

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 19, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 19, 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 199 15
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by deleting “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

Michael Horne, representing the Bethany Beach Landowners Association, commented on the recent decision by Judge Brady on the special use exception for a 100 foot cell tower application by AT&T.

Richard Heubeck, a resident of Mallard Lakes, commented on the Substantial Damage Claim filed by 24 homeowners in Mallard Lakes due to flood damage from Superstorm Sandy.

Greg Cox, a resident of Sea Pines Village, read a letter that was sent to Jamie Sharp (Assistant County Attorney) from their resident attorney, David Gerk. Mr. Cox stated that he was asked by the Board of Directors of Sea Pines Village to read the letter regarding to the recent decision by Judge Brady on the special use exception for a 100 foot cell tower application by AT&T.

**Public Hearing/
Proposed Ordinance/
Temporary Removable Vendor Stands**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE X, § 69 AND § 72; ARTICLE XI, § 77 AND § 80 AND; ARTICLE XIA, § 83.2 AND § 83.6 OF THE CODE OF SUSSEX COUNTY RELATING TO TEMPORARY REMOVABLE VENDOR STANDS”.

Synopsis: There have been several proposed temporary removable vendor stands (including “food trucks”) that have sought approval in Sussex County, and until now there was no clear path under the Zoning Code governing the approval process. Instead, approvals have been sought by default under the Conditional Use “catch-all” category of “residential, business, commercial or industrial uses when the purpose of this chapter are more fully met by issuing a conditional use permit.” As a result of this, existing stands run the risk of violation, and those seeking approval face uncertainty about how to proceed under the Code. With this amendment, such stands in the B-1, C-1 and CR-1 districts can receive over-the-counter approval if certain specific requirements are satisfied. In those districts, if the Director still has concerns about the proposal, the owner of the stand can seek a Special Use Exception from the Sussex County Board of Adjustment. This amendment will not affect temporary removable farm stands that are permitted uses in the AR-1 District under Section 115-20.A.(3).

Vince Robertson, Assistant County Attorney, presented the Proposed Ordinance and explained its purpose and process.

Mr. Robertson explained that, for a food vendor to receive expedited approval under this Proposed Ordinance:

- **The property must be zoned C-1, CR-1 or B-1**
- **The activity must be temporary and removable, including food trucks.**
- **There can only be one stand per individual parcel of land.**
- **The size of the stand must be no wider than 8 feet 6 inches nor longer than 45 feet. This is consistent with DelDOT’s criteria for roadway use.**
- **The activity must be approved, in writing, by the property owner.**
- **A Plan showing the location of the vendor must be provided by the applicant.**
- **The vendor cannot be permanently connected to utilities, including water, sewer, electric or gas.**
- **The vendor cannot interfere with vehicular or pedestrian movement on the property.**

Mr. Robertson reported that the Planning and Zoning Commission held a Public Hearing on this application on May 7, 2015 at which time the Commission recommended approval with a recommendation that the six (6) month time limit be replaced with specified dates, so that the first

**Public
Hearing/
Proposed
Ordinance/
Temporary
Removable
Vendor
Stands
(continued)**

paragraph of Chapter 115 Article X Section 69, Chapter 115 Article XI Section 77, and Chapter 115 Article XIA Section 83.2, should state:

“Temporary removable vendor stands, including but not limited to “food trucks” and similar vehicles or trailers, located on the premises between March 15 and November 15 of each year for the sale of food, agricultural products, or other food related goods. Such temporary removable vendor stands must comply with all of the following requirements.”

Mr. Robertson reported that these dates were proposed by an attorney who has represented several vendor stand applications and is familiar with their needs. The recommendation of the Commission was favorably received by Staff and the Commission, since it sets identical timeframes for all vendors approved under this process rather than requiring Planning and Zoning to determine when each one must start and end based upon independent six month time frames that are attached to each use.

Mr. Robertson stated that Staff recommended additional amendments to the Proposed Ordinance:

- **Add a new “I” to Section 1, 2 and 3 which states that “The approval of the temporary removable vendor stand shall be valid for one year.”**
- **Require an application fee of \$100.00 to cover costs incurred by the County.**

The Council discussed the Proposed Ordinance and the proposed amendments.

Mr. Robertson noted that these regulations do not have any effect on produce stands that are already permitted in the AR-1 District.

Public comments were heard.

Dan Kramer commented on the Proposed Ordinance’s requirement for a State of Delaware business license.

Lou DiAmico stated that he is the owner of a concession trailer/barbeque and he thanked the Council for the ordinance amendment.

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

**M 200 15
Adopt
Proposed
Amend-
ments**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole to adopt the following proposed amendments to the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE X, § 69 AND § 72; ARTICLE XI, § 77 AND § 80 AND; ARTICLE XIA, § 83.2 AND § 83.6 OF THE CODE OF SUSSEX COUNTY RELATING TO TEMPORARY

M 200 15
Adopt
Proposed
Amend-
ments to
Proposed
Ordinance
Regarding
Temporary
Removable
Vendor
Stands
(continued)

REMOVABLE VENDOR STANDS”.

