

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 14, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 14, 2024, at 12:30 p.m., in Council Chambers, 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 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 243 24
Approve
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to approve the Agenda, 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**

Minutes

The minutes from May 7, 2024, were approved by consensus.

**Correspond-
ence**

Mr. Moore reported that correspondence was received from Cape Henlopen Senior Center thanking Council for their donation.

**Public
Comments**

Public comments were heard.

Mr. Paul Rieger spoke about appointments to the Board of Adjustment and Planning & Zoning Commission.

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Mitchell's Corner (F/K/A Zwaanendael Farm) Phase 2 - Commercial Building Entrance

Administrator's Report (continued)

Road (Sewer Only) effective May 1st and Spring Lake Condominiums effective May 7th.

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

Bulk Delivery/ Polymer

Mark Parker, Assistant County Engineer presented a recommendation to award for bulk delivery of polymer for Council's consideration.

M 244 24 Approve Polymer Delivery/ South Coastal

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that the first contract year alternative bid item 1 for Sussex County project M24-11, bulk delivery of polymer to the South Coastal Regional Wastewater treatment facility, be awarded to Pollu-Tech Inc., at the bid amount of \$18.81 per gallon.

Motion Adopted: 5 Yeas

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

M 245 24 Approve Polymer Delivery/ Inland Bays

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that the first contract year bid item 2 for Sussex County project M24-11, bulk delivery of Polymer to the Inland Bays Regional Wastewater facility, be awarded to Watertech, Inc. at the bid amount of \$14.94 per gallon.

Motion Adopted: 5 Yeas

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

Millsboro Paramedic/ CO No. 1

Mark Parker, Assistant County Engineer presented change order no. 1 for Millsboro Paramedic Station 103 for Council's consideration.

M 246 24 Approve CO No. 1/ Millsboro Paramedic Station

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 1 for contract C21-18, Millsboro Paramedic Station 103, be approved, decreasing the contract by \$1,946.00.

Motion Adopted: 5 Yeas

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

Consultant Services Selections **Mark Parker, Assistant County Engineer presented a recommendation to award for professional service contracts. The contracts included RFP 24-17 Miscellaneous Engineering Consultant, RFP 24-18 for land survey & mapping services and RFP 24-19 for geotechnical engineering services.**

M 247 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it**
Approve **moved based upon the recommendation of the consultant selection**
Miscellan- **committee, that Sussex County Council approves the selection of Davis**
ous **Bowen and Friedel (DBF), George Miles and Buhr (GMB), Johnson,**
Engineering **Mirmiran & Thompson, Inc. (JMT) and Aracadis U.S., Inc. to provide**
Consultant **miscellaneous professional services with individual task orders not**
 exceeding \$250,000.00 without specific Council authorization, and to
 negotiate base professional service agreements for a five (5) year period
 effective July 1, 2024 and ending June 30, 2029.

Motion Adopted: 5 Yeas

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

M 248 24 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it**
Approve **moved based upon the recommendation of the consultant selection**
Land Survey **committee, that Sussex County Council, approves the selection of Davis,**
& Mapping **Bowen & Friedel and Greenman-Pederson, Inc. to provide on-call land**
Services **survey and mapping services as needed, and the negotiate a professional**
Consultant **services agreement for a five (5) year period, with an annual cost not to**
 exceed \$100,000.00.

Motion Adopted: 5 Yeas

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

M 249 24 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it**
Approve **moved based upon the recommendation of the consultant selection**
Geotechn- **committee, that Sussex County Council approves the selection of Verdantas,**
ical **LLC to provide on-call geotechnical engineering services as needed, and to**
Engineering **negotiate a professional services agreement for a five (5) year period, with**
Services **an annual cost not to exceed \$100,000.00.**
Consultant

