plan may prevent this use as well as it would limit uses to "solely non-residential type uses permitted within Commercial, Manufacturing or Industrial Districts" which is totally inconsistent with a residential subdivision and none of these uses are even permitted in AR-1 land.**
- n. The Commission questioned if the HOA became the owner of the contaminated area, whether the HOA should be saddled with ongoing remediation, monitoring and maintenance of a toxic landfill site. This does not promote the health, safety and welfare of the future residents of this development and Sussex County.**
- o. If another party owns the contaminated area, it would not even be part of the subdivision and should not count towards the density.**
- p. The 2018 Amended Proposed Plan stated that:**
  - (1) the "Deep soil concentrations of arsenic was reported above DNREC-SIRS screening levels and the resulting risk exceeds the DNREC-SIRS level of acceptable risk to future residential use."**
  - (2) "Groundwater samples collected during the 2015 investigation and beyond, reported concentrations of total chromium, hexavalent chromium, iron, manganese, and cobalt which pose an unacceptable risk to potential residential and commercial use."**
  - (3) "A supplemental remedial investigation of OU-1 in 2017 also identified elevated concentrations of hexavalent chromium in shallow and deep soil as well as the groundwater. The risk posed by concentrations of hazardous chemicals reported in OU-1 exceeds an acceptable risk to potential residential use."**
- q. Applicant's own report, as approved by DNREC, concludes that, "The cap would preclude casual contact or ingestion of soils by site occupants or trespassers/recreators, but would not necessarily be**

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(continued)**

appropriate in a residential setting, due to the requirements for maintenance and necessary restrictions regarding excavations in the capped area.” Even when capped, the area is incompatible with residential development and, even though the Applicant would classify it as “open space”, it could never really be used as open space.

r. Section 99-16 of the Sussex County Subdivision Code states that land unsuitable for development because of features “which will be reasonably harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision...shall not be subdivided or developed” unless adequate methods are formulated and approved to solve the problems created by the conditions. The contaminated soils are dangerous to both residential and recreational use, and containing them within the open space is not a reasonable solution that protects the future inhabitants for these reasons:

1. The size of the contaminated area is uncertain;
2. The volume of the contaminants is uncertain;
3. The nature of the contaminants;
4. The proposed remedy is uncertain and, by Applicant’s own admission, has not been fully designed;
5. Keeping the contaminated soils on site is not consistent with residential or recreational uses;
6. DNREC will not even accept these contaminated soils at Delaware landfills which professional and licensed regulators operate and maintain;
7. Knowing that DNREC won’t accept it, the Applicant’s solution is to shift the burden of maintaining the contaminated area to a future HOA;
8. In its June 6, 2018 letter, DNREC stated that all of its assumptions “assume that the remediation is successful” in the first place - an assumption that Sussex County should not risk.
9. The Applicant will not haul it to an out-of-state landfill because it is cost prohibitive.”

**M 151 19  
Affirm the  
Decision of  
the Planning  
and Zoning  
Commission  
on Streams  
Edge  
Subdivision  
Application  
#2018-8**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Council affirms the Commission’s decision to deny this application (Subdivision #2018-8 – Streams Edge Subdivision) because the decision of the Commission “was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of [Chapter 99]”, and regarding the statement entered into the record on this date, it is affirmed that the subparts [of the statement read into the record by Mr. Burton] are numbered a through r, with subpart p having 3 parts (1 through 3) and subpart r having 9 parts (1 through 9)].

**Motion Adopted: 5 Yeas.**



**M 151 19  
(continued)**

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

**Old  
Business/  
CU 2162**

**Under Old Business, the Council considered Conditional Use No. 2162 filed on behalf of Yellow Metal, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2019 at which time action was deferred. On January 24, 2019, the Commission deferred action again. On February 14, 2019, the Commission recommended approval with the following conditions:**

- A. The use shall be limited to a paving construction business with an office and the storage of equipment associated with that use.**
- B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas.**
- C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.**
- D. There shall not be any outside storage of paint, seal coating or other liquid materials associated with the use.**
- E. No retail sales shall occur from the site.**
- F. No vehicle or equipment repairs shall occur outside.**
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.**
- I. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.**
- K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.**
- L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicle and employees' vehicles, must only be parked within the designated areas.**
- M. No outside burning of any materials shall occur on the site.**
- N. No materials such as asphalt, stone, or millings shall be permanently stored on the site.**
- O. No junked, in-operable or untitled vehicles shall be located on the site.**
- P. The Applicant has stated that there will be milling operations proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:**

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CU 2162  
(continued)**

- 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.**
  - 2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.**
  - 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m. Monday through Friday. No milling operations shall occur on Saturday or Sunday.**
  - 4. Milling operations shall only occur in the central area of the site, as far away from the property boundaries as possible.**
  - 5. No more than 50 tons (approximately two (2) dump truck loads) shall be milled and stored on the site any one time. These materials shall be located on a concrete pad which is no longer than 50 by 100 feet in size. The concrete pad shall be clearly shown on the Final Site Plan.**
  - 6. The pile of millings shall not be higher than 10 feet.**
- Q. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.**
- R. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**The Sussex County Council held a Public Hearing on this application on February 5, 2019 at which time it was reported that the public record would remain open for five days following the issuance of the Planning and Zoning Commission's recommendation (for written public comments only).**

**Janelle Cornwell, Planning and Zoning Director, reported that Sussex County Council closed the record on March 12, 2019.**

**Mr. Burton commented on the Proposed Ordinance and suggested amendments to the conditions proposed by the Planning and Zoning Commission.**

