

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 5, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 5, 2015, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Robert B. Arlett	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 165 15
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by striking "Approval of Minutes" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

**Public
Comments**

Public Comments

Barb Gerk, President of the Sea Pines Village Homeowners Association, commented on the recent decision by Judge Brady on the special use exception for a 100 foot cell tower application by AT&T. Ms. Gerk submitted her comments, in writing, for the record.

Dan Kramer commented on the County's contract with a Kent County organization for dog control services and he questioned why they are harassing horse owners.

**Legislation/
HB 87**

State Representative Tim Dukes and Hal Godwin, Deputy County Administrator, presented information on House Bill 87 entitled "AN ACT TO AMEND TITLES 22 AND 9 OF THE DELAWARE CODE RELATING TO RIGHT-TO-WORK ZONES". This Act would allow each municipality and each county to create right-to-work zones. Representative Dukes asked for the Council's position on this proposed

**Legislation/
HB 87
(continued)** **legislation. Representative Dukes is one of the sponsors of the Bill. It was noted that this is empowering legislation for the creation of right-to-work zones.**

The Council discussed the proposed legislation with Representative Dukes.

Mr. Arlett, Mr. Cole and Mr. Wilson stated their support of this effort in the General Assembly and they expressed interest in Sussex County becoming a Right-to-Work County.

Mr. Godwin stated that there will most likely be a hearing on this legislation in the near future and he asked for Council’s direction on whether to support this bill or not.

**Present-
tation/
Memorial
Poppy** **Liz Shepperd was in attendance on behalf of the American Legion Auxiliary Post #28 to present poppies to the Council. Ms. Law stated that the poppy program helps veterans and their families. Ms. Law introduced Miss Poppy, Paris Parks.**

**CIB/
James
Farm** **Chris Bason, Executive Director of the Center for the Inland Bays, presented an update on the James Farm Ecological Preserve, including activities offered and future expansion plans.**

**Tribute/
F. Shade** **The County Council presented a Tribute in recognition of Frank Shade who is retiring from the County after 25 years of service.**

**Farmland
Preservation
Advisory
Board
Appoint-
ments** **Mr. Lawson presented proposed appointments to the Farmland Preservation Advisory Board for the Council’s consideration. He reported that the State of Delaware Department of Agriculture has asked each County to reappoint their Farmland Preservation Advisory Board. This Board is tasked with: (1) reviewing any State legislation that may affect the State Farmland Preservation Program and (2) reviewing any district expansions that may take place in the respective counties. Mr. Lawson reported that the proposed appointments are a result of hearing from Council members and the farm community. The Board consists of four active farmers or people in the agriculture business community and one member of the County Council who will serve as Chair of the Board. The County Council member would serve until replaced and the other four members would serve four year terms. Mr. Lawson presented the following recommended appointments:**

**Sam Wilson, Sussex County Council
Donald Collins, Millsboro
Christopher Magee, Selbyville/Williamsville
Mark Wells, Milford/Slaughter Neck
Randall “R.C.” Willin, Seaford/Laurel**

**M 166 15
Appoint
Members/
Farmland
Preservation
Advisory
Board**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, that the Sussex County Council approves the appointments of the members to the Farmland Preservation Advisory Board, as presented, for a term of four years, effective immediately.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. 9-1-1 Awareness Day – May 14th

On Thursday, May 14th, the Sussex County Emergency Operations Center will host its 16th annual 9-1-1 Awareness Day at the public safety complex located at 21911 Rudder Lane, next to the Sussex County airport. The event will run from 9:00 a.m. to 2:00 p.m., and all activities are free and open to the public.

In addition to tours of the 9-1-1 Center, there will be displays and activities featuring the Delaware State Police K-9 Team, Blades Fire Company Safety House, Delaware State Fire Marshal's Office, Delaware State Fire School, Delaware Emergency Management Agency, Delaware Department of Natural Resources and Environmental Control, and the Sussex County Sheriff's office. There will also be police cars, fire trucks, ambulances, paramedic units, and County and State mobile command centers on display.

The event is sponsored by Sussex County and the Delaware State Police, which jointly operate the 9-1-1 Center.

2. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Coastal Club – Phase 1B received Substantial Completion effective April 24, 2015.

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

**Legislative
Update**

Hal Godwin, Deputy County Administrator, presented a legislative update.

House Bill 9 – “AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE SANITARY PROTECTION OF ALL DRINKING WATER SUPPLIES WHICH ARE FURNISHED TO AND USED BY THE PUBLIC”

**Legislative
Update
(continued)**

Synopsis: The bill eliminates an existing conflict between the Delaware Code statute regulating licensed water system operators and the regulations governing licensed water system operators. This bill corrects the conflict by allowing the creation of an Advisory Council to assist the Secretary in implementing the regulations. In addition, this bill allows for the waiver in the water system operator law and will provide clearer guidance to owners of public water systems.

This bill was signed into law on April 23, 2015.

Senate Bill 25 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO REGULATIONS AND PROHIBITIONS CONCERNING THE GRAY FOX”

Synopsis: This bill authorizes the Department of Natural Resources and Environmental Control to allow the harvesting of gray foxes and permitting of same.

This bill was passed in the House and is stalled in the Senate.

House Bill 33 – “AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO OUTDOOR ADVERTISING”

Synopsis: This bill clarifies the types of signs that are permitted to be erected in the State’s right-of-way by an outside entity, with department approval. The legislation provides consistency with federal regulations for outdoor advertising.

This bill passed the House and has been released from Senate Committee.

Senate Bill 29 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO DANGEROUS DOGS”

Synopsis: This bill restores language to the Delaware Code that was inadvertently repealed in 2010 when SB 240 and HB 419 were enacted concurrently. This bill adds cats to the list of domestic animals that are protected under the dangerous dog law. Cats are domestic animals and dogs that viciously attack a cat on the property of its owner or under the immediate control of its owner should be evaluated according to dangerous dog provisions.

This bill has passed the Senate and has been released from Committee in the House.

House Bill 68 – “AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO ABANDONED PERSONAL PROPERTY”

Legislative
Update
(continued)

Synopsis: As the law stands now, following a writ of possession, a Landlord must store a manufactured home of the tenant that was left unclaimed for 30 days. Following that 30-day period, the home is deemed abandoned by operation of law, and the Landlord may dispose of the home as the Landlord wishes. However, in order to acquire title to the home, the Landlord must wait one year under Chapter 40. This bill will permit the Landlord to acquire title following the 30 day waiting period.

This bill is out of Committee in the House.

House Bill 85 – “AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO STATE TAXES”

Synopsis: This bill allows school taxes and property taxes to be collected by tax intercept.