Motion Adopted: 5 Yeas

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

General **Mark Parker, Assistant County Engineer presented a recommendation to**

- Equip. & Labor** award for general labor & equipment contract for Council’s consideration.
- M 250 24** A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, that be it moved based upon the recommendation of the Sussex County Engineering Department, that the total bid for contract 25-01, FY 2025 general labor & equipment contract, be awarded to George & Lynch, Inc., of Dover, DE in the amount of \$4,949,784.00.
- Approve General Equipment & Labor Contract** Motion Adopted: 5 Yeas
- Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- Permission to Prepare & Post Notices/ Bayard Commons** John Ashman, Director of Utility Planning & Design Review presented permission to prepare and post notices for Bayard Commons Annexation into the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area. The Engineering Department received a request from George, Miles & Buhr, LLC on behalf of their client Bayard Commons, LLC, the owners/developers of a project known as Bayard Commons for parcel 134-19.00-22.00. The proposed site will consist of a 3,000 SF strip mall on 3.00 acres within the B-2 Zoning District. The project will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- M 251 24** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Bayard Commons, Miller Creek Area expansion of the Sussex County Unified Sanitary Sewer District to include parcel 134-19.00-22.00 as presented.
- Approve Permission to Prepare & Post Notices/ Bayard Commons** Motion Adopted: 5 Yeas
- Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea
- Permission to Prepare & Post Notices/ Jefferson Lodge** John Ashman, Director of Utility Planning & Design Review presented permission to prepare and post notices for Jefferson Lodge Annexation into the Sussex County Unified Sanitary Sewer (SCUSSD), West Rehoboth Area. The Engineering Department received a request from Baird, Mandalas, Brockstedt & Federico, LLC on behalf of their client Jefferson Lodge #15 (Masonic Hall of Lewes, DE) in connection with its initiative to relocate to parcel 334-4.00-28.02 on Sweetbriar Road just south of Pinetown Road. The project is proposed as a new Masonic Lodge. The Engineering Department would like to include the adjacent County owned parcel 334-4.00-28.01. The project will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- M 252 24** A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it

Approve Permission to Prepare & Post Notices/ Jefferson Lodge moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Jefferson Lodge No. 15 expansion of the Sussex County Unified Sanitary Sewer District, West Rehoboth Area to include parcels 334-4.00-28.01 and 334-4.00-28.02 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

Grant Requests Mrs. Jennings presented grant requests for Council's consideration.

M 253 24 Parkinson's Education & Support Group A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account) to Parkinson's Education and Support Group of Sussex County for their Parkinson's caregivers wellness education series.

Motion Adopted: 5 Yeas

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

M 254 24 Rehoboth Summer Children's Theatre A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,350 (\$1,350 from the Countywide Youth Grant Account) to Rehoboth Summer Children's Theatre for their Outreach Tour – Robin Hood.

Motion Adopted: 5 Yeas

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

Proposed Ord. Intro There were no Proposed Ordinances for Introduction.

CC Member Comments Mrs. Green commented that last week she attended the Law Enforcement Memorial Unity bike tour that occurred in Sussex County. She shared that it was a good program and event.

M 255 24 Go Into Executive Session At 12:57 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to go into Executive Session for the purpose of discussing matters related to land acquisition, personnel & job applicants' qualifications.

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 1:02 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to land acquisition, personnel & job applicants' qualifications. The Executive Session concluded at 1:45 p.m.

M 256 24 Reconvene At 1:48 p.m., a Motion was made by Mr. Rieley, seconded Mr. Hudson to come out of Executive Session back into Regular Session.

Motion Adopted: 4 Yeas, 1 Absent

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

M 257 24 Parcel 2024-H A Motion was made by Mr. Rieley, seconded by Mr. Hudson to authorize the County Administrator to negotiate, enter into a contract and settle on a parcel identified as 2024-H.

Motion Adopted: 4 Yeas, 1 Absent

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

Rules Mr. Moore read the rules and procedures for public hearings.

**Public Hearing/
CU2412** A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.459 ACRE, MORE OR LESS" (property lying on the northeast corner of the intersection of Wilkins Lane and Lewes Georgetown Highway [Rt. 9]) (911 Address: 22163 Lewes Georgetown Highway) (Tax Map Parcel: 135-15.00-49.00) filed on behalf of Marco Morales.

The Planning & Zoning Commission held a Public Hearing on the application on April 10, 2024. At the meeting of April 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 5 reasons stated and subject to the 8 recommended conditions as outlined.

The Council found that Mr. Marco Morales spoke on behalf of his application; that he is requesting to put in an office building to have his for his construction business office; that there will be a large room for display for clients; that the conditions were reviewed and agreed upon by the applicant.

There were no public comments.