1. Amend Section 1 (Paragraph 2) as follows: “Temporary removable vendor stands, including but not limited to “food trucks” and similar vehicles or trailers, located on the premises between March 15 and November 15 for the sale of food, agricultural products, or other food related goods. Such temporary removable vendor stands must comply with all of the following requirements:”
2. Amend Sections 1, 2, and 3 to add a new section “I” to state “The approval of the temporary removable vendor stand shall be valid for one year.”
3. Amend Sections 1, 2, and 3 to add a new section “J” to state “The application for a temporary removable vendor stand shall be in a form established by the Director. The fee for filing the application shall be \$100.00.”

Motion Adopted: 5 Yeas.

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

M 201 15
Adopt
Ordinance
No. 2397

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2397 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE X, § 69 AND § 72; ARTICLE XI, § 77 AND § 80 AND; ARTICLE XIA, § 83.2 AND § 83.6 OF THE CODE OF SUSSEX COUNTY RELATING TO TEMPORARY REMOVABLE VENDOR STANDS”, 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

Community
Action
Month

The Council presented to Bernice Edwards, Executive Director, First State Community Action Agency, a Proclamation entitled “PROCLAIMING THE MONTH OF MAY AS COMMUNITY ACTION MONTH”.

Planning &
Zoning
Land Use
Application
Docket/
County
Website

Mr. Lawson presented the new Planning and Zoning Land Use Application Docket, an update to the County’s website and designed to be a one-stop-shop for planning and zoning information. This new section on the County’s website contains every Planning and Zoning application from 2015 back to 2010, including applications for Conditional Uses, Change of Zones, Subdivisions, Variances, and Special Use Exceptions. Each corresponding page will contain information on the application including the hearing dates, minutes, audio, legal notice, and approved Ordinance. In addition, there will be a corresponding map link to the County’s new GIS

**Planning &
Zoning
Land Use
Application
Docket/
County
Website
(continued)**

maps showing where an application is located.

Mr. Lawson stated that the site is currently live and can be viewed at <http://www.sussexcountyde.gov/land-use-application-docket>.

Mr. Lawson commented that this portal puts parcel information, detailed maps, hearing audios and minutes, and other items related to a property in one easy-to-navigate page on the County's website. He noted that this is a monumental leap forward in the service that the County provides to the public.

Mr. Lawson also provided an update on the Planning and Zoning mapping project whereby GIS experts at Salisbury State are drawing the entire County's property lines and zoning layers. The County's new GIS mapping site which will go live this summer.

**Adminis-
trator's
Report**

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

1. Delaware State Police Activity Report – March 2015

Please direct your attention to the new format from the Delaware State Police illustrating their activity for March. Per the attached report, there were 66 violent crime arrests with 49 clearances; 655 property crimes with 227 clearances; and 11,369 total traffic charges with 7,773 corresponding arrests. Of those traffic arrests, 206 were for DUI. Finally, there were 1,082 total vehicle crashes investigated in March. In total, there were 197 troopers assigned to Sussex County for the month of March.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Millville by the Sea – Lakeside Village and The Landings at Pepper Creek (a/k/a/ The Marina at Pepper's Creek) – Phase 3-3 received Substantial Completion effective May 14, 2015.

3. Memorial Day Holiday

Please note, County offices will be closed on Monday, May 25th, to observe the Memorial Day holiday. In addition, Council will not meet on Tuesday, May 26th. The next regularly scheduled Council meeting will be held on Tuesday, June 2nd.

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

**CAFR
Award**

Mrs. Jennings presented that, for the thirteenth consecutive year, Sussex County Government has been awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers

**CAFR
Award
(continued)**

Association for its Comprehensive Annual Financial Report (CAFR). This award is the highest form of recognition in government accounting and financial reporting and its attainment represents a significant accomplishment by a government and its management. The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive “spirit of full disclosure” to clearly communicate its financial story.

Mrs. Jennings stated that the award reflects the collaborative efforts of many County employees.

**Legislative
Update**

Hal Godwin, Deputy County Administrator, presented the following legislative update:

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.

Mr. Godwin reported that this bill is in the House Education Committee and that he has contacted the Committee Chair and asked that the Committee deal with this bill.

Mr. Godwin noted that the Council previously gave direction to support this legislation.

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

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.

On April 5th, the Council voted to oppose this bill.

This bill has been tabled in 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. Representative Dukes asked for the Council’s position on this proposed legislation. Representative Dukes is one of the

**Legislative
Update
(continued)**

sponsors of the Bill. It was noted that this is empowering legislation for the creation of right-to-work zones.

On May 5th, the Council voted to support this legislation with a vote of 4 Yeas, 1 Nay (Deaver).

Mr. Godwin reported that this bill was discussed in Committee on May 7th and tabled; since that time, Representative Dukes was successful in adding an amendment to the bill which would make this bill not a statewide bill, but a bill that only applies to Sussex County and its municipalities.

House Bill 124 – “AN ACT PROPOSING AN AMENDMENT TO THE DELAWARE CONSTITUTION RELATING TO THE REALTY TRANSFER TAX”

Synopsis: The Delaware Farmland Preservation Fund was created under the Delaware Agricultural Lands Preservation Act in order to conserve, protect, and encourage improvement of agricultural lands within the State. The Legislature has previously expressed its desire that \$10 million in receipts from the State Realty Transfer Tax be allocated annually to this fund in order to accomplish its goals. This Act is the first leg of a constitutional amendment that will make this allocation binding on all future administrations and General Assemblies, thus allowing this essential program to continue protecting one of our State’s most important resources.