This bill was reintroduced (new draft) on April 1, 2015. Previously, similar legislation passed the House on three separate occasions; however, the Senate has never addressed the legislation. The bill has died in the past three General Assemblies.

Senate Bill 5 – “AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT”.

Synopsis: This Act affirmatively authorizes preexisting common interest communities and approved common interest communities to comply with any or all of the provisions of the Delaware Uniform Common Interest Ownership Act that they are not already required to comply with.

Mr. Godwin stated that the provisions of this legislation are enabling.

This Bill is out of Committee in the Senate.

House Bill 74 – “AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES”

Synopsis: This bill requires a utility provider to alert the homeowner’s association for any condominium or cooperative at least 72 hours before shutting off the service, in addition to notifying the occupants of the dwelling unit.

This bill has been introduced and assigned to Committee.

Senate Bill 54 – “AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO RIGHT-TO-WORK ZONES AND THE GROSS RECEIPTS TAX”

Legislative
Update
(continued)

Synopsis: This Act allows the Director of the Delaware Economic Development Office to create right-to-work zones as part of its inducements to bring new businesses to Delaware and requires these zones to be offered for manufacturing businesses hiring at least 20 employees. It also exempts those manufacturing businesses from their gross receipts taxes for their first 5 years.

Mr. Godwin stated that this is a statewide bill.

This bill has been introduced and assigned to Committee.

House Bill 79 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO STRIPED BASS”

Synopsis: This bill provides that a striped bass must be tagged by a commercial fisherman before it is landed or put on shore.

This bill was introduced and assigned to Committee.

House Bill 86 – “AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO PUBLIC EMPLOYMENT”

Synopsis: This bill allows counties and municipalities to elect not to be subject to the State’s Public Employment Relations Act.

This bill was introduced and assigned to Committee.

House Bill 87 - “AN ACT TO AMEND TITLES 22 AND 9 OF THE DELAWARE CODE RELATING TO RIGHT-TO-WORK ZONES”

Synopsis: This act would allow each municipality and each county to create right-to-work zones.

In regards to House Bill No. 87 discussed earlier in the meeting, Mr. Godwin asked for Council’s direction/position.

M 167 15
Support
HB 87

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to support House Bill No. 87 entitled “AN ACT TO AMEND TITLES 22 AND 9 OF THE DELAWARE CODE RELATING TO RIGHT-TO-WORK ZONES”.

Motion Adopted: 4 Yeas, 1 Nay.

Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 168 15
Oppose
HB 54

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to oppose Senate Bill 54 entitled “AN ACT TO AMEND TITLE 29 OF THE

M 168 15 **DELAWARE CODE RELATING TO RIGHT-TO-WORK ZONES**
(continued) **AND THE GROSS RECEIPTS TAX”.**

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

Vote by Roll Call: **Mrs. Deaver, Nay; Mr. Cole, Yea;**
 Mr. Arlett, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea

Legislative **House Bill 86 – “AN ACT TO AMEND TITLE 19 OF THE DELAWARE**
Update **CODE RELATING TO PUBLIC EMPLOYMENT”**
(continued)

Synopsis: This bill allows counties and municipalities to elect not to be subject to the State’s Public Employment Relations Act.

Mr. Godwin asked for Council’s direction on this legislation and stated that if no direction is given, he will stay quiet during the hearing.

Mr. Cole stated that he would like for the County’s Human Resources Department to provide information on this legislation.

Senate Bill 26 – “AN ACT TO AMEND TITLE 29, CHAPTER 101,
SUBCHAPTER 11 OF THE DELAWARE CODE RELATING TO
AGENCY REGULATIONS AND PUBLIC HEARINGS”

Synopsis: This bill provides for recording and maintain a record of all deliberations made by public bodies during public hearings, including any discussion made “off the record”.

This bill was passed by the Senate and assigned to House Committee.

Senate Bill 66 – “AN ACT TO AMEND THE DELAWARE CODE
RELATING TO NEIGHBORHOOD CONSERVATION AND LAND
BANKS”

Synopsis: This Act will allow any Delaware jurisdiction with a long-term residential vacancy rate above 3%, including a county, to form a land bank, where such jurisdiction determines that a land bank would help it address the problem of vacant and abandoned real property within its jurisdiction. A land bank is a non-profit organization created by a political subdivision of the State, or through an intergovernmental agreement between two or more political subdivisions of the State, and would serve as the repository for vacant, abandoned and tax-delinquent properties that, left unaddressed, can contribute to crime, depress the local real estate market, and deplete the tax base of Delaware’s communities. A land bank would have the authority to obtain such properties at sheriff’s sales instituted by the jurisdiction that established the land bank, where such properties have been abandoned by their owners because of unpaid property taxes or substantial liens arising from property code violations. The land bank would have the ability to do

**Legislative
Update
(continued)**

one or more of the following: (1) purchase liens from the local jurisdiction; (2) acquire properties at a sheriff’s sale on credit from the local jurisdiction; (3) assert a trump bid at a sheriff’s sale that would allow the land bank to acquire abandoned properties for the price of the outstanding liens. The land bank would retain the acquired properties until such time as a suitable and vetted buyer could be found who would be able to return the property to productive use. Funding for land banks created under this Act would come from governmental and private grants, private investments and property sale proceeds. Additionally, any land bank created under this Act could, at the election of the local jurisdiction, be funded through the allocation to the land bank of 50% of the real property taxes on the property for a 5 year period once the property returns to productive use or such other funding sources established by the local jurisdiction. Through this Act, jurisdictions throughout Delaware would have the ability to alleviate the blight caused by vacant, abandoned and tax delinquent properties in the area, and revitalize communities by turning vacant spaces into vibrant places.

Mr. Godwin advised that this legislation would give the Council the authority to set up a land bank to deal with abandoned/vacant properties. Mr. Godwin noted that this legislation is enabling legislation.

Mr. Godwin reported that the sponsors of this bill do not include Sussex County legislators.

This bill is out of Committee in the Senate.

**Code
Enforce-
ment
Options/
Littering
and
Dumping**

Mr. Lawson reported that Mike Costello, Chief Constable, would be giving a presentation on code enforcement options as it relates to trash. He noted that this is a continuation of a discussion that took place at the March 10th Council meeting and during the Budget Workshop held on April 23rd.

Mr. Costello reported on options regarding roadside dumping and littering problems in and around the County. He explained that, a part of that, is the detection and apprehension of the people who are dumping and the clean-up itself.

Mr. Costello stated that he has listened to public input, looked at what other jurisdictions are doing in neighboring communities and states, and looked at the County’s current approach and how effective that has been.