The Public Hearing and public record were closed.

**M 258 24
Adopt
Ordinance
No. 3013/
CU2412**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3013 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.459 ACRE, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The property is located along Route 9 on the outskirts of the Town of Georgetown. Route 9 is one of the main cross-county roadways in Sussex County and this area of it has developed with a variety of business and commercial uses including Sports at the Beach, contractor facilities, stores and other offices. This location is appropriate for this business use.**
- 2. The Applicant has stated that this site will only be for office purposes. No retail sales, storage or construction activities (aside from construction associated with the site itself) will occur on the premises.**
- 3. The proposed use will not generate a significant amount of traffic, and it will not have any adverse effect on area roadways.**
- 4. The proposed use is very limited in nature, and it will not have any adverse impact on neighboring properties or the community.**
- 5. No parties appeared in opposition to the application.**
- 6. This recommendation is subject to the following conditions:**
 - a. The use shall be limited to use as an office.**
 - b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.**
 - c. The applicant shall comply with any DelDOT entrance and roadway improvement requirements.**
 - d. Parking areas for all vehicles shall be shown on the Final Site plan and clearly marked on the site itself.**
 - e. All outdoor trash receptacles shall be screened from view of neighboring properties and roadways.**
 - f. All security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.**
 - g. Failure to comply with these conditions may result in the revocation of the Conditional Use approval.**
 - h. 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/
CZ2002**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21.11 ACRES, MORE OR LESS” (property lying on west side of DuPont Boulevard [Rt. 113] approximately 0.40 mile south of Nine Foot Road [Rt. 26]) (911 Address: 32602 Dupont Boulevard, Dagsboro) (Tax Map Parcel: 233-16.00-26.00) filed on behalf of Sadie Properties, LLC.

The Planning & Zoning Commission held a Public Hearing on the application on April 10, 2024. At the meeting of April 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 9 reasons as outlined.

The Council found that Mr. Bob Palmer, of Beacon Engineering, spoke on behalf of the Applicant that they are looking for a change in zone tax parcel 233-16.00-26.00 which is located on the southbound side of DuPont Blvd just outside of Dagsboro; that the Applicant chose to change zoning to C-3 for the AR-1 portion because it was the least impactful commercial zone that would allow the Applicant to continue his expansion; that Mr. Rudloff started the business in his apartment in Wilmington fixing boat motors; that the use is for boat sales, use and storage; that this is an expansion of the existing use; that a wetland delineation was conducted; that the property was cleared of wetlands or any regulated resources on the property; that site plan approval has been received for the initial project in October 2017; that the area where the change of zone is proposed was approved as an accessory storage use to the primary boat sales and service; that in April of 2018, the applicant purchased additional lands which are the CR-1 lands in the exhibit; that the site plan was further amended in 2021 and 2022; that this property has a commercial history; that in 2005, the then owner was granted a conditional use (CU1723) to develop self-storage on the AR piece of the property; that he appeared with the applicant before the Board of Adjustments in 2017 to seek relief from the tree planting requirements in the combined highway corridor overlay zone; that the Board of Adjustment at that time granted them the relief to allow for turf plantings; that the C-3 use purpose is intended for larger scale auto oriented retail and service businesses along major arterial roads that serve local, regional residents and the traveling public; that most commercial uses found in this zone are automobile, truck, recreational vehicle and boat sales, rentals and major repair facilities; that the property is Level 2, 3 and 4 in the investment strategies and the area subject to the rezone is actually Level 3 and the Counties comp plan notes that lands in investment Level 3 areas are those

**Public
Hearing/
CZ2002
(continued)**

in the long term growth plans for counties or municipalities where development is not necessary to accommodate expected or growth population within the next five years or longer; that Investment Level 3 areas also include lands adjacent to or intermingled with fast growing areas within counties or municipalities that are otherwise categorized as investment levels; that the front half of the property is Level 2 investment area which in chapter four of the comp plan, the Future Land Use Map identifies the AR-1 piece as commercial or developing areas; that the comp plan says that developing areas are newer emerging growth areas that demonstrate the characteristics of developmental pressures; that most of the proposed developing areas are adjacent to municipalities, within adjacent to or potential future annexation areas of municipality or located next to town centers; that Table 4.5.2 in the Comprehensive Plan notes that C-3 is appropriate zoning classification in Developing and Commercial areas; that currently the property is served by well and septic; that the property is mapped in the Dagsboro/Frankford planning area and adjacent to the Dagsboro/Frankford sanitary sewer district; that when sewer becomes available, they will request to be connected; that as the applicant continues to grow, more attractive and higher paying jobs are coming to the region to help support the boating and marine recreational use.