This Bill has been released from Committee.

House Bill 140 – “AN ACT TO AMEND TITLES 21 AND 30 OF THE DELAWARE CODE RELATING TO TAXES AND FEES SUPPORTING THE TRANSPORTATION TRUST FUND”

Synopsis: This bill increases several revenue sources for the Transportation Trust Fund. The motor vehicle document fee is increased from 3.75% to 4.25%. The fee for late renewal of a driver’s license is increased from \$1.15 to \$10, and the fee for late renewal of vehicle registration is increased from \$10 to \$20. The fees for reinstatement of a suspended or revoked driver’s license are increased from \$25 to \$40 and \$143.75 to \$200, respectively. The fees for issuance of duplicate documents is raised, with the fee for duplicate driver’s license increased from \$10 to \$20, for duplicate titles from \$25 to \$50, for duplicate vehicle validation stickers from \$1 to \$5, and for duplicate registration cards from \$2 to \$10. The fee for a vehicle temporary tag is increased from \$10 to \$20. The fee for sale of driver’s licenses records is increased from \$15 to \$25. The fee to transfer a specific tag number from vehicle to vehicle is increased from \$10 to \$20. The fee to issue a title for a vehicle is increased from \$25 to \$35. The fee for issuance of a lien on an existing title is increased from \$10 to \$20. The effective date for these increases is generally October 1, 2015 to allow time for computer

**Legislative
Update
(continued)**

reprogramming and effective implementation.

This Bill has passed the House.

House Bill 103 – “AN ACT TO AMEND TITLES 9 AND 25 OF THE DELAWARE CODE RELATING TO TAX LIENS”

Synopsis: This bill removes a conflict in the Delaware Code relating to the duration of tax liens.

Mr. Godwin noted that this is a housekeeping bill.

Mr. Godwin reported that the General Assembly is in recess until June 2, 2015.

**Old
Business/
CZ 1767**

Under Old Business, the Council considered 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 action was deferred. On April 23, 2015, the Commission recommended that the application be denied for the following reasons:

- 1. Mr. 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**

**Old
Business/
CZ 1767
(continued)**

property next to his house to be rezoned to 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 such as poor traffic visibility along this section of Route 9.
5. The traffic that could be generated at this location after a rezoning to B-1 is not compatible with 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.

The Council held a Public Hearing on the application on May 5, 2015 at which time the Council deferred action and left 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.

Mr. Lank reviewed a map showing the B-1 and C-1 zonings and Conditional Uses in the immediate area (Route 5 to Five Points at Route 1) of the application site.

Mr. Moore read the Proposed Findings of Fact previously submitted by the Applicant.

**M 202 15
Adopt
Proposed
Ordinance

DENIED**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adopt 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.

Motion Denied: 4 Nays, 1 Yea.

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

**Woodland
Park
Project**

Juel Gibbons, Project Engineer, presented the bid results for the Woodland Park Project, Contract 12-27. Four bids were received with the low bidder's price being \$204,494.00. Ms. Gibbons reported that the County has had to explore other options to maintain this as a viable project. The Sussex Conservation District (SCD) was approached and they have provided a proposal for the site work (construction of the stone dust trail) at a cost of \$99,995.00. In comparison, the price for the site work by the low bidder is \$158,284.00. The Engineering Department's estimate of the cost of the other elements (kiosk, fencing, etc.) is approximately \$45,000, which when added to the SCD site work proposal provides a total of \$145,995. It is proposed that these non-site work items be sourced via letter bids. Ms. Gibbons stated that this represents the most effective approach since, with the District's involvement, the entire project would be about \$60,000 less than the most competitive bid received. Ms. Gibbons reported that the Engineering Department recommends that the bids received be rejected since all are substantially higher than the \$142,900 amount approved by Council at its July 15, 2014 meeting; and that the site work be contracted with the Sussex Conservation District.

**M 203 15
Reject
Bids and
Contract
Work/
Woodland
Park
Project**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that all bids opened on April 9, 2015 for Contract 12-27, Woodland Park Project, be rejected, and further, that the Engineering Department move forward to contract the site work with the Sussex Conservation District at an estimated amount of \$99,995.00, with the non-site work items to be contracted via letter bids at an estimated amount of \$45,000.

Motion Adopted: 5 Yeas.

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

**Grant
Requests**

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

**M 204 15
Countywide
Youth
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$2,000.00 (\$1,000.00 from the Countywide Youth Grant Account and \$1,000 from the Human Service Grant Account) to Del-Mar-Va Council, Boy Scouts of America for program expenses.

Motion Adopted: 5 Yeas.

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

M 205 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$1,000.00 from Mr. Cole’s Councilmanic Grant Account to the Rehoboth Beach Main Street for the July 4th fireworks display.**

Motion Adopted: 5 Yeas.