Mr. Costello reviewed the State Statutes that cover dumping and littering: Title 7, Title 16, and Title 21 of the Delaware Code all have statutes that can be enforced by any police officer anywhere in the State. Title 7, however, has stronger littering and waste disposal statutes and the heaviest fines associated with the violation. DNREC’s Environmental Crime Unit works under the authority of DNREC’s Secretary and is charged with the investigation and enforcement of the Code. In regard to the jurisdiction of the clean-up, DelDOT is primarily responsible for keeping our roadways

Code
Enforce-
ment
Options/
Littering
and
Dumping
(continued)

clear of litter; this extends to the State right-of-ways which for the most part includes the ditches and grassy portions next to the road. DelDOT has a three-prong approach to keeping litter off of the roadways: road crews, inmates from the correctional facilities, and the Adopt-A-Highway Program (285 groups in Sussex County).

Mr. Costello commented on the costs of a program, should the County decide to start one, i.e. cameras, camera batteries, staff and staff time.

Mr. Costello reviewed four options for the Council to consider:

Complaint – County staff can submit complaints by forwarding the location of sites to DNREC’s Environmental Crime Unit and to DelDOT’s road response line. This option would require no further personnel or equipment from the County. This option could be implemented right away.

Contribute – The County could encourage the action of citizens who witness instances of littering or dumping. The County could initiate and fund a reward or tip program. The cost would be approximately \$4,500 annually. This option would require no further personnel or equipment from the County. Implementation time would be 30 days.

Contract – The County could contract with another agency who is equipped to handle the law enforcement component of the statutory laws. The County could offer a grant to obtain the concentrated efforts of DNREC’s Environmental Crime Unit. This way, the County could get dedicated officers on an overtime basis; a DNREC officer would be available to handle the County’s trash related issues. This option would require no additional personnel or equipment from the County. This option would take approximately 60 days. He noted however, that it would require negotiations with DNREC and that DNREC may not agree to it. The cost would be approximately \$32,000. The County could offer it as a grant for six months and see how it works.

Commit – The County could institute an ordinance to address the problem. County staff would need to be assigned to enforce the ordinance. The County would investigate violations and prosecute offenders. Implementation would take approximately 90 days. It is estimated that 5 additional personnel would be needed; vehicles and tools would also be needed. A base cost of \$414,000 annually is estimated; this cost covers only staff, vehicles and tools. This does not include gas, GPS for the vehicles, computers, trash pick-up, etc. This would be for staff to canvas the County to identify people who are dumping trash but it would not include picking up the trash and disposing of it.

Mr. Costello’s recommendation is Option 1 – to complain. He noted that the County could pursue this option and determine the outcome of the County making a complaint versus an anonymous citizen.

Code Enforcement Options/ Littering and Dumping (continued)

Mr. Arlett offered several suggestions: ask County employees to be a part of the process. When employees are out riding around (in County vehicles) and see a site, they can file a complaint.

Mr. Arlett suggested doing a combination of the options, i.e. Options 1 and 2. Mr. Arlett also suggested a Sussex County clean-up day.

Mr. Wilson stated that the County should still consider fining those that are littering.

M 169 15 Proceed with Options 1 and 2 (Code Enforcement)

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to proceed with Options 1 and 2.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea

Code Enforcement Options/ Littering and Dumping (continued)

Mr. Arlett asked that a Sussex County Council Clean-up Day be included in the Motion at a cost not to exceed \$10,000. Council members agreed to ask Mr. Costello to determine the cost of a Sussex County Clean-up Day and to report back to Council.

Mr. Vincent passed along a suggestion he heard from a constituent. The suggestion was that when a person is fined for a trash violation, the fine should also include community service hours of picking up roadside trash. It was noted that this would require a change in State law.

Old Business/ Proposed Ordinance/ Failure to Appear

Under Old Business, the Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §§ 216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL”.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on January 22, 2015 at which time the Commission recommended approval with the recommendation that it be revised to state that Sussex County Council shall not act upon any matter in which an applicant failed to appear before the Planning and Zoning Commission.

The County Council held a Public Hearing on the Proposed Ordinance on February 3, 2015 at which time action was deferred to allow time for Legal Counsel to review the Proposed Ordinance and report back on amendments to the Proposed Ordinance or Rules of Procedure to address Council’s concerns.

**Old
Business/
Proposed
Ordinance/
Failure
to Appear
(continued)**

The Council discussed the procedure that would be followed under the Proposed Ordinance, if adopted. Also discussed was the need for evidence to be submitted to support a *Petition for Reconsideration*.

Mr. Moore reported that a list of procedures has been drafted which Legal Counsel suggests be added to the Rules of Procedure. Instead of putting all of the specifics in the ordinance, an amendment to the Rules is proposed. (Rule (10.11) has been drafted which, if approved, would be included in the Council’s Rules of Procedure) Mr. Moore noted that the proposed amendment to the Rules of Procedure will have to be placed on a future agenda for consideration. Lawrence Lank, Director of Planning and Zoning, noted that, if the Council approves an amendment to the Rules of Procedure, the Planning and Zoning Commission and the Board of Adjustment will also have to amend their Rules of Procedure.

Mr. Moore explained that the draft ordinance was amended to include the following recommendation of the Planning and Zoning Commission: “that the County Council shall not act upon any matter in which the applicant failed to appear before the Planning and Zoning Commission”. Mr. Moore reviewed the amended version of the draft ordinance.

**M 170 15
Adopt
Ordinance
No. 2396/
Failure
to Appear
Ordinance**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to Adopt Ordinance No. 2396 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §§ 216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL”, as amended (with the Planning and Zoning recommendation).

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/Z
No. 1759/
DNREC
Report on
Stormwater
Regulations**

Mr. Lawson reported that the County Council held a Public Hearing on February 3, 2015 on Change of Zone No. 1759 filed on behalf of Osprey Point D, LLC. On that date, action was deferred and the record was kept open for the Planning and Zoning Commission to receive reports that it was waiting on (for the Sussex Conservation District reference to grandfathering of the project for DelDOT’s comments on the Traffic Operational Analysis, for the Applicant’s response to DelDOT’s comments) and to have a representative from DNREC’s Division of Soil and Water Conservation address the Council to discuss the soil conservation regulations pertaining to this specific site. Also on that date, the Council instructed that the record remain open for 20 additional days for written comments from the public and the applicants on the reports and DNREC’s presentation.

**Old
Business/
C/Z
No. 1759/
DNREC
Report on
Stormwater
Regulations
(continued)**

Jamie Rutherford, Program Manager with DNREC's Sediment and Stormwater Program, introduced Randy Greer and Elaine Webb. Ms. Rutherford provided to Council a copy of the Delaware Erosion and Sediment Control Handbook and a copy of the Post Construction Stormwater BMP Standards and Specifications Handbook.