**M 152 19  
Amend  
Conditions/  
CU 2162**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to add an additional Condition Q to the conditions recommended by the Planning and Zoning Commission and the remainder of the conditions be re-lettered; the new Condition Q shall state: "No more than 25 acres of this property shall be used as part of the permitted Conditional Use. On the Final Site Plan, the Applicant shall designate the area excluded from this Conditional Use by establishing a line that runs parallel with the Route 9 right-of-way. The Final Site Plan shall show that no activities permitted by this Conditional Use shall occur on this property to the north of this line. In addition, there shall be markings installed along this line to confirm its location on the site itself."**

**Motion Adopted: 5 Yeas.**



**M 156 19  
(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 157 19  
Amend  
Conditions/  
CU 2162**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition B of the conditions recommended by the Planning and Zoning Commission to add a sentence to state that “This buffer shall not be required for the C-1 portion of the site.”**

**Motion Adopted: 5 Yeas.**

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

**M 158 19  
Amend  
Conditions/  
CU 2162**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to add a new Condition R (replacing the previous one and the remainder of the conditions be re-lettered) to state that: “Only uses that shall be permitted on the area of the property that is not C-1 are office uses and the parking and storage of equipment and vehicles; all other uses shall occur within the area of this property that currently has C-1 zoning.”**

**Motion Adopted: 5 Yeas.**

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

**M 159 19  
Adopt  
Ordinance  
No. 2641/  
CU 2162**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2641 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT FOR A PAVING CONSTRUCTION BUSINESS WITH AN OFFICE AND EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 39.630 ACRES, MORE OR LESS” (Conditional Use No. 2162) filed on behalf of Yellow Metal, LLC, with the following conditions, as amended:**

- A. The use shall be limited to a paving construction business with an office and the storage of equipment associated with that use.**
- B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas. This buffer shall not be required for the C-1 portion of the site.**
- C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all**

**M 159 19  
Adopt  
Ordinance  
No. 2641/  
CU 2162  
(continued)**

- wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.
- D. There shall not be any outside storage of paints, seal coating, or other liquid materials associated with the use. All storage of paints, seal coating or other liquid materials shall occur within the area that is currently zoned C-1.**
  - E. No retail sales shall occur from the site.**
  - F. No vehicle or equipment repairs shall occur outside.**
  - G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
  - H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.**
  - I. The Applicant shall comply with all DeIDOT requirements for entrance and roadway improvements.**
  - J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.**
  - K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.**
  - L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicle and employees' vehicles, must only be parked within the designated areas.**
  - M. No outside burning of any materials shall occur on the site.**
  - N. No materials such as asphalt or stone shall be permanently stored or stockpiled on the site. These materials needed for current jobs may remain on the site but they shall only be located in the area that is currently zoned C-1.**
  - O. No junked, in-operable or untitled vehicles shall be located on the site.**
  - P. The Applicant has stated that there will be milling operations proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:**
    - 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.**
    - 2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.**
    - 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m. Monday through Friday. No milling operations shall occur on Saturday or Sunday.**
    - 4. Milling operations shall only occur in the area of land that is currently zoned C-1 and is as far away from the boundaries of the property as possible.**
    - 5. No more than 50 tons (approximately two (2) dump truck loads) shall be milled and located on the site at any one time. These materials shall be located on an asphalt pad which is no larger than 50 feet by 100 feet in size. The asphalt pad shall be clearly shown on the Final Site Plan. No milling shall be permanently**

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(continued)**

- stored on the site.
6. The pile of millings shall not be higher than 10 feet.
- Q. No more than 25 acres of this property shall be used as part of the permitted Conditional Use. On the Final Site Plan, the Applicant shall designate the area excluded from this Conditional Use by establishing a line that runs parallel with the Route 9 right-of-way. The Final Site Plan shall show that no activities permitted by this Conditional Use shall occur on this property to the north of this line. In addition, there shall be markings installed along this line to confirm its location on the site itself.
- R. Only uses that shall be permitted on the area of the property that is not C-1 are office uses and the parking and storage of equipment and vehicles; all other uses shall occur within the area of this property that currently has C-1 zoning.
- S. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- T. The Final Site Plan shall be subject to the review and approval of the Sussex County 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**

**Old  
Business/  
CU 2157**

**Under Old Business, the Council considered Conditional Use No. 2157 filed on behalf of Country Lawncare & Maintenance, LLC (c/o Gerald and Stephania Dougherty).**

**The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2019 at which time action was deferred. On February 28, the Commission's Motion to approve the application failed for the lack of 3 votes (Motion was 2-2).**

**The Sussex County Council held a Public Hearing on this application on February 19, 2019 at which time the public record remained open for the recommendation of the Planning and Zoning Commission and thereafter, for five calendar days for the submission of written comments only. The public record closed on March 12, 2019.**

**Mr.. Burton commented on the Proposed Ordinance and stated his reasons for denial of the application, referencing covenants and deed restrictions.**

**M 160 19  
Adopt  
Proposed  
Ordinance/  
CU 2157**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt 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**



**M 162 19**      **At 12:15 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to recess.**  
**Recess**

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

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

**Sussex**      **The Council attended a luncheon and discussion with the Sussex**  
**Conser-**      **Conservation District at the CHEER Center in Georgetown. Topics**  
**vation**      **discussed were tax ditch cost share program, agricultural conservation,**  
**District**      **cover crop program, stormwater bonds and plans, and drainage cost share**  
**Luncheon**      **program. The Sussex Conservation submitted funding requests for FY**  
                      **2019.**

**M 163 19**      **At 1:15 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson,**  
**Adjourn**      **to adjourn.**

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

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