There were no public comments.

The Public Hearing and public record were closed.

**M 259 24
Adopt
Ordinance
No. 3014/
CZ2002**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 3014 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21.11 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission as follows:

- 1. The entire property currently has three zoning designations. The area of the property that fronts along Route 113 is zoned C-1 while one portion behind that is zoned CR-1 the remainder of the property is zoned AR-1. The Applicant seeks to convert the AR-1 area to the C-3 Zoning District.**
- 2. The commercially zoned portions of this site are currently used in the Applicant’s boat storage, sales and repair business known as “Rudy South”. This rezoning will permit the reasonable expansion of the Applicant’s business. The C-3 zoning for the rear portion of the property is consistent with the existing use of the property.**
- 3. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents.**

**M 259 24
Adopt
Ordinance
No. 3014/
CZ2002
(continued)**

Permitted Uses include retail uses, restaurants, offices and vehicle service stations. Although a number of uses are permitted, this Applicant intends to use the site for roadside services and auto repair.

- 4. This property has frontage along Route 113. Route 113 is considered to be a Principle Arterial Roadway according to DelDOT’s roadway classification. This is the highest roadway classification issued by DelDOT and it is an appropriate location for C-3 Zoning.**
- 5. The parcel is in an area of Route 113 where there are a variety of zoning districts. This includes HI-1, C-1, CR-1 and GR and AR-1 zoning districts. There is other business, commercial, and industrial uses in the area as well. This rezoning is consistent with the surrounding zoning districts and uses.**
- 6. This property is located in the Commercial Area according to the current Sussex County Land Use Plan. This proposed C-3 Zoning is appropriate in this Area according to the Plan.**
- 7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.**
- 8. No parties appeared in opposition to this rezoning application.**
- 9. Any future use of the property will be subject to Site Plan review by 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/
CU2411**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.94 ACRES, MORE OR LESS” (property lying on the east side of Gravel Hill Road [Rt. 30] approximately 0.35 mile north of the intersection of Gravel Hill Road [Rt. 30] and John J. Williams Highway [Rt. 24]) (911 Address: 28121 Gravel Hill Road, Millsboro) (Tax Map Parcel: 234-32.00-30.00) filed on behalf of Joshua Zuppo.

The Planning & Zoning Commission held a Public Hearing on the application on April 10, 2024. At the meeting of April 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 13 recommended conditions as outlined.

The Council found that Mr. David J. Weidman, Esq., spoke on behalf of Mr. Joshua Zuppo in regard to the application; that the applicant would like to operate a tree business within the AR-1 zoning district; that the staff analysis dated October 23, 2023 states that this Conditional Use could be

**Public
Hearing/
CU2411
(continued)**

considered with being consistent with the surrounding land use, zoning and uses subject to consideration of scale and impact; that the applicant has owned the property since September 9, 2021; that he splits firewood at the property; that his employees come to the property to come to work; that he operates his business, AAA tree care from this property; that he lives on site as well; that pictures were shown of the property; that with the exception to the small sign out front of the property there is no way to tell that there is a tree business even located on the property; that the neighbors of the adjacent properties have written letters of support and that there is no adverse impact on them; that the owner currently has the sides of the property well buffered to limit disturbance to the neighbors; that since the Planning & Zoning hearing, Mr. Zuppo has cleaned the property up; that pictures were provided to show the property now after it was cleaned up; that the intent going forward is to only keep wood that is 18 inches or less so that it is easier to spilt up for fire wood; that some of the people that opposed this application has a problem with the noise; that there is a tree business that is immediately behind Mr. Zuppo's property that does not have a conditional use; that the other property owner has not been as considerate; that one of the owners that appeared at the PZ hearing in opposition owns the property at 28161 who complained about noise; that the owner of the property of 21851 submitted a letter that was read in the record; that the owners of that property are Krista & Christopher Amoroso; that the letter stated "We will be unable to attend the public hearing for an Ordinance to grant the conditional use of land. We just want it known that we have no objection to Joshua Zuppo's tree service business being located next to us. They have been very respectful of the neighbors by not starting any business before 8:00 a.m. or after 6:00 p.m. Monday through Friday. I am a stay-at-home wife and have never been disrupted by anything they have done on that property. The traffic is WAY LOUDER and constant in anything than they have done. Thank you for your time"; that the property to the south are saying that the noise did not bother them; that it is thought that the owner that complained about the noise is complaining about the noise at the other tree business property.