Elaine Webb, Engineer, reviewed the chronology of the revisions to the Delaware Sediment and Stormwater Regulations.

Randy Greer, Engineer, reviewed a comparison between the Department's revised Sediment and Stormwater Regulations which became effective January 1, 2014 and the old regulations.

Mr. Greer advised that the Osprey Point Project was grandfathered by DNREC under the old regulations. He noted that the grandfathering provision was applied to projects submitted prior to January 1, 2014.

In response to questions, Mr. Greer stated that the Sussex Conservation District will review Osprey Point's plans for compliance with the old regulations.

Mr. Greer explained the grandfathering provision in the new regulations that stated if the project was already in the review queue or had applied prior to January 1, 2014, then they could continue under the old regulations or have their plans grandfathered under the old regulations. Osprey Point met that condition; therefore, they are grandfathered.

Mr. Greer also explained that there are multiple applications that are grandfathered and that the grandfathering provision does have an expiration date; the grandfathered projects were given an 18 month window to get approval. He noted that some projects cannot meet the 18 month deadline, DNREC does have the ability to grant an administrative extension; however, any extensions will be limited.

**Grant
Requests**

Andrea Wall, Manager of Accounting, presented grant requests for the Council's consideration.

**M 171 15
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$750.00 (\$500.00 from Mr. Wilson's Councilmanic Grant Account and \$250.00 from Mr. Arlett's Councilmanic Grant Account) to The Jefferson School for the 5K Run/Walk Fundraiser.

Motion Adopted: 5 Yeas.

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

Action Tabled **Action on the grant request from Delmarva Clergy United in Social Action Foundation was tabled for one week.**

M 172 15 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$600.00 (\$200.00 from Mr. Wilson’s Councilmanic Grant Account and \$100.00 each from Mr. Arlett’s, Mr. Cole’s, Mrs. Deaver’s, and Mr. Vincent’s Councilmanic Grant Accounts) to the American Cancer society for the Relay for Life of East Sussex/Coastal.**

Motion Adopted: 5 Yeas.

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

M 173 15 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$1,000.00 from Mrs. Deaver’s Councilmanic Grant Account to the Benevolent & Protective Order of Elks of the USA for the Cape Henlopen Elks Lodge for sewer connection costs.**

Motion Adopted: 5 Yeas.

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

M 174 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$600.00 (\$300.00 each from Mr. Wilson’s and Mrs. Deaver’s Councilmanic Grant Accounts) to VFW Post 2931 (Georgetown-Ellendale) for the 5th Annual Car, Truck and Motorcycle Show.**

Motion Adopted: 5 Yeas.

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

M 175 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Delaware Devil Dogs Detachment 780 for the 2nd Annual Golf Tournament Fundraiser.**

Motion Adopted: 5 Yeas.

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

M 176 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Vincent’s Councilmanic Grant Account to the Friends of the Bridgeville Library for the 6th Annual Jumping June Jamboree Fundraiser.**

Motion Adopted: 5 Yeas.

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

M 177 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$300.00 from Mr. Cole’s Councilmanic Grant Account to the Ocean View Historical Society for transportation expenses for the Lord Baltimore Elementary School tour.**

Motion Adopted: 5 Yeas.

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

M 178 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$300.00 (\$100.00 each from Mr. Arlett’s, Mr. Cole’s, and Mr. Wilson’s Councilmanic Grant Accounts) to the American Legion Post 28 Auxiliary for the Poppy Fund.**

Motion Adopted: 5 Yeas.

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

M 179 15 Councilmanic Grant **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$750.00 from Mr. Arlett’s Councilmanic Grant Account to the Selbyville Volunteer Fire Company for LED light replacement.**

Motion Adopted: 5 Yeas.

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

M 180 15 Councilmanic Grant **A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$750.00 from Mr. Vincent’s Councilmanic Grant Account to the Greater Seaford Chamber of Commerce for the Woodland Ferry Festival.**

Motion Adopted: 5 Yeas.

M 180 15
(continued) **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;**
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 181 15 **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00**
Council- **from Mrs. Deaver’s Councilmanic Grant Account to the Shields**
manic **Elementary School (Cape Henlopen School District) for the Odyssey of the**
Grant **Mind Team.**

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

Introduction **Mrs. Deaver introduced the Proposed Ordinance entitled “AN**
of Proposed **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR**
Ordinances **MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY**
DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN
PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH
HUNDRED, SUSSEX COUNTY, CONTAINING 22,500 SQUARE FEET,
MORE OR LESS” (Conditional Use No. 2017) filed on behalf of Eli and
Victoria Zacharia (Tax Map I.D. 334-18.00-7.00) (911 Address – 20336 John
J. Williams Highway, Lewes).

Mr. Vincent introduced the Proposed Ordinance entitled “AN
ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN
AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SPORTING
GOODS BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF
LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX
COUNTY, CONTAINING 11,473 SQUARE FEET, MORE OR LESS”
(Conditional Use No. 2018) filed on behalf of David Clark Lankford (Tax
Map I.D. 331-6.00-89.00) (911 Address – 9636 Tharp Road, Seaford).

Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE
TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1
AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONSTRUCTION
COMPANY OFFICE; STORAGE OF MATERIALS; RETAIL SALES;
AND EQUIPMENT STORAGE AND RENTAL TO BE LOCATED ON A
CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER
HUNDRED, SUSSEX COUNTY, CONTAINING 34,495.70 SQUARE
FEET, MORE OR LESS” (Conditional Use No. 2019) filed on behalf of JB
Builders, LLC (Tax Map I.D. 234-28.00-153.00) (911 Address – 27324 John
J. Williams Highway, Millsboro).

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Members’
Comments**

Council Members’ Comments

Mrs. Deaver commented on the Milford School District’s referendum and expressed concern that it would not pass.

Mr. Arlett commented on libraries that he has visited and on his attendance at Delaware Tech’s Starry Starry Night Event.

**M 182 15
Go Into
Executive
Session**

At 12:41 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing matters relating to personnel and land acquisition.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 12:43 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to personnel and land acquisition. The Executive Session concluded at 12:55 p.m.

**M 183 15
Reconvene
Regular
Session**

At 12:56 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

There was no action on Executive Session matters.

**M 184 15
Recess**

At 12:56 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to recess until 1:30 p.m.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 185 15
Reconvene**

At 1:37 p.m. a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to reconvene.

Motion Adopted: 3 Yeas, 2 Absent.

**M 185 15
(continued)** **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Absent;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea**

Rules **Mr. Moore reviewed the Rules of Procedure for Public Hearings.**

Mr. Cole and Mr. Wilson joined the meeting.