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

M 206 15 Councilmanic Grant **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$1,000.00 (\$500.00 each from Mr. Vincent’s and Mr. Arlett’s Councilmanic Grant Accounts) to the Town of Laurel for the Laurel Independence Day Committee’s fireworks display.**

Motion Adopted: 5 Yeas.

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

M 207 15 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$700.00 (\$500.00 from Mr. Vincent’s Councilmanic Grant Account, \$100.00 from Mr. Arlett’s Councilmanic Grant Account, and \$100.00 from Mrs. Deaver’s Councilmanic Grant Account) to the Eastern Shore AFRAM Festival for event expenses.**

Motion Adopted: 5 Yeas.

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

M 208 15 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$7,000.00 from Mrs. Deaver’s Councilmanic Grant Account to the City of Lewes for the Lewes Historic Byways project expenses.**

Motion Adopted: 4 Yeas, 1 Nay.

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

Council Members’ Comments

Council Members’ Comments

Mrs. Deaver commented on the recent event at Broadkill Beach highlighting the beach replenishment project. (The Army Corps of Engineers will be using dredged sand from the Delaware River’s main

**Council
Members’
Comments
(continued)**

shipping channel to restore the badly eroded and storm-damaged shoreline at Broadkill Beach.) Mrs. Deaver expressed appreciation for the federal funding that makes this project possible.

Mr. Arlett stated that the Council should consider the comments received on this date regarding the AT&T cell tower application.

Mr. Arlett commented on various events he attended during the past week.

**M 209 15
Go Into
Executive
Session**

At 12:25 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation.

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 12:29 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 pending/potential litigation. The Executive Session concluded at 12:38 p.m.

**M 210 15
Reconvene
Regular
Session**

At 12:40 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, 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**

**M 211 15
Appeal
Decision
of the
Superior
Court/
AT&T**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to appeal the decision of the Superior Court in Case No. 11-296 (AT&T v. Sussex County Board of Adjustment) for the following reasons:

**MOTION
DENIED**

- The Applicant applied on multiple occasions to place a telecommunications tower on a subject property. After a public hearing on the latest application, the Board of Adjustment denied the application. Neighbors opposed the application each time the matter came before the Board of Adjustment and they spent a considerable amount of time and money arguing against the proposed tower.
- The decision of the Superior Court to modify the decision instead of affirming or reversing the Board of Adjustment’s decision differs from any prior decisions of the Court in its treatment of Board of Adjustment cases. The decision concerning Sussex County should come from its government and not a court. The modification in this case has

M 211 15 **the court making the ultimate decision and not the County. This sets a**
(continued) **bad precedent.**

Motion Denied: 3 Nays, 2 Yeas.

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

M 212 15 **At 12:46 p.m. a Motion was made by Mr. Wilson, seconded by Mr. Cole, to**
Recess **recess until 1:30 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

M 213 15 **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to reconvene**
Reconvene **at 1:30 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

Rules of **Mr. Moore read the Rules of Procedure for Public Hearings on zoning**
Procedure **applications.**

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
CU 2014 **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A**
LANDSCAPING AND SITE WORK BUSINESS TO BE LOCATED ON A
CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER
HUNDRED, SUSSEX COUNTY, CONTAINING 5.2594 ACRES, MORE
OR LESS” (Conditional Use No. 2014) filed on behalf of Jay Beach (Tax
Map I.D. 234-5.00-44.06) (911 Address – None Available).

The Planning and Zoning Commission held a Public Hearing on this
application on April 9, 2015 at which time action was deferred. On April
23, 2015 the Commission recommended that the application be approved
with the following conditions:

- a. The residence must be located in front of all accessory buildings on**
the property. No accessory buildings or storage areas shall be located
forward of the rear wall of the residence.
- b. As stated by the Applicant, he will reside on this property during the**

**Public
Hearing/
CU 2014
(continued)**

- operation of this use. The Applicant provided testimony that it will be operated much like a home occupation. As a result, the Conditional Use shall expire if the Applicant no longer resides at the property.
- c. All equipment, machinery and vehicles associated with the business must be kept inside a wood or vinyl fenced and locked area so that it is screened from view of neighboring or adjacent properties and roadways.
 - d. In addition to being located behind the residence, all equipment, storage and service buildings shall be constructed in the middle and northeast corner of the property away from the neighbors to the South as illustrated by the Applicant and be at least 200 feet from Beaver Dam Road. These structures must also be enclosed within the fenced area.
 - e. There shall not be any dirt, tree stumps, stones, mulch, or other materials stored on the property.
 - f. There shall not be any retail sales conducted from the property.
 - g. One unlighted sign, not to exceed 32 square feet per side, shall be permitted.
 - h. There shall not be any storage of junked, inoperable, unregistered or untitled vehicles or equipment on the property.
 - i. Any security lighting on the property shall be downward screened so that it does not shine on neighboring properties or roadways.
 - j. All equipment repairs and maintenance must be performed inside of a structure on the premises.
 - k. All parking areas for employees shall be shown on the Final Site Plan and clearly marked on the site.
 - l. All areas for parking equipment must be shown on the Final Site Plan and clearly marked on the site within the fenced in area.
 - m. All oils, fluids, hazardous substances, etc. associated with the business must be stored inside of a structure and disposed of in accordance with applicable laws and regulations.
 - n. The project shall be subject to all DelDOT entrance and roadway improvement requirements.
 - o. A revised Preliminary Site Plan must be submitted to the Planning and Zoning Commission depicting these conditions of approval or noting them upon it.
 - p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

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

The Council found that Jay Beach and his son were present on behalf of the application.