Mr. Joshua Zuppo, of 28121 Gravel Hill Rd Millsboro, stated that the property behind his property has a tree company; that the video that was played at the PZ hearing was from the property behind him; that the other company has a circular saw; that the property owner is big into race cars and does work during the night; that to his understanding, he also has to get a conditional use; that pictures were distributed to show what has been cleaned up on the property since the PZ hearing; that he plans to send the debris to Eastern Shore Forestry Products in Frankford so that it will not continue to pile up; that you can take it there and they mulch it up; that he is not having anything else dumped on his property; that his property is served by a well; that the conditions set by the PZ Commission were acceptable to the applicant; that business hours be Monday through Friday 8:00 a.m. - 6:00 p.m.; that no more than one item of power equipment operating at a time from 9:00 a.m.-1:00 p.m. Monday through Friday; that security lighting would not point in the direction of the neighbors' homes;

that they asked for approval of the Conditional Use; that the hours of operation would have an exception in the event of emergencies; that he would be allowed to take the truck out, remove the tree and bring it back to the site until the next day; that in emergencies and bad weather events, they would ask for exceptions which is included in the conditions.

There were no public comments.

The Public Hearing and public record were closed.

**M 260 24
Amend
Condition
8 B/CU2411**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to amend Condition 8 B to read “No retail sales shall be conducted except for sale of firewood from the site”.

Motion Adopted: 5 Yeas

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

**M 261 24
Adopt
Ordinance
No. 3015/
CU2411**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 3015 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.94 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:

1. The property is a 1.94-acre parcel located on Gravel Hill Road. The Applicant testified that many of his neighbors have no objection to the use as a tree service. The approval of this Conditional Use will confirm the existence of the Applicant’s tree service, but with conditions that further protect the neighborhood from the impacts of this business.
2. This property is located in the “Developing Area” according to Sussex County’s Comprehensive Plan. There are also other small businesses out in this area. This small business will be consistent with those other uses.
3. There will be no retail sales from the property and the proposed use is limited. With the conditions imposed by the County, the use will not adversely affect neighboring properties, roadways, or traffic.
4. This is an agricultural-type use, and it is consistent with the underlying AR-1 zoning of the property.
5. The business provides a service to a wide variety of Sussex County residents, farmers, and businesses. It has a public or semi-public character that will benefit the residents, farmers, and businesses of Sussex County.
6. The Applicant’s property contains natural buffers in the form of tree

**M 261 24
Adopt
Ordinance
No. 3015/
CU2411
(continued)**

- lines that will screen this use from the adjacent properties.
7. The proposed use will have no significant impact upon traffic and DelDOT did not require a TIS.
 8. This recommendation is subject to the following conditions:
 - a. This use shall be limited to a tree service business. No other business shall be conducted from the site.
 - b. No retail sales shall be conducted except for sale of firewood from the site.
 - c. No dyeing of mulch or other materials shall occur on the site.
 - d. A small, lighted sign shall be permitted. It shall not exceed 24 square feet per side.
 - e. The hours of operation shall be limited to 8:00 a.m. through 6:00 p.m., Monday through Friday. The use of chainsaws, log splitters, grinders or other power equipment shall only be used between 9:00 a.m. and 1:00 p.m., Monday through Friday. There shall not be any Saturday or Sunday hours of operation except in the very limited case of weather emergencies.
 - f. The natural tree buffers shall remain in place along the property's side boundaries to screen the use from the view of neighboring properties.
 - g. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - h. The applicant shall comply with any DelDOT requirements, including any entrance or roadway improvements.
 - i. The Final site plan shall clearly show all areas set aside for the temporary storage of logs, timber, firewood or woodchips. These storage areas shall be no closer than 20 feet to the property's boundaries.
 - j. All cars, trucks, trailers, and equipment shall be parked at the rear of the property, behind the improvements. This parking area shall be shown on the Final Site Plan.
 - k. All dumpsters shall be screened from the view of neighboring properties and roadways. The location of all dumpsters shall be shown on the Final Site Plan.
 - l. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - m. 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/
Ord No. 24-
01**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES I, IV, XI, XIA, XIC, XIII, XIV, AND XV, AND XXV, SECTIONS 115-4, 115-20, 115-77, 115-83.2, 115-83.18, 115-