**Public
Hearing/
C/Z 1767** **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.867 ACRES, MORE OR LESS” (Change of Zone No. 1767) filed on behalf of Adel M. Baghouli (Tax Map I.D. No. 334-10.00-31.05 and 31.06) (911 Address: 28990 Lewes–Georgetown Highway, Lewes).**

The Planning and Zoning Commission held a Public Hearing on this application on March 26, 2015 at which time the Commission deferred action. On April 9, 2015, the Commission deferred action again. On April 23, 2015, the Commission recommended that the application be denied, for the following reasons:

- 1. Commissioner Johnson does not believe this site is appropriate for B-1 zoning and the permitted uses that are allowed in that zoning district, which includes banks, laundries, gas stations, restaurants, retail shopping centers, and other uses.**
- 2. The rezoning is incompatible with the surrounding zoning, which is all AR-1, subject in some cases to limited conditional uses. While there is some commercial or business zoning in the area, it is all on the north side of Route 9. There is no commercial or business zoning on the south side of Route 9 in the vicinity of this parcel. As a result, rezoning the property to B-1 would be inconsistent with the surrounding properties on the south side of Route 9.**
- 3. Mr. Johnson does not believe the Applicant made an adequate record to support the change in zone. The Applicant stated that he desires the B-1 zoning because he currently lives on the property and would like to operate his business there. He has requested the additional property next to his house to be rezoned B-1 without any real justification for the request. Because the location of the property does not support a B-1 use and the Applicant has not created an adequate record to justify the rezoning, it should be denied.**
- 4. This property is part of a prior application that was also denied by the Planning and Zoning Commission and County Council in CU #1790. Many of the reasons for that denial still apply today.**

**Public
Hearing/
C/Z 1767
(continued)**

- 5. The traffic that could be generated at this location after a rezoning to B-1 is not compatible with the existing roadways and traffic conditions on Route 9.**
- 6. The application does not promote the health, safety and general welfare of the neighborhood or community.**

(See the minutes of the Planning and Zoning Commission dated March 26, April 9, and April 23, 2015.)

Lawrence Lank, Director of Planning and Zoning, presented a summary of the Commission’s Public Hearing.

The Council found that David Hackett, Attorney, was present with the Applicant, Adel M. Baghouli. He stated that the applicant is a local businessman that does custom painting and wall design, including window treatments and closet organizations; that the property is located on the south side of the Lewes-Georgetown Highway (Route 9) approximately 1,000 feet from Road 282 (Arabian Acres Road); that the property consists of two lots with a total frontage of 300 feet on Route 9 and a depth of approximately 430 feet; that the applicant’s residence is located on the easterly property; that a pole barn garage is located behind the residence; that the westerly lot is unimproved; that the applicant proposes to erect a 5,000 square foot building with three (3) retail store units on the westerly lot; that one or more of the units will be utilized by the applicant and the other(s) will be leased; that he plans a showroom and offices; that these are permitted uses in B-1 zoning; that there are several B-1 Neighborhood Business properties, C-1 General Commercial properties, and some Conditional Use properties in the immediate area; that Route 9 is an arterial roadway; that the trend of development on Route 9 between Georgetown and Lewes has been a mix of business and commercial uses; that the trend has caused the subject site to be more appropriate for business uses and less appropriate for residential uses; that Route 9 is an appropriate location for B-1 zoning; that B-1 zoning is appropriate for this location because numerous properties in the immediate vicinity of the site are used for commercial and business purposes; that the change in zoning will not adversely affect neighboring or adjacent properties or nearby communities; that permitted uses in the B-1 District are compatible with uses in the C-1 District and are also compatible with business uses in the vicinity of the site; that there are no similarities between this application and the application for a Conditional Use that was denied in 2007; that DelDOT did not require a Traffic Impact Study; that the change of zone is consistent with the County’s Comprehensive Land Use Plan; and that the site plan will be subject to the review and approval of Planning and Zoning. Mr. Hackett reviewed the uses and zonings of other properties in the vicinity of this site. Mr. Hackett referenced several approvals for B-1 zoning in the area and he commented on the reasons for approval for those applications.

**Public
Hearing/
C/Z 1767
(continued)**

Mr. Hackett submitted proposed Findings of Fact.

Mr. Lank referenced a letter from DelDOT, dated July 17, 2014, in which DelDOT recommends that the rezoning be considered without a Traffic Impact Study and that the need for a Traffic Impact Study be evaluated when a subdivision or land development plan is proposed. DelDOT also stated that the Level of Service E of Route 9 will not change as a result of this application.

Mr. Arlett questioned how many B-1 zonings exist in the general area of the application site.

There were no public comments and the Public Hearing was closed.

**M 186 15
Defer
Action on
CZ 1767**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action for two weeks on Change of Zone No. 1767 filed on behalf of Adel M. Baghouli and to leave the record open for the sole purpose of staff reporting on what B-1 zonings and C-1 zonings exist in the area and also, what Conditional Uses exist in the area; and to allow time for review of the Proposed Findings of Fact submitted by the Applicant's Attorney.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CZ 1769
and
CU 2012**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.98 ACRES, MORE OR LESS" (Change of Zone No. 1769) (Tax Map I.D. No. 335-11.00-55.00, 56.00, 59.00, and 59.01) (911 Address: None Available) and on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MIXED RESIDENTIAL USE WITH MULTI-FAMILY DWELLINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 37.26 ACRES, MORE OR LESS" (Conditional Use No. 2012) (Tax Map I.D. No. 335-11.00-55.00, 56.00, 59.00, 59.01, and 60.00) (911 Address: None Available) filed on behalf of Ocean Atlantic Communities, LLC.

The Planning and Zoning Commission held a Public Hearing on these applications on March 26, 2015 at which time action was deferred. On April 9, 2015, the Commission recommended that Change of Zone No. 1769 be approved and that Conditional Use No. 2012 be approved with the

**Public
Hearing/
CZ 1769
and
CU 2012
(continued)**

following conditions:

- A. There shall be no more than 147 units being a mixture of 43 single family units, 46 duplex units, and 58 townhouse units.**
- B. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- D. All entrance and roadway improvements shall comply with DelDOT requirements.**
- E. As offered by the applicant, a five (5) foot easement adjacent to the railroad right-of-way shall be dedicated for use as part of the proposed Georgetown-Lewes Trail and a parking area as shown on the Preliminary Site Plan shall be provided for access to the Trail for the general public.**
- F. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- G. A 20 foot wide perimeter buffer shall be provided as shown on the Preliminary Site Plan. There shall also be a 20 foot wide buffer along the common boundary with the Villages of Five Point development. The landscaping plan, which may include existing vegetation, shall be included as part of the Final Site Plan.**
- H. The development will be served as part of a Sussex County Sewer District and central water will be provided by a public utility company.**
- I. The clubhouse, pool and playground amenities shall be constructed prior to the issuance of the 73rd residential building permit for the project.**
- J. Federal Wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State Permits. The wetland areas shall be clearly marked on the site with permanent markers to prevent disturbance.**
- K. As proposed by the applicant, there shall be a 20 foot buffer from all Federal Wetlands and a 50 foot buffer from all tidal wetlands.**
- L. Any site remediation work required by DNREC as a result of the site study performed by Environmental Alliance, Inc. shall be completed in accordance with all DNREC instructions.**
- M. As indicated by the applicant, the development shall be operated as an “age restricted, over 55” community as that term is generally interpreted and governed by Federal Law.**
- N. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m., and Saturdays between the hours of 9:00 a.m. and noon. The applicant shall make every effort to establish a temporary construction entrance via Atlantic Concrete and not Tulip Drive.**

**Public
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and
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(continued)**

- O. As requested by the Villages of Five Points, there shall not be interconnecting trails between the Villages of Five Points and the rail trail. Instead, the area where the interconnecting trail was to be located shall now be a 20 foot wide vegetated buffer, like others along the perimeter of the project.**
- P. As stated by the applicant, trees shall be preserved to the maximum extent possible. The Final Site Plan shall show all areas where existing trees will not be disturbed.**
- Q. This preliminary approval is contingent upon the applicant submitting a Revised Preliminary Site Plan either depicting or noting the conditions of approval on it. The Staff shall approve the Revised Preliminary Site Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.**
- R. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- S. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated March 26 and April 9, 2015.)

Lawrence Lank, Director of Planning and Zoning, presented a summary of the Commission's Public Hearing.

Mr. Lank stated that the Applicants would present Change of Zone No. 1769 and Conditional Use No. 2012 as one presentation with the understanding that each application would be acted on separately.

Mr. Lank noted that there is a difference in the acreage on the two applications; one is because there is a lot within Dutch Acres that is a portion of the application that is already zoned MR.

Mr. Lank reported that, on this date, the law firm of Fuqua, Yori and Willard, P.A. submitted a letter from DNREC, dated April 28, 2015.

Copies of an Exhibit Book and Exhibit Packet were submitted by the Applicant.

The Council found that Preston Schell and Ben Gordy were present on behalf of Ocean Atlantic Communities, LLC with James Fuqua, Esquire of Fuqua, Yori and Willard, P.A. and Zac Crouch and D.J. Hughes of Davis, Bowen & Friedel, Inc.

Mr. Fuqua stated that these applications involve a 36.98 acre parcel of land located off of Route One north of Five Points, approximately behind St. Jude The Apostle Catholic Church; that access to the site is from Tulip Drive off of Route One; that Tulip Drive is a State maintained public road; that Tulip Drive will be extended from where it turns into Dutch Acres; that

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and
CU 2012
(continued)

30 feet of the right-of-way of Tulip Drive is a part of the Applicant's property; that the new extended roadway will provide access to the application site and will be the only access to the development other than the Atlantic Concrete entrance, which will be used for emergency purposes only; that it is proposed that the Atlantic Concrete entrance would be the construction entrance to the site; that to the south of the site is Dutch Acres, a 40 lot subdivision; that to the east is the Villages of Five Points, a 586 unit Residential Planned Community with a central commercial area; that to the northeast is Atlantic Concrete, an industrial use; that to the north is the railroad; that to the west is the Reserves of Nassau I development and the Taramino development; that in 2005, the same parcel was approved for a 152 multi-family unit project for Robino-Sanibel Village, LLC; that the Planning and Zoning Commission originally denied the requested application and the County Council approved the application with conditions; that there are two differences in this application and the original application: 1) the original application had a shared entrance with Atlantic Concrete from Route 1 to Old Orchard Road and a private traffic signal was to be required with the access road; that in this application, Tulip Drive is a State maintained street that provides access to the site and 2) this application is intended to be an age restricted community with master bedrooms on the first floor; that an age restricted community creates a lower traffic volume/impact; that a Traffic Impact Study (TIS) was prepared by Davis, Bowen & Friedel, Inc. and has been reviewed and approved by DeIDOT; that based on the TIS, DeIDOT will require improvements to the Route One intersection by extending the Route One turning lanes and the erection of a stop sign to control the Tulip Drive intersection; that as part of the TIS, DeIDOT required a Traffic Signal Justification Study for the Route One intersection; that a Traffic Signal Justification Study was performed and that McCormick/Taylor, Consultants to DeIDOT, have agreed that a full service traffic signal is not warranted at this location at this time; that the applicants will be dedicating a 5 foot wide easement along the entire length of the railroad right-of-way for a future rail to trail expansion; that central water will be provided by Tidewater Utilities; that central sewer will be provided by the County; that electrical services will be provided by Delmarva Power; that studies indicate that there are no known endangered species or historic or cultural resources on the site; that there are 4.51 acres of Federal non-tidal wetlands on the site; that stormwater management and erosion and sediment control will be provided subject to the current regulations of the Sussex Conservation District; that the previous use of a portion of the site was a borrow pit which was backfilled at a later date with fill including stumps, logs, construction debris, etc.; that a detailed site evaluation was performed by Environmental Alliance Inc. to determine the nature and extent of the current condition of the site and what remedial measures are needed to be done to bring the property into compliance with DNREC's standards (copy submitted into the record); that the site was entered into the State's Brownfield Program in 2014; that the Program, which is administered by DNREC, encourages potential purchasers of land to enter into the Program and perform site evaluations and propose a remedial clean-up plan prior to

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(continued)**

taking ownership; that the site evaluation has been performed and reviewed by DNREC; that in a letter dated April 28, 2015 from the Project Manager of DNREC’s Site Investigation and Restoration Section, notice of approval was given for the site specific assessment and brownfield investigation report; that DNREC will now issue proposed and final plans of remedial action which will be implemented and paid for by the developer/applicant and it will be done as part of the site plan construction (under the authority and supervision of DNREC); that, as a result, this long abandoned pit will be cleaned up and put into an appropriate use; that they are requesting consideration for an age-restricted community of 147 condominium type units comprised of 43 single family units, 46 duplex units, and 58 townhouse/condominium units; that recreational amenities will include a clubhouse, a swimming pool, trails and a playground; that the site is located in an Investment Level 1 Area according to State Strategies, where the State considers the area already developed or urban in nature; that development of the site is supported by the State; that the site is located in an Environmentally Sensitive Developing Area (a growth area) according to the Sussex County Comprehensive Land Use Plan; that the type of development intended is an appropriate use in this area; that the rezoning and conditional use are appropriate since the site is located in a growth area, since the site is surrounded by developments, and since the use conforms to the Sussex County Comprehensive Land Use Plan Future Land Use Map; that the MR zoning requested is consistent with the zonings in the area; that the conditional use for a mixed residential use is consistent and similar to the adjoining uses in the area; that these applications are infill zoning; that based on comments received during the Public Hearing before the Planning and Zoning Commission, the site plan has been revised to address some of the concerns;