**Public
Hearing/
CU 2014
(continued)**

Jay Beach stated that he proposes a site work business on the site for his son; that his son started the business three years ago; that he believes the site is a perfect location; that it is located on a busy road; that the property borders a farm market/garden center to the south, equipment storage across the road at another site work company location, and a residence to the north; that no work was performed on the site prior to submitting an application; that currently they are only stockpiling dirt; that the business will have little impact on neighbors; that there will be no employees, only his son; that there are only a few pieces of equipment; that work is done offsite; that after talking with the Sussex Conservation District, he understands that he must stay under an acre of disturbed soil to qualify for a standard sediment and stormwater plan; that he wants to stay under an acre; that only one acre of the 5.25 acre parcel of land will ever be disturbed; that when they first brought soil to the site, they disturbed less than 5,000 square feet and needed no permits; that they will be needing approximately 200 loads of dirt for construction of a pole barn, driveway, and parking area, all of which will be above grade; that 200 loads of dirt could cost \$20,000; that because his son is in the business and there is a lot of construction going on, they are able to get dirt cheap or free, but they have to take it on demand, they cannot delay; that this is the reason they brought dirt to the site now; that he has permission from the Sussex Conservation District to stockpile the dirt; that once the construction is over, there will not be traffic on the site like that again; that it is a construction site and the dirt is strictly for building; that it will be a small business; that it will be a quiet site; that he plans to live on the site; that Beaver Dam Road is a busy road; that within a 5 mile area from the application site, there are six site work companies and six landscaping companies, some located on very small roads; that the proposed use is appropriate for the area; that an application was recently approved (October 2014) on Camp Arrowhead Road for an excavating company (Ordinance No. 2371 - CU 1995); that a garden center application (Ordinance No. 2388 – CU 2006) was approved for an adjacent property in March 2015; that he wants to put his residence in the back/center of the property; that he proposes that the equipment would be located by the shop which is off to the north; that he could put a 3 to 4 foot earth berm (with beach grass and shrubbery on it) across the front of the property along Beaver Dam Road; and that along the northern and southern borders of the property, he would put Leyland Cypress trees.

Mr. Beach commented on the conditions recommended by the Commission:

Regarding Condition a, he would like to put his residence in the back/center of the property.

Regarding Condition b, amend it to state that the current owner will reside on the site, instead of the applicant.

**Public
Hearing/
CU 2014
(continued)**

Regarding Condition c, a stockade fence would make the site look like a construction site and that he prefers a buffer of trees and an earth mound instead of a stockade fence.

Regarding Condition d, he realizes it was on his site plan submitted to the Commission but he did not know it would be a setback requirement and that he would not be able to add to the front of the building in the future. He would like the Council to reconsider this since he wants to add an office to the front of the building in the future.

Regarding Condition e, he would like to have stone or mulch on the site; however, no large stock piles or tree stumps.

Mr. Beach noted that he submitted pictures of bordering properties, a revised site plan, an application for standard plan approval (Sussex Conservation District), Stormwater Assessment Study, GIS, and septic plot plan.

In response to questions, Mr. Beach stated that the dirt brought to the site is from the Lewes Public Library construction site; that it is his understanding that a portion of the Lewes Library site was a brownfield site; that the contractor in charge of the Lewes Library project hauled the dirt; that they received it from the library site without knowing about the brownfield site; that a federal agency was involved; and that proper paperwork was not filed by the contractor.

Mr. Moore commented that the Council could have a condition of approval requiring sufficient paperwork to satisfy that there was no tainted dirt on the property.

Public comments were heard.

Tom Kucharik, an adjacent property owner, spoke in opposition to the project. He stated that he operates a farm and a greenhouse business on the site where he lives; that his business is agriculture related; that the Applicant told him they were going to have a little business – landscaping and site work; that big dump trucks brought dirt to the site; that the dirt came from the Lewes Library site, a brownfield site; that he called DNREC and DNREC looked into it and halted delivery of the soils; that initial screenings showed elevated levels of arsenic and mercury in the soil; that this triggered a risk assessment and DNREC determined that it posed no harm; that the Applicant then filed for a permit to stockpile and this would allow the Applicant to create a stockpile one acre in size, 20 feet in the air; that it is windy in the area with no trees and the dirt and dust will be a nuisance; that the proposal is not a landscape business; that it would be a heavy equipment, dirty, noisy business – an industrial site; that the Commission’s proposed 16 conditions show that there is concern; that if the Applicant builds up his land, the other properties around the site will flood;

**Public
Hearing/
CU 2014
(continued)**

and that this application will be detrimental to his farm and greenhouses.

Mr. Kucharik submitted letters from neighbors living directly behind the proposed site (Maria Andrews, James Andrews, and Paul Bourbonnais) in opposition to the application. The letters were made a part of the record.

Mr. Kucharik also submitted pictures and copies of text messages with Mr. Beach.