**Public
Hearing/
Ord No. 24-
01
(continued)**

83.19A 115-94, 115-102 AND 115-194.6 TO REGULATE MARIJUANA ESTABLISHMENTS IN SUSSEX COUNTY”.

The Planning & Zoning Commission held a Public Hearing on the Ordinance on April 10, 2024. At the meeting of April 24, 2024, the Planning & Zoning Commission recommended adoption of the Ordinance for the 6 reasons as outlined.

The Council found that Mr. Robertson spoke on behalf of Ordinance No. 24-01; that a timeline of the implementation of the State legislation was shown; that the County needs to be in front of the State’s regulations; that in July of 2024, regulations for licensing are going to become official, November 1, 2024 is when the state will begin to issue cultivation facility licenses, December 1, 2024 for manufacturing facility licenses and March 1, 2025 is when they will begin to issue up to 30 retail store licenses statewide; that Commissioner Coupe stated that Delaware’s levels for those are more stringent or equal to the most stringent of any other state in the country; that Delaware wouldn't accept a product that has met adjacent states requirements because they aren't as stringent as our stand it's going to be very highly regulated; that Commissioner Coupe provided an example of an industrial site that was vacant and it was redeveloped as a cultivation facility and a manufacturing facility licensed by the state under our medicinal marijuana regulations; that it's totally closed with no public access, there's no signage to indicate what's occurring; that after talking to Commissioner Coupe, staff and County Council, the ordinance was introduced so that the cultivation, manufacturing and testing facilities could be a permitted use in a AR-1, C-1, CR-1, C-3 and three industrial zones, L-1, L-2 and H-1; that stores could only be approved in the C-3 Zoning District with a conditional use; that there are 4 conditions that are governed conditional uses: first, is no retail marijuana store shall be located within 3 miles of a municipal boundary, two, no retail marijuana store shall be located within 3 miles of any other retail marijuana store, three, no retail marijuana store shall be located within 3 miles of any church, school, college, or substance abuse treatment facility is defined in the Delaware Code; that the hours of operation need to be established; that he would recommend to amend D to state “Retail Marijuana stores may only operate between the hours established for them by Title 4 of the Delaware Code”; that the state currently allows sales from 9:00 a.m. to 1:00 a.m., and that is undergoing a proposed change to 9:00 a.m. to 10:00 p.m.; that the County should follow the states guidelines; that if someone wanted to open a marijuana retail store, they would apply with the PZ office; that if they are already zoned C-3, they would just apply for a Conditional Use; that a public hearing would be held before PZ and County Council; that if it is approved with County Council, it still has to go through the Office of Marijuana Commissioner’s public hearing process.

Public comments were heard.

Ms. Jean Duffy spoke about the application; that she stated that there are

**Public
Hearing/
Ord No. 24-
01
(continued)**

liquor stores and places where cigarettes can be brought within 3 miles of schools, churches, colleges, or substance abuse treatment facility; that Mr. Robertson stated that there are other factors that could come into play; that it would depend on where the property is and what the zoning of the land is next to it; that Ms. Duffy stated that cannabis is legal as well as alcohol and tobacco; that she questioned the opposition of cannabis being sold within the 3 miles.

Mr. Roberston stated that there is not any prohibitions of the sale of tobacco. For alcohol, it is regulated with some distance requirements that are in state code and there is a public hearing process.

Ms. Zoey Patchell, Executive Director of Delaware Cannabis Advocacy Network spoke about the application; that she requested that the Council zone cannabis businesses similar to alcohol establishments; that cannabis has never been responsible for an overdose death; that she provided statistics of crimes that alcohol is responsible for; that cannabis has been shown to not be associated with aggressive or violent behavior; that prohibiting legal cannabis businesses in Sussex County will not be effective; that she encouraged everyone to reconsider this matter; that legal cannabis businesses will create employment opportunities which will decrease the unemployment rate; that these businesses will generate business license fees and property taxes for local areas which will benefit Sussex County.

The Public Hearing and public record were closed.

**M 262 24
Amend
Condition**

A Motion was made by Mr. Hudson, seconded by Mrs. Green to amend Section 115-194.6D to read “Retail Marijuana stores may only operate between the hours established for them by Title 4 of the Delaware Code”.

Motion Adopted: 5 Yeas

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

**M 263 24
Adopt
Ordinance
No. 3016/
Ord No. 24-
01**

A Motion was made by Mr. Hudson, seconded by Mrs. Green to Adopt Ordinance No. 3016 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES I, IV, XI, XIA, XIC, XIII, XIV, AND XV, AND XXV, SECTIONS 115-4, 115-20, 115-77, 115-83.2, 115-83.18, 115-83.19A 115-94, 115-102 AND 115-194.6 TO REGULATE MARIJUANA ESTABLISHMENTS IN SUSSEX COUNTY” for the reasons given by the Planning & Zoning Commission and as amended by this Council as follows:

1. The State legislature enacted legislation that permits the licensure of Marijuana Establishments in the State of Delaware. A “Marijuana Establishment” includes Cultivation Facilities, Manufacturing Facilities, Testing Facilities and Stores. As part of that state

**M 263 24
Adopt
Ordinance
No. 3016/
Ord No. 24-
01
(continued)**

- legislation, municipalities are able to ban Marijuana Establishments within their jurisdiction. Sussex County cannot ban them, but Sussex County can permit them with certain regulations through zoning.
2. The Ordinance strikes a reasonable balance between allowing these Establishments in appropriate locations under certain circumstances while respecting the decision of many municipalities to prohibit them within their boundaries.
 3. The Ordinance also creates reasonable distance and separation requirements between the Establishments and other sensitive existing uses including schools, colleges, churches and rehabilitation facilities. There is also an appropriate separation requirement between Establishments.
 4. It is appropriate for Cultivation, Manufacturing and Testing Facilities to be a permitted use within the AR-1, C-1, CR-1, C-3, LI-1 and LI-2 Districts. Based on the evidence presented, including information provided to staff by the Marijuana Commissioner, it is most likely that cultivation, manufacturing and testing will occur entirely indoors because of the purity, testing and security requirements that are in place. These operations will be very similar to greenhouses that are already a permitted use in AR-1 and other zoning districts. Likewise, based on that same information, the Testing and Manufacturing Operations will most likely occur entirely within a commercial or industrial building that is identical to what is permitted in the commercial and industrial districts. And none of these uses are open to the public, so their impact upon neighboring or adjacent properties should be minimal. In fact, one example provided by the Office of the Marijuana Commissioner included the adaptive redevelopment of a derelict manufacturing or industrial facility that improved the property significantly.
 5. It is appropriate for Marijuana Stores to be located in the C-3 Heavy Commercial District with a conditional use and subject to separation locations. This use is consistent with the “Purpose” of the C-3 District and it is similar to other uses listed within this District. Also, with a conditional use for Marijuana Stores, the County and the public will be made aware of the proposed use and have an opportunity to comment upon it as part of a public hearing process.
 6. After the Ordinance was introduced, the Office of the Marijuana Commissioner commented that an amendment should be made to the hours of operation for Marijuana Stores so that there is not an inconsistency with State Code. Therefore, this recommendation is subject to the further recommendation that Section 115-194.6D be amended so that it now states, “Retail Marijuana Stores may only operate between the hours established for them by Title 4 of the Delaware Code.” Similarly, Section 115-194D should be amended to state, “Any licensed and approved pre-existing, legally nonconforming Retail Marijuana Store shall be subject to the hours of operation established for them by Title 4 of the Delaware Code.”

Motion Adopted: 5 Yeas

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

**M 264 24
Adjourn**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley to adjourn at
3:06 p.m.**

Motion Adopted: 5 Yeas

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

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}