Mr. Crouch reported that the site plan has been revised based on the Public Hearing before the Planning and Zoning Commission and based on a meeting with the residents of Dutch Acres. Mr. Crouch reviewed the revised site plan and stated that they propose 147 mixed residential uses (43 single family homes, 46 duplexes, and 58 townhouses); that as you enter the property from Tulip Drive, there is a road connection that will extend Tulip Drive into the interior of the subdivision; that the homes on the south side of the branch will all be single family homes; that the duplexes and townhouses along with some single family homes will be on the north side of the branch; that the sidewalk will be extended from Tulip Drive to the interior intersection across the branch; that the purpose of not providing sidewalks throughout the development is that they are making the roads wider; that all of the streets within this subdivision will be 30 feet wide and that way, they can designate a pedestrian path on the road; that a wetlands delineation was done; that at the entrance of the development, there are two wetlands crossings; that there is minimal impact; that a 20 foot buffer will be provided from all Federal 404 wetlands – that this is voluntary; that there is a 50 foot setback from perennial streams; that there will be four bio-retention areas for stormwater management so there will be no wet ponds located throughout the north portion of the site; that on the south

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portion of the site, there will be bio-swales and small bio-retention areas to take care of stormwater management on that side; that there will be an emergency access (only) near the Atlantic Concrete Plant; that, per the revised site plan, the 20 foot buffer will be extended between the road and the Villages of Five Points and the pedestrian access has been removed from the Villages of Five Points to the public parking area; that a 20 foot buffer is proposed around the perimeter; that there are three lots where there will not be the 20 foot buffer but it will be between 10 and 12 feet; that there will be a centrally located pool, tot lot and clubhouse; that parking spaces will be throughout; that they propose to remove or turn the two parking areas on the south side of the branch; that they will attempt to realign the road to save some of the large trees in the back of the residences; that the project complies with the source water protection for Chapter 89; that they are below the requirement of 35% impervious area so no mitigation is required; and that there is an existing brownfield that is going to be cleaned up as part of this project.

Mr. Schell commented on the fact that sidewalks will not be provided throughout the development and he explained the pedestrian use of the roadway. He stated that a portion of the roadway could be designated for pedestrian use.

Mr. Hughes stated that, regarding the Traffic Impact Study, they met with DelDOT in 2014 and the TIS was scoped per DelDOT's regulations; that the final TIS was submitted in November 2014 and DelDOT responded and determined that a signal is not warranted at this time; that there are some improvements that will be required at Route 1 and Tulip Drive; that the right turn lane on Route One will be extended to the south to be a total of 460 feet; that in the median, the left turn lane is to be extended to a total of 230 feet of full width storage and 100 feet taper but it will not go back to Nassau Road; that a five foot additional right-of-way for the trail and parking area for the trail is proposed; that as an age restricted community, less than 700 trips per day will be generated; that the age restricted aspect of the community cuts down on traffic and limits impact on the schools; and that they are proposing less units than the previously approved application for this site.

Mr. Fuqua stated that they have revised the site plan to address issues raised by representatives of the Villages of Five Points and Dutch Acres and concern expressed by Commissioner Johnson (about sidewalks); that other objections were raised by other area residents regarding the use of Tulip Drive; that Tulip Drive is a State-maintained public road; that the Applicant will own 30 feet of Tulip Drive when they purchase this property; that the Taramino project contains 68 multi-family townhouse condominiums and has a density of 6.6 units per acre and uses one entrance off of Tulip Drive that provides access to Route One; that they want to deny this application for the exact same rights that they are enjoying; that they respect the rights of St. Jude The Apostle Church; that the church has decided to organize opposition to the application; that the church

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coordinated the signing of the petition of opposition signed by over 900 people; that the petition states that “because presently traffic on Route One has a traffic overload”; that almost everyone that signed the petition do not live near Tulip Drive; that their use of Tulip Drive is minimal; that a land use decision is not a popularity contest; that the law requires that local governments deal with specific land use decisions in a rational, non-arbitrary manner guided by the legislative standards of general application; that the site is surrounded by land zoned MR or C-1; that the application site is a text-book infill parcel; their requested density of approximately 3.9 is consistent with the surrounding densities; that the Villages of Five Points has a density of 3.2, the Taramino townhouse project has a density of 6.6, Dutch Acres has a density of 3.2, the Reserves of Nassau has a density of 10.2; that their requested density is less than 4 which is totally consistent with the densities in the area; that 2 units per acre (AR-1 zoning) would be out of character with the nature of the area; that the site is in a growth zone under the Comprehensive Plan where the County Council indicated development is supposed to go, at higher densities; that it is in a Level 1 Area where the State wants the higher density development; that they are providing a 50 foot buffer from the stream (the “gut”) and buffers from the other developments (a 20 foot wooded buffer that will be planted and maintained); that the Applicant has a history of high quality and environmentally safe development; and that the site is less than desirable and will be improved environmentally and put into a useful functioning property.

Mr. Fuqua referenced the Gibbons v. Sussex County Council Court of Chancery Decision in 2005.

Mr. Fuqua referenced the conditions recommended by the Planning and Zoning Commission and stated that they agree with the proposed conditions with the exception of Condition No. N which states that “Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off, or to the property shall only occur from Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m. and Saturdays between the hours of 9:00 a.m. and Noon. The Applicant shall make every effort to establish a temporary construction entrance via Atlantic Concrete and not Tulip Drive.”