Joseph Morris of Beaver Dam Road, adjacent property owner, stated that the property has been agricultural / residential since 1848; that he has concerns about Mr. Beach's plans for the property; that a family member was told by Mr. Beach that he was going to move his horse farm onto this property; that he was told by Mr. Beach that he was simply going to build a residence; that there was no mention of a commercial business on the property; that the Applicant has told many different stories; that the Applicant wants to put his sewer and leach field right up next to his property line, which is not correct or appropriate; that the Applicant states that his engineer says it has to be placed there; that the Applicant is not planning a landscape business; that it will be a construction site and excavation business; that the Applicant should have to build his home on the site first and put screening up; that the proposed use is not a quiet use; that the Applicant has brought dirt in and there is concern about contamination of the soil; that run-off will create leaching into the ground and will contaminate wells; that he is concerned about the stewardship of the land; and that it is unknown if the business across the road that the Applicant has referred to is a permitted use.

Matthew Cottrell of Beaver Dam Road stated that he is curious about the site across the road from where the proposed use is; that there is a lot of heavy equipment on that site (Kuhn Construction); that he researched the site in the Planning and Zoning Office and found that there has never been an application for a Conditional Use there and no one is living there; and that it would set a bad precedent to use that site as an example for Mr. Beach's application.

Mike Miller of Jimtown Road commented on the proposed landscape business; that it sounds like the applicant wants a full-blown business on the site; that the son has never spoken and if it is to be the son's business, he should speak on what he is planning on doing; and that if the Conditional Use is approved, the property could be sold and someone else could run the business.

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

**M 214 15
Defer
CU 2014**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on Conditional Use No. 2014 filed on behalf of Jay Beach, and to leave the record open for the purpose of obtaining information from DNREC, Sussex

**M 214 15
Defer
Action on
CU 2014
and
Leave
Record
Open
(continued)**

Conservation District, and any other appropriate agencies concerning the soils brought to the property; following receipt of the information by the Planning and Zoning Office, a report will be made to Council during public session, after which time the record will remain open for 15 days for written public comment on the information received.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Request for
Modified
Conditions**

Mr. Cole also requested staff/legal to prepare a modified list of proposed conditions based on the Applicant’s testimony on this date.

Mr. Vincent left the meeting during following public comment on this Public Hearing. Mr. Wilson presided over remainder of the meeting.

**Public
Hearing/
CZ 1764**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NUMBERS 1, 4, 13, AND 17 IMPOSED ON ORDINANCE NO. 1770 FOR CHANGE OF ZONE NO. 1554, THE APPLICATION OF MARINE FARM, LLC FOR THE COASTAL CLUB, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, AND TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, FOR A 13.425 ACRES, MORE OR LESS, PORTION OF THE PROPERTY” (Change of Zone No. 1764) filed on behalf of Coastal Club, LLC (Tax I.D. No. 334-11.00-5.00, 395.00 and 396.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on April 9, 2015 at which time action was deferred. On April 23, 2015, the Commission recommended that the application be approved with conditions.

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

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

Mr. Lank distributed Exhibit Books and Exhibit Packets submitted by the Applicant.

Public
Hearing/
CZ 1764
(continued)

The Council found that Preston Schell and Blake Thompson, Principals, were present with James Fuqua, Attorney; and Zac Crouch, Professional Engineer.

Mr. Fuqua stated that they are applying to rezone a 13.4 acre portion of the property from MR-RPC to MR by abandoning the RPC overlay, and to amend or modify four of the Conditions of Approval relating to C/Z #1554; that the MR/RPC zoning was approved by the Sussex County Council in April 2005 with 18 Conditions of Approval; that there has been a change in ownership over the last 10 years; that the original project was known as the Marine Farm; that the original project went into default; that Coastal Club, LLC is the current owner and developer of the property; that the applicants purchased the property from the lender and have started developing Phase One of the project; that the request for rezoning is for a 13.4 acre portion of the property that fronts Beaver Dam Road and is separated by a branch and wetlands from the larger portion of the site; that a wastewater treatment facility was originally intended for the project; that the project will now be served by Sussex County sanitary sewer; that the sanitary sewer system is now under construction, therefore there is no need for a private sewerage treatment facility; that this rezoning will not impact the original RPC; that there will be little to no impact on the density of the project; that the MR zoning will remain with the 13.4 acre portion of the property; that in 2007, two years after the original approval, a request was applied for by Marine Farm (at the request of some residents) to amend the Conditions of Approval on behalf of the residents of Jimtown Road as the Conditions of Approval related to these same items; that the Planning and Zoning Commission recommended that the request be denied, and not long after the developers withdrew their requests; that the original Conditions of Approval reference “if desired by the residents of Jim Town” which was not clear; that the current developers of the project desired to get the opinion of the residents of Jimtown and asked for assistance from the County and the First State Community Action Agency; that in 2014 the First State Community Action Agency assisted the developers by holding a public meeting to ballot the residents to determine if street lighting and sidewalks were supported by the residents; that it was determined that 44 residents could vote; that 29 of the residents were property owners; that letters were sent to the 29 property owners; that it was reported that in reference to street lighting there were ten (10) votes in support and four (4) votes in opposition; that in reference to sidewalks there were eleven (11) votes in support and three (3) votes in opposition; that since only 14 residents voted it was not clear what the majority of the residents want; that after 10 years, the question of the desire of the residents is still not a decided issue; that it was never the intent of the original developer or the current developers to get out of building sidewalks or street lighting; that they are seeking guidance from the County; that ballots were issued to the property owners; that letters were sent out requesting a response on the ballots; that staff of First State Community Action Agency talked to residents in the area in July 2014 and asked the residents to communicate; that there appeared to be

**Public
Hearing/
CZ 1764
(continued)**

some strong support and some strong negativity; that all responses received were from property owners; that some want sidewalks and some don't; and that any one resident can refuse to grant an easement for a sidewalk on their property.

Mr. Crouch presented 3 scenarios for sidewalks and stated that they have found that the pavement is higher at the crown of the road than the properties; that the ditches may have to be moved; that either a drainage easement or the sidewalks will be on private properties; that the ordinance references that sidewalks shall be located on one side of Jimtown Road, not both sides, therefore, the question remains as to which side will the sidewalks be built upon; that the developers are happy to install both sidewalks and street lighting, and are only asking for direction; and that the southwesterly side of Jimtown Road seems to be the least impacting on the residents. Mr. Crouch presented exhibits showing existing conditions of the roads and ditches and topographical issues that need to be addressed if sidewalks are placed. Mr. Crouch noted that some of the property owners do not want sidewalks on their land or do not want to give up land for sidewalks.

Mr. Crouch commented that Mike Miller (a Jimtown resident), Jeff Reed of DelDOT and Senator Lopez met on May 18th in Jimtown and that the resulting comment was why can't the road be lowered by 2 or 3 feet. Mr. Crouch responded to that comment.

Mr. Fuqua stated that the Applicant is proposing that the pedestrian walkway be on the southwest side of the street where there would be less impact; that the Planning and Zoning Commission recommended the northeast side of the street; that there are more houses on the northeast side that complicates the easements; that it can be a traditional sidewalk or a pedestrian bike lane along Jimtown Road; that it can be in the right-of-way or an easement; and that they need the property owners to grant easements so the developer can construct an improvement on that property.

Mr. Fuqua distributed a summary of the Applicant's response to the Planning and Zoning Commission's recommendations (six separate Motions):

Motion No. 1

Modify Condition No. 4 to state *"The development shall be served by central sewer as part of a Sussex County Sewer District"*.

- This is acceptable to the Applicant.

Public
Hearing/
CZ 1764
(continued)

Modify Condition No. 17A to state:

“At its sole cost and expense, Developer will provide the properties of Jimtown with lateral and gravity connections to a Sussex County Sewer District, whereby capacity is allocated in accordance with the Goslee Creek Planning Study. The Jimtown service area is described as those properties with frontage on Jimtown Road that are located between the existing bridge at Goslee Creek and the intersection of Beaver Dam Road

At its sole cost and expense, the Developer will complete construction of a sanitary sewer transmission system of sufficient size to convey the Jimtown sewerage through the Coastal Club sanitary sewer system to the Sussex County sewer system within three (3) years of the commencement of construction on the Coastal Club site. Based upon the established date of construction commencement (May 23, 2014), the Developer must complete the Jimtown transmission system by May 22, 2017.

At its sole cost and expense, Developer will engineer and construct a sanitary sewer collection system within Jimtown Road from the bridge to the intersection of Jimtown and Beaver Dam Roads, and connect it to the Coastal Club transmission system. The home, lot or parcel owners will not be responsible for any System Connection Charges (SCC’s) if connected to the Central Sewer within three (3) years from the date of substantial completion of the Sewer System. The Developer shall be responsible for paying the SCC for any existing home connecting during the three (3) year period. No home, lot or parcel owners of Jimtown shall be required by Sussex County to hook up to the central sewer unless they choose to do so.

Each resident of Jimtown that chooses to hook up to the Coastal Club sanitary sewer system, with such hookup being solely at the discretion of each individual property owner, will pay the use rates set by Sussex County.”

- This is acceptable to the Applicant.

Motion No. 2

Modify Condition No. 17(C) to state *“Within two (2) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense will provide for the installation of all streetlights required by DelDOT together with streetlights on each telephone pole along Jimtown Road between the existing bridge at Goslee Creek and the intersection with Beaver Dam Road. Additionally, all street light rental or service charges (for these streetlights only) will be borne by Coastal Club, LLC, its successors or assigns.”*

- This is acceptable to the Applicant.

Public
Hearing/
CZ 1764
(continued)

Motion No. 3

Modify Condition 17(D) to state *“Within three (3) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense shall provide a sidewalk within the Jimtown Road right of way on the northeast side of Jimtown Road from the existing bridge over Goslee Creek to the intersection of Jimtown Road and Beaver Dam Road in accordance with the approval of DelDOT and the Sussex Conservation District.”*

- The Applicant proposes that Conditions 17(D) be modified as follows: *Within three (3) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense shall provide a sidewalk or pedestrian/bike lane within the Jimtown Road right of way or on easements granted by property owners, on the southwest side of Jimtown Road from the existing bridge over Goslee Creek to the intersection of Jimtown Road and Beaver Dam Road in accordance with the approval of DelDOT and the Sussex Conservation District.*

Motion No. 4

Modify Condition No. 1 to state *“The maximum number of dwelling units shall not exceed 630 of which at least 412 shall be located on single family lots. The 20 lots with roadway connection to Jimtown Road shall be eliminated. The roadway connection to Jimtown Road shall be eliminated.”*

- This is acceptable to the Applicant.

Motion No. 5

Recommend denial of part of CZ #1764 relating to the removal of the Residential Planned Community overlay from 13.4 acres of land that was originally part of the Coastal Club RPC. (The property should remain subject to the MR/RPC as originally contemplated for the Coastal Club residential project.)

- The Applicant proposes that *“The 13.4 acre site was the planned location of a wastewater treatment plant which is no longer necessary due to the development’s location in a Sussex County Sewer District. The 13.4 acre parcel is therefore removed from the RPC designation but shall revert to its original AR-1 zoning designation.”*

Motion No. 6

“The former 42-acre “Wildlife Habitat Area” shall remain an open, natural area in perpetuity, with uses limited to trails and other passive recreational uses. There shall not be any residences, structures, pool, clubhouse, or similar

Public
Hearing/
CZ 1764
(continued)

amenities constructed within this area.”

- The Applicant agrees with the following additional language: “, except elevated community garden plots, improvements associated with the community garden (such as storage buildings, gazebos, a community farmer’s market and similar improvements) and a replica lighthouse.”

Public comments were heard.

Michael Miller, a resident and property owner in Jimtown, stated that, 10 years ago when the application was approved, the sewer was to be completed for the Jimtown residents within three years; that all the improvements should have been completed by now; that there are many more developments in the area than 10 years ago; that Jimtown is a cut-through; that the new developer (Coastal Club) is now asking for a change in requirements; that the Applicant is now proposing uses in the area that was designated as the Bald Eagle preservation area (42 acre eagle wildlife habitat conservation area); that during the public meeting, the Applicant said they wanted to remove the area since the eagle is not there and that they did not want to build anything on it; that it was stated that 44 residents live in Jimtown; that in the vote for streetlights (10 yes votes and 4 no votes), one of the 10 represents his vote although he owns 4 properties; that other people only got one vote but own more properties; that the vote should reflect more votes in favor of streetlights; that the developer says they still do not know how the residents want them to proceed; that the majority says they want the streetlights and the sidewalks; that it is time for the streetlights and sidewalks to be installed; that the one year time frame should not be extended to two years; if they went by the ordinance, there would be 27 new poles erected with streetlights (from Beaver Dam to the bridge); that he proposes a total of 21 streetlights on the entire length of Jimtown Road, from Robinsonville Road to Beaver Dam Road, which is a distance of 2,700 feet; that 15 of the 21 streetlights would be on existing poles; that this would still be less than the 27 required by the ordinance; that there is more traffic on this road in comparison to 10 years ago; that they were never supposed to vote on sewer; that was never question to be brought to the residents; that only the question of streetlights and sidewalks was to be brought to the residents; that the residents of Jimtown want access to sewer; that the 3-year stipulation is too long; that they have already waited 10 years; that he would like to know what the plan is and what the schedule is; that regarding sidewalks, the ordinance states that “if desired by the residents of Jimtown”, within one year of commencement of construction, Marine Farm (now Coastal Club) at its sole cost and expense will provide a sidewalk; that there was never a dollar figure placed on how it would get done; that the votes that came in were on the side where most homes are located in Jimtown (the northeast side); that the residents voted that they want the sidewalks and they want the sidewalks on their side; that the Jimtown residents are to get to decide where they want the sidewalks;

**Public
Hearing/
CZ 1764
(continued)**

that the plans laid out by the Applicant are for sidewalks on the other side of the road; that Senator Lopez and Jeff Reed of DelDOT came out and toured Jimtown; that he questioned if the road can be graded down; that there is a 50 foot right-of-way on Jimtown Road; that the drainage ditches could be covered; and that there is space for pavement, curbing with eyelets, and guttering with sidewalks.

Reverend Wendell Hall, Sr., resident and property owner on Jimtown Road, stated that Jimtown is a historical community; that more developments in the area are bringing more traffic; that they are trying to get the best they can to minimize the impact; that in regard to Reese's Lane, it is important that it be maintained only for emergency access or something of that nature and not an access of 600 homes coming through Jimtown Road; that in regard to sewer, he proposes that the money it costs for residents to be hooked up be put in an escrow account so that the current homeowners would be able to access the funds for connection at their leisure; that in regard to the sidewalk issue, it was proposed to be on the side of the street where most of the houses are; that there are 16 houses on the east side and 9 houses on the west side; that half of the property on the west side is farm land; that the sidewalks should be located on the side where the people who access them the most live; and that he is for the improvements of Jimtown.

Roslyn Allen Echols stated that she owns interest in a property on Jimtown Road; that the majority of property owners in Jimtown are still not interested in sidewalks, streetlights, sewer, or water; that she has objections to First State Community Action Agency being hired to come to Jimtown to conduct a poll as to whether or not the individuals in Jimtown want streetlights or sidewalks; that her first objection to this is that it was said to find out the will of the people; that the people