

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 13, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 13, 2021, at 9:00 a.m., in the Carter Partnership Center at Delaware Technical Community College, Georgetown, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 115 21
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

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

**M 116 21
Go Into
Executive
Session**

At 9:03 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to recess the Regular Session and go into Executive Session to discuss matters relating to pending litigation and land acquisition.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 9:05 a.m., an Executive Session of the Sussex County Council was held in the Carter Partnership Center at Delaware Technical Community College, Georgetown, to discuss matters relating to pending litigation and land acquisition. The Executive Session concluded at 9:38 a.m.

**M 117 21
Reconvene**

At 9:42 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to come out of Executive Session and reconvene the Regular Meeting.

**M 117 21
(continued)**

Motion Adopted: 5 Years.

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

**Executive
Session
Action/
Settlement
Agreement/
Reassess-
ment
Litigation**

Mr. Lawson summarized a Settlement Agreement in regards to the Case known as Delawareans for Educational Opportunity and the NAACP Delaware State Conference of Branches v. Sussex County Finance Director Gina Jennings (Reassessment Litigation). In the liability phase of the Case, the Court said that the County did not comply with the True Value Statute in Delaware Code nor the Tax Uniformity Clause in the Delaware Constitution. The County then entered the remedy phase of the Case and, on this date, the County is considering the settlement in that Remedy Phase. Mr. Lawson noted that Kent County and New Castle County have agreed to the terms of settlement; Sussex County was last and was last on purpose to see the results of the pending RFP for reassessments. Mr. Lawson stated that the County Council reviewed the terms of the Settlement Agreement with the County's Legal Counsel in Executive Session. Mr. Lawson reviewed some of the terms of the Agreement under consideration by the Council: In order to comply with the True Value Statute and the Tax Uniformity Clause, the County will complete a general reassessment of all real property in the County and cause the reassessed values to be placed on the assessment roll used to issue property tax bills in Fiscal Year 2025, or July 1, 2024 which is known as the completion date. The County may seek an extension of the completion date and the Plaintiffs cannot unreasonably withhold that request. The Plaintiffs may seek to enforce this stipulation if the County fails to undertake a good faith effort to complete a general reassessment. The Defendant does not admit liability to the Plaintiffs. The pending Hearing is not required now if this Settlement Agreement is signed and the pending Hearing can be cancelled. The Court retains jurisdiction over these terms and the Defendant must provide quarterly updates beginning in September 2021 to the Plaintiffs.

**M 118 21
Approve
Settlement
Agreement/
Reassess-
ment
Litigation**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that Sussex County Council approves the Stipulation and Proposed Order summarized and discussed in the record and authorizes the appropriate officials to execute the same (Delawareans for Educational Opportunity and the NAACP Delaware State Conference of Branches v. Sussex County Finance Director Gina Jennings).

Motion Adopted: 5 Years.

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

Minutes

The minutes of March 23, 2021 were approved by consent.

**M 119 21
Approve
Consent
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to approve the following items listed under the Consent Agenda:

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-1103 Sweetbay Project, Johnson's Corner Area**
- 2. Use of Existing Wastewater Infrastructure Agreement, IUA-820-18 Destiny Apartments Project, West Rehoboth Area**
- 3. Use of Existing Wastewater Infrastructure Agreement, IUA-HMC1 Hosmane Medical Center Project, West Rehoboth Area**

Motion Adopted: 5 Yeas.

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

**Council
Members'
Comments**

Council Members' Comments

John Rieley regrettably recognized the loss of Laura Madara, Ladies Auxiliary Member and Fire Police Member of the Selbyville Fire Company, who was fatally injured while operating on the scene of a vehicle crash on Friday, April 9, 2021.

**Adminis-
trator's
Report**

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

1. DelDOT 2023-2028 Capital Transportation Program

Sussex County invites the public to offer suggestions for the upcoming 2023-2028 Capital Transportation Program request, which the County Council will submit to the Delaware Department of Transportation later this spring. Residents and property owners with ideas for improving local roads, pedestrian walkways, public transportation, and other related infrastructure and services can log onto the County's website to submit their suggestions.

Please visit www.sussexcountyde.gov and click the 'Sussex County wants your transportation ideas' announcement on the main page to fill out a suggestion form.

Submissions will be accepted through April 30. County staff will review all suggestions and forward those comments to DelDOT as part of the County's annual request for funding and prioritization of transportation projects here in Sussex County.

2. Projects Receiving Substantial Completion

Administrator's Report (continued)

The following projects have received Substantial Completion: Stingray Harbor, effective March 25th; Lewes Crest, effective March 30th and Fox Haven II, Phase 2A (Plan Approval & Construction Record), effective April 1st.

3. Norma Talley

It is with sadness that we note the passing of County pensioner Norma Talley on Thursday, March 18th. Mrs. Talley began her career with Sussex County in May 1971 and retired from the Planning & Zoning Department in July 1999. We would like to extend our condolences to the Talley family.

Proposed Roxana Apartment Annexation/ Request to Post Notices

John Ashman, Director of Utility Planning and Design Review, presented a request to prepare and post notices for the Roxanna Apartments Expansion of the Millville Area of the Sussex County Unified Sanitary Sewer District. The proposed expansion includes Parcel 134-12.00-330.00 located along Roxana Road (Route 17). The Engineering Department received a request from Morris & Ritchie Associates, Inc. on behalf of their client, Peak Management, LLC, the owners/developers of the proposed Roxana Apartments. The Roxana Apartments is a proposed 126-unit apartment complex with a pool and pool house.

M 120 21 Authorize Posting of Notices/ Proposed Roxana Apartment Annexation

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Engineering Department is authorized to prepare and post notices for the Roxana Apartments Expansion of the Sussex County Unified Sanitary Sewer District to include Parcel 134-12.00-330.00 located along Roxana Road (Route 17), as presented.

Motion Adopted: 5 Yeas.

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

Herring Creek SSD Project S20-07

Hans Medlarz, County Engineer, presented Change Orders for the Herring Creek Sanitary Sewer District - North Gravity Sewer and Force Main Project (Project S20-07).

M 121 21 Approve Change Orders/ Herring Creek SSD/ Project S20-07

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract S20-07, Herring Creek Sanitary Sewer District: North Gravity Sewer and Force Main, be approved, increasing the Contract amount by \$2,273.11 and that Time and Materials Change Order No. 3 be approved, increasing the Contract in the not to exceed amount of \$7,200.00.

Motion Adopted: 5 Yeas.

**M 121 21
(continued)**

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

**EMS 200/
Medic 110
Station/
Project
C19-08**

Hans Medlarz, County Engineer, reported on the EMS 200/Medic 110 Station, Project C19-08. The Contract time on this project ends on April 16, 2021 and it is believed that the deadline will be met. Mr. Medlarz presented a Substantial Completion request for the project and Contract Amendment (No. 3) for Council's consideration.

**M 122 21
Approve
Contract
Amend-
ment/
EMS 200/
Medic 110
Station/
Project
C19-08**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 3 to the Architectural Services Contract with George Miles & Buhr be approved in the amount not to exceed \$21,500.00 for additional construction phase services reflecting actual construction time.

Motion Adopted: 5 Yeas.

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

**M 123 21
Grant
Substantial
Completion/
EMS 200/
Medic 110
Station/
Project
C19-08**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Substantial Completion for Contract C19-08, EMS 200/Medic Station 110, be granted, effective April 13, 2021, with any held retainage released in accordance with Contract documents.

Motion Adopted: 5 Yeas.

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

**Hollyville
Road
DeIDOT
Easement
Request**

Hans Medlarz, County Engineer, presented for Council's consideration a DeIDOT easement request for Hollyville Road. DeIDOT required drainage improvements along Hollyville Road as part of their approval of the entrance to the Liberty Subdivision. Part of these improvements affect a County-owned parcel. The proposed Easement Agreement delineates the requested area for the construction of the improvements totaling 1,612 square feet. The Engineering Department recommends the granting of the easement to the State of Delaware in exchange for payment of \$600.00 which has been paid by the Developer.

**M 124 21
Approve
Hollyville
Road
Easement**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the granting of a Permanent Easement to the State of Delaware for Tax Parcel No. 234-16.00-28.00, in the amount of \$600.00, for drainage improvements along Hollyville Road.

**M 124 21
(continued)**

Motion Adopted: 5 Yeas.

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

**Agricultural
Farm Lease/
Bridgeville**

Hans Medlarz, County Engineer, presented for Council's consideration a recommendation for an Agricultural Farm Lease for farmland known as Parcel No. 430-16.00-31.00 located off of Oak Road in Bridgeville. The Engineering Department publicly advertised the Lease under a Request for Proposals (RFP) for a five (5) crop season term beginning on the date of execution on December 15, 2025. Five bids were received. The Engineering Department recommends awarding the Lease to the highest lease offer which was submitted by Hill Farms, Inc. It was noted that the County controls this farmland as per a Transition Agreement with the Town of Bridgeville.

**M 125 21
Approve
Award of
Agricultural
Farm Lease/
Bridgeville**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the award of the Agricultural Farm Lease for Parcel No. 430-16.00-31.00 to Hill Farms, Inc. in the aggregate amount of \$129,485.00 for the five-year lease.

Motion Adopted: 5 Yeas.

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

**Delaware
Coastal
Business
Park Leases**

William Pfaff, Economic Development Director, presented for Council's consideration, three Delaware Coastal Business Park leases:

- Michael D. Rhodes and Ethan M. Rhodes, Builder Supply of Delmarva – this is a Lease Addendum for an extension of their current lease as they plan on putting up a third building in order to conduct distribution of their products.**
- PATS Aircraft, LLC, d/b/a ALOFT AeroArchitects – this is a Lease for Lot 10 (two hangars)**
- Great Outdoor Cottages, LLC – this is a Lease for 7 acres in the new Business Park**

**M 126 21
Approve
Lease
Addendum/
Rhodes/
Builder
Supply of
Delmarva**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to approve the Lease Addendum with Michael Rhodes and Ethan Rhodes (Builder Supply of Delmarva) located in the Delaware Coastal Business Park at 21528 Baltimore Avenue, Georgetown; the term of the Addendum shall have the option to renew the current lease with four (4) additional five (5) year terms; since this option doesn't kick in until 2034, Sussex County shall conduct a market rent analysis at that time to establish the rental value per acre at the Delaware Coastal Business Park.

**M 126 21
(continued)**

Motion Adopted: 5 Yeas.

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

**M 127 21
Approve
Lease
Agreement/
PATS
Aircraft,
LLC
d/b/a
ALOFT**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Lease Agreement with PATS Aircraft, LLC, d/b/a ALOFT, in the Delaware Coastal Business Park, located at 21652 Nanticoke Avenue, Georgetown; the term of the Lease shall be five (5) years with two (2) additional five (5) year renewals, with a CPI rent adjustment every five (5) years.

Motion Adopted: 5 Yeas.

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

**M 128 21
Approve
Lease
Agreement/
Great
Outdoor
Cottages,
LLC**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Lease Agreement with Great Outdoor Cottages, LLC, consisting of 7 acres, at the Delaware Coastal Business Park, located at 12498 Baltimore Avenue, Georgetown; the term of the Lease shall be for thirty (30) years with four (4) additional five (5) year renewals, with a CPI rent adjustment every five (5) years.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Woodlands
II Expansion
into the
SCUSSD/
Miller
Creek
Area**

A Public Hearing was held to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area, to include the Woodlands II Subdivision. John Ashman, Director of Utility Planning & Design, reported that the Engineering Department received a request for this extension from Civil Engineering Associates on behalf of their client, Gulfstream Development, LLC, the owners/developers of the proposed Woodlands II Subdivision. The original Woodlands was annexed in February 2008 as part of the Bayard Expansion. Woodlands II is a proposed 33-lot subdivision connecting into the existing Woodlands. The proposed expansion would include Parcel No. 134-19.00-23.00. Mr. Ashman noted that, to date, the Engineering Department has not received any comments regarding this proposal.

There were no public comments.

The Public Hearing and public record were closed.

**M 129 21
Adopt
R 006 21**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Resolution No. R 006 21 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MILLER CREEK AREA, TO INCLUDE ONE PARCEL OF LAND ALONG THE EAST SIDE OF BAYARD ROAD LOCATED IN THE OFFICE OF THE RECORDER OF DEEDS IN AND FOR SUSSEX COUNTY, DELAWARE” (WOODLANDS II EXPANSION).

Motion Adopted: 5 Yeas.

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

Rules

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

**Public
Hearing/
CU 2251**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 35.4 ACRE SOLAR FIELD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 142.80 ACRES, MORE OR LESS” (Conditional Use No. 2251) filed on behalf of Heimlich Solar Partners, LLC (Tax I.D. No. 530-13.00-10.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on March 11, 2021 at which time action was deferred. On March 25, 2021, the Commission recommended approval with the following conditions:

- a. No storage facilities shall be constructed on the site.**
- b. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- c. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- d. The site shall be secured by fencing with a gate with “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.**
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.**
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Public
Hearing/
CU 2251
(continued)**

(See the minutes of the Planning and Zoning Commission dated March 11 and 25, 2021.)

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

The Council found that Mark Neilson, Vice President, South Services for Delaware Electric Cooperative (DEC), and Jeff Machiran of EDF were present on behalf of the application.

Mr. Neilson stated that DEC is headquartered in Greenwood and that the proposed project sits approximately one mile from the DEC office and that the Council approved a similar project for DEC in 2012 (solar farm on East Trap Pond Road). Mr. Neilson explained the partnership between EDF and Old Dominion Electric Cooperative (ODEC); DEC is a part owner of ODEC. He noted that EDF is proposing to build solar projects for DEC in DEC's service territory; that this is one of multiple projects that they will be undertaking in DEC's service area in Kent and Sussex counties; and that ODEC is a non-profit cooperative headquartered in Richmond, Virginia. He also stated that the capacity of this particular project is about 4.5 megawatts; that the power generated will go to DEC's local customers in the Greenwood-Bridgeville-North Seaford area; and that all the power goes directly to the membership.

Mr. Machiran stated that solar panels provide clean, renewable electricity without using water, creating emissions or producing waste; that its low visual profile and quiet operations make for a great neighbor; that it places little to no demand on County infrastructure; that the project area is currently an open agricultural field with no structures; that the anticipated project footprint will be less than 40 acres; that the site will contain rows of connected solar panels installed on racking systems, a transformer skid, interconnection equipment, and a weather station; that there will be a 100 foot buffer to onsite wetland areas; that wetlands have been mapped and avoided and given appropriate buffers; that no substation will be constructed; that the project will tie into an existing substation; that there will be fencing around the solar panel arrays; that no grading is proposed; and that construction should take approximately five months and the site should be operational by 2022.

Public comments were heard.

Christopher Edginton (member of Delaware Interfaith Power & Light) spoke in support of the application and in support of renewable green power.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 130 21
Adopt
Ordinance
No. 2767/
CU 2251**

A Motion was made by Mrs. Green, seconded by Mr. Hudson, to Adopt Ordinance No. 2767 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 35.4 ACRE SOLAR FIELD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 142.80 ACRES, MORE OR LESS” (Conditional Use No. 2251) filed on behalf of Heimlich Solar Partners, LLC, with the following conditions:

- a. No storage facilities shall be constructed on the site.**
- b. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- c. One unlighted 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” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.**
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.**
- g. 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: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2208**

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 TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS” (Conditional Use No. 2208) filed on behalf of Artesian Wastewater Management, Inc. (Tax I.D. No. 235-6.00-28.00 & 28.09) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on March 11, 2021 at which time action was deferred. On March 25, 2021, the Commission recommended approval with the following conditions:

**Public
Hearing/
CU 2208
(continued)**

- a. **The regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.**
- b. **The water treatment plant shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance No. 2013 approving Conditional Use No. 1810.**
- c. **Any buildings constructed on the site shall be constructed with an agricultural appearance.**
- d. **There shall be a medium density landscaped buffer twenty feet (20') in width adjacent to the storage lagoons along Isaacs Road (Del. Route 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 235-6.00-28.01). The density and location of these landscaped buffers shall be shown on the Final Site Plan. These buffer areas and the plantings within them must be maintained by the property owner at all times. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub.**
- e. **Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.**
- f. **One lighted sign shall be permitted along Isaacs Road (Del. Route 30) not to exceed 32 square feet in size per side.**
- g. **Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.**
- h. **Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County roads.**
- i. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated March 11 and 25, 2021.)

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

The Council found that David Hutt, Attorney, was present on behalf of Artesian Wastewater Management, Inc., the Applicant/Owner. Mr. Hutt noted that also in attendance were David Spacht, President of Artesian Wastewater Management, Inc.; Rodney Wyatt, Vice President of Artesian Wastewater Management, Inc.; Daniel Konstanski, Principal Engineer with Artesian; Bruce Bagley, Soil Scientist; Peter Demicco, Hydrogeologist with Demicco & Associates, and Lee Bridgman, Landscape Architect with Solutions.

**Public
Hearing/
CU 2208
(continued)**

Mr. Hutt stated that the application is for the processing of wastewater; that this application relates to Artesian’s Southern Regional Recharge Facility (SRRF); that SRRF exists and is being constructed to serve a broad area of Sussex County; that Artesian seeks to include the adjacent 52.76 acres to the existing 74.61 acres and to also make some amendments to the conditions on the original Conditional Use No. 1724; that there are three existing conditional uses for this project (Conditional Use Nos. 1724, 1725 and 1810); that this is an agricultural area and Route 30 is a truck route; that the proposal will not generate any additional noise than is already there; that DelDOT did not require a Traffic Impact Study; that in regard to excellent recharge areas or wellhead protection areas, there is no impact on this application; that DNREC will review and address wellhead protection areas and groundwater recharge areas; that wellhead protection areas and groundwater recharge are found in Chapter 89 of the Sussex County Code and known as the Sourcewater Protection Chapter of the Code and in this Chapter, the County adopted DNREC’s sourcewater maps; that no impervious surface is proposed; that the 52 acres is in Zone X on the FEMA maps and is outside of the 500-year flood plain; that there was a preliminary soils report performed on the 52 acre site to establish what the disposal could be; that there was a hydrogeologic suitability report which is part of the DNREC approval process; that there are no wellhead protection areas in close proximity to this site; that there is an excellent recharge area throughout most of the site; that the additional 52 acres is almost comprised entirely of areas within an excellent recharge area; that the spray fields are also in excellent recharge areas; that the application seeks to modify the buffer to a 20 foot wide medium density landscaped buffers along a portion of Isaacs Road and the properties along Reynolds Pond Road that exists between Reynolds Pond Road and Artesian’s property boundary lines; and that the applicant/application provides an essential service to Sussex County.

Mr. Hutt highlighted the communities that will be served by this facility, stating that this is a broad area of Sussex County which will be assisted with wastewater management. He noted that Artesian works in tandem with Sussex County for wastewater treatment in this area.

Mr. Hutt reviewed the site plan for the application site and the original 74.61 acres and reviewed a diagram of the transmission of wastewater. Off-site treated effluent will be ready to be sprayed; raw wastewater will be sent to the wastewater treatment plant, then to the storage lagoon and then to the spray fields. Mr. Hutt noted that the wastewater treatment plant has already been approved and that the application to be considered today is only for the 52 acres of spray fields.

Mr. Hutt summarized the requested changes to the conditions of approval for Conditional Use No. 1724, as follows:

- Condition 1: add the words “storage” and “treatment” to better describe and encompass the entire process (Planning and Zoning Commission’s recommended Condition a)**

**Public
Hearing/
CU 2208
(continued)**

- **Condition 1:** add the information about Conditional Use No. 1810 (Planning and Zoning Commission's recommended Condition b)
- **Condition 3:** modify the term "treatment plant building" to include "any buildings" (Planning and Zoning Commission's recommended Condition c)
- **Condition 4:** remove the Sussex County Engineering Department as this is regulated by DNREC (Planning and Zoning Commission recommended deletion of Condition 4 as it is duplicative of Condition 1)
- **Condition 5:** clarify the location and density of the buffer with the landscaping plan (Planning and Zoning Commission's recommended Condition d)
- **Condition 5:** make the second (last) sentence a separate condition (Planning and Zoning Commission's recommended Condition e)
- **Condition 6:** identify that the signage would go on Isaacs Road (Planning and Zoning Commission's recommended Condition f)
- **Condition 7:** modify to specify equipment location (Planning and Zoning Commission's recommended Condition g)

Mr. Hutt noted that all of the other conditions for Ordinance No. 1922 (Conditional Use No. 1724) from 2007 would remain the same, except for being extended across the additional acreage. He further noted that the primary change to Conditional Use No. 1724 is to add 52.76± acres for a total acreage of 127.37± acres. He further noted that the conditions would apply to the entirety of the 127.37± acres.

Mr. Hutt stated that the Applicant agrees to the conditions recommended by the Planning and Zoning Commission.

Public comments were heard.

Christopher Edginton commented on the application and questioned if the proposed site will be a future spray field and if the treated wastewater from the Allen Harim chicken processing plant will be co-mingled in the lagoon with the wastewater from the treatment plant.

Mr. Hutt stated that the 52 acres is a disposal area and the science is being done to determine the type of disposal.

Mr. Konstanski responded yes to both questions and he stated that they are currently looking into disposal options (spray field or rapid infiltration basins). He also stated that there would be treated effluent coming into the lagoon from Allen Harim directly and the treated effluent from the proposed wastewater treatment plant would also come into the same lagoon, and both of them would be below the levels as required by DNREC and therefore, it is acceptable to co-mingle them.

There were no public comments in support of the application.

**Public
Hearing/
CU 2208
(continued)**

Stephanie Coulbourne (speaking as a resident and not in a professional manner) spoke in opposition to the application. She stated that she lives on Reynolds Pond Road which is contiguous to this project; that this project affects her property directly; that in reviewing the application, she has noticed that there is information missing that is critical to the application; that she agrees there is a need for this service in the area but she wants to make sure it is done correctly and does not compromise any neighborhood properties; that she has concern about their own water supply and quality of living at their own property; that the elevation map that shows the drainage to the property shows the direction towards the wells and the residents' area and potentially toward the aquifer; that her well is not noted on the map at all and she questions how it is being protected; that in a letter dated February 23, 2021 from the Senior Hydrologist, it stated that the investigations were not complete – that the HSR Report has not been completed; that the quantity of treated effluent that can be discharged to the site is not known; that there are seven reports that have not been done to figure out what can be discharged and she understands this is a DNREC issue; that she questions why the application is being considered without answers to these reports; that she is concerned about wastewater from Allen Harim because of the company's track record; that Allen Harim has had multiple violations and heavy fines for not following regulations; that she would like to know how those issues will be regulated; that she has not seen a nutrient management study done and she has not seen a report about the groundwater recharge; that there is already 1,700 acres that are being used for the spray fields; that she agrees with the forested buffer they are installing and that there is not a need for one adjacent to the spray fields next to them; that she asked that the land developer continue to be responsible for the health of the buffer for the life of the project and not just the two years referenced in the maintenance responsibilities for the plant; and she asks that all HSR reports be completed prior to approval.

Keith Steck (speaking as a resident and as Vice President of Delaware Coalition for Open Government) spoke in opposition to the application. He stated that he does not believe that the Council has complete and accurate information; that in regards to the combined lots, the second lot that they identified on the application is wrong – it is two miles away and owned by the Nature Conservancy; that discussions have been on three ordinances that are intertwined now; that there is a parcel (235-6.00-11.01) that is included in spray fields that was never approved for inclusion in this project; that Conditional Use 1725 (Ordinance 1923) identifies the parcel; that he has raised this issue previously with Artesian and DNREC; that Artesian has failed to comply with all conditions; that Artesian does not have a CPCN from the Public Service Commission for most of the spray fields but it does show up for this particular parcel; that the sourcewater protection ordinance is not being followed by Artesian; that this is critical to protect drinking water supplies; that the County cannot pass this off to DNREC because relying on DNREC is not an option and this sets a dangerous precedent; that another important issue is the Artesian and Allen Harim deal and the large amount of wastewater that is going to this location to be sprayed; that he

**Public
Hearing/
CU 2208
(continued)**

questions how much of that water the plants can take up; that spray irrigation cannot be sprayed all the time year-round and he questions what happens on days when spraying cannot take place; that he questions how much sewage they plan to bring in and is it more than this facility can handle; and that he asks the Council to defer its decision until all the questions have been answered and the necessary documents/reports submitted.

There were no additional public comments.

Mr. Vincent questioned if the record should remain open for the purpose of answering questions raised by the opposition.

Mr. Whitehouse addressed the questions that pertained to this application.

It was noted that Ms. Coulbourne's landscaping question was answered.

It was also noted that the other questions are for DNREC.

The Public Hearing and public record were closed.

**M 131 21
Amend
Condition/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to amend the third sentence of Condition 11d recommended by the Planning and Zoning Commission to read as follows: "These buffer areas and the plantings within them must be maintained by the property owner during the lifetime of this permitted use."

Motion Adopted: 5 Yeas.

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

**M 132 21
Amend
Condition/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to amend the last sentence of Condition 11d recommended by the Planning and Zoning Commission to read as follows: "For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub in a timely manner."

Motion Adopted: 5 Yeas.

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

**M 133 21
Adopt
Ordinance
No. 2768/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to Adopt Ordinance No. 2768 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO.

**M 133 21
Adopt
Ordinance
No. 2768/
CU 2208
(continued)**

1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS” (Conditional Use No. 2208) filed on behalf of Artesian Wastewater Management, Inc., with the following conditions, as amended:

- a. The regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.**
- b. The water treatment plant shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance No. 2013 approving Conditional Use No. 1810.**
- c. Any buildings constructed on the site shall be constructed with an agricultural appearance.**
- d. There shall be a medium density landscaped buffer twenty feet (20’) in width adjacent to the storage lagoons along Isaacs Road (Del. Route 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 235-6.00-28.01). The density and location of these landscaped buffers shall be shown on the Final Site Plan. These buffer areas and the plantings within them must be maintained by the property owner during the lifetime of this permitted use. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub in a timely manner.**
- e. Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.**
- f. One lighted sign shall be permitted along Isaacs Road (Del. Route 30) not to exceed 32 square feet in size per side.**
- g. Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.**
- h. Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County roads.**
- i. 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: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

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

M 134 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to give \$1,500.00 from Mr. Hudson's Councilmanic Grant Account to the Village Improvement Association for snow fence replacement along beach dunes.**

Motion Adopted: 5 Yeas.

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

M 135 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$1,000.00 from Mr. Hudson's Councilmanic Grant Account to Rehoboth Beach Main Street to defray costs associated with sidewalk dining and retail.**

Motion Adopted: 5 Yeas.

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

M 136 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$2,000.00 (\$500.00 each from Mr. Hudson's, Mr. Rieley's, Mr. Schaeffer's and Mr. Vincent's Councilmanic Grant Accounts) to the Fraternal Order of Police, Sussex County Lodge No. 2, for programs supporting disadvantaged youth, needy families, police officers, veterans, etc.**

Motion Adopted: 5 Yeas.

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

M 137 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to give \$500.00 from Mr. Hudson's Councilmanic Grant Account to Stronger After Cancer for personal training for cancer survivors.**

Motion Adopted: 5 Yeas.

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

M 138 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 each from Mr. Hudson's and Mr. Rieley's Councilmanic Grant Accounts) to the Diocesan Council for Camp Arrowhead for construction of a dining hall and community center.**

Motion Adopted: 5 Yeas.