Mr. Fuqua commented on Mr. Schell’s meeting with the residents of Dutch Acres and he suggested that Condition M be amended as follows, as offered and agreed to by the Developer:

- 1) Construction, site work, grading and deliveries of construction materials, landscaping materials and fill, on, off, and to the property shall only occur from Monday through Friday between the hours of 7:30 a.m. and 5:00 p.m. and on Saturday between the hours of 8:30 a.m. and 5:00 p.m. There shall be no construction, site work, grading or deliveries on Sunday.**
- 2) No vibratory rollers or tampers shall be used during road**

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- construction on the west side of the wetlands adjacent to Dutch Acres.
- 3) No overflow parking shall be located on the west side of the wetlands adjacent to Dutch Acres that would face the rear of homes located on Tulip Drive.
 - 4) A twenty (20) foot forested buffer will be planted and maintained along the rear of the lots in Dutch Acres bordering the site except for Lots 1, 2 and 3, which shall receive similar plantings and the maximum buffer permissible considering the location of the project entrance road. The buffer shall be planted within six (6) months of the commencement of site construction and shall be planted with Leland spruce or similar trees five (5) feet or higher and appropriate fill-in shrubbery in order to create a natural screen along the rear of the Dutch Acres lots.
 - 5) The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of two way stop signs at the intersection of Tulip Drive and Slipper Shell Way (the Site's entrance road). It is understood that this item is subject to DelDOT's approval. The Developer agrees and commits to pay the cost of the stop signs upon the approval of DelDOT, provided said approval is granted within three years from the date of Final Site Plan approval for the development.
 - 6) The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of a cul de sac at the southern end of the residential section of Tulip Drive, if desired by the majority of lot owners in Dutch Acres. It is understood that this item is subject to DelDOT's approval. The Developer agrees and commits to pay the cost of construction of cul de sac upon approval of DelDOT, provided said approval is granted within three years from the date of Final Site Plan approval for the development.
 - 7) The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of a fully operational traffic signal at the northern intersection of Tulip Drive and Route 1. The Developer agrees and commits the sum of up to \$200,000 for the specific purpose of the installation of a fully operational traffic signal at this intersection, for a period of three years from the date of Final Site Plan approval for the development. It is understood that this item is subject to DelDOT's approval.
 - 8) A construction entrance will be provided through the property of Atlantic Concrete and all construction traffic shall utilize that entrance only.
 - 9) All homes located on the west side of Black Hog Gut will be single family only.

Mr. Fuqua noted that the Applicant has voluntarily agreed to this amended Condition M and is requesting that the County Council incorporate the new Condition M into the Council's conditions.

Public comments were heard.

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Hearing/
CZ 1769
and
CU 2012
(continued)**

There were no public comments in support of the application.

Mike Pfarr, Business Manager for St. Jude The Apostle Church, stated that the Church is not against the development; that the Church is opposed to Route 1 turning into Tulip Drive as being the access to the development; that when church lets in and out, the access to and from the church is very dangerous; that it's not about the development, it is about the safety of the community and the parishioners ; that people do cut through the area; that the church does not have funding for signs, speed bumps, etc.; that using this as an access to a public trail will create an increase in traffic; that all they are asking for is another access; and that the petition referred to the dangerous traffic conditions.

Kenneth Ciarlone of Taramino stated that they are not opposed to the development, they are opposed to the access onto Tulip Drive and building on the Gut; that he has called DNREC, Division of Water, that has jurisdiction over the tidal gut; that it is classified as a tidal gut; that the Developer is proposing a bridge across the tidal gut, across the stream and the wetlands; that an application for a bridge has not been filed, nor has application been made to fill in the wetlands on the tidal gut; that they are concerned about flooding; that the State of Delaware is not aware of the project; that there is arsenic and oil sand; that the oily sand in the brownfield may have permeated into the groundwater; that they want the development to find another access; that traffic and safety are a concern; that there will be accidents and fatalities at the Route One access; that Route One is the most heavily travelled road; that they will not be able to get in and out of Taramino; that they question if the 13 houses on this side of the gut are needed; and that Council must do what is morally and ethically right for the citizens.

Helen Truitt, member of the Inland Bays, stated that there is a great deal of phosphorus; that this is a tidal wetland and this water should not be filled in; that trees surrounding the water should not be bulldozed; that the property around the water should remain as it is – wetlands; and that the wetlands should not be disturbed.

Tina Melchiorre of Tulip Drive stated that they have met with Preston Schell and they have gotten a lot of answers and they are okay with the development. She stated that no one is addressing the south side of Tulip Drive that so many people use (especially the church); however, with the cul-de-sac on the south side and the light working (in front of the church), she thinks she will all be okay with the development.

Kirsten Sultan of Tulip Drive stated that they met with Mr. Schell and they are not against his development She also stated that Tulip Drive is not the place to put it. Ms. Sultan offered another solution/option to the use of Tulip Drive.

**Public
Hearing/
CZ 1769
and
CU 2012
(continued)**

Mike Baines of Taramino commented on the brownfield situation and questioned if the developer has to notify potential buyers and that in regard to the bridge, it would be a different grade, which would be a problem in winter with snow on the ground.

Sol Peltz of Villages of Five Points stated that safety is the paramount issue; that this site is a difficult site; that he questions why in 2005 the developer did not consider entry on Tulip Drive; that it was approved based on a traffic light going through a commercial industrial zone; that he questions why the permitting process comes after the preliminary plan approval by the Council; that there is a difference of opinion as to whether the gut is tidal or non-tidal; and that it may be useful to bring in DNREC before a decision is made because it may impact the developer's idea for development.

Estelle Ciarlone of Taramino commented on the brownfield and her discussion with a DNREC representative about the brownfield. She commented on the monitoring of the brownfield and revealing brownfields in real estate contracts. Ms. Ciarlone also commented on the traffic.

John Gilbert of the Villages of Five Points discussed two concerns: (1) that the his community wants a 20 foot forested buffer between The Reserves at Nassau and the Villages of Five Points and that this has been provided in the changes and (2) that they want the 10 foot path from the Rails to Trails parking lot which appeared to connect to their walking path around Five Points to be eliminated and that this has been eliminated in the proposed changes.

Joseph Rossi of Environmental Alliance, Inc. (proponent for the application) stated that they conducted the brownfield investigation and he clarified information regarding the oily sands, monitoring, plan of remediation, DNREC requirements, groundwater, arsenic, and environmental covenants.

Mr. Moore asked for any public comments on Mr. Rossi's statements and there were none.

The Public Hearing was closed.

**Leave
Record
Open/
Additional
Information**

Mrs. Deaver, Mr. Cole, and Mr. Arlett requested additional information from DNREC (remediation plan for the brownfield, impacts of a brownfield) and from DelDOT (rationale for access at Tulip Drive and DelDOT's recommendation for an access point to the development). Mr. Vincent stated that the comment period would remain open for the purpose of having these specific points answered by staff, DNREC, and DelDOT.

**M 187 15
Defer Action
on CZ 1769**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on Change of Zone No. 1769 filed on behalf of Ocean Atlantic Communities, LLC.

**M 187 15
(continued)**

Motion Adopted: 5 Yeas.

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

**M 188 15
Defer
Action on
CU 2012**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to defer action on Conditional Use No. 2012 filed on behalf of Ocean Atlantic Communities, LLC.

Motion Adopted: 5 Yeas.

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

**Record
Open/
Comment
Period**

Mr. Moore stated that the public will be given the opportunity to comment on the additional information requested and submitted; the public will be given a 15 day period of time to submit written comments after the information is reported to the Council.

**M 189 15
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 5:02 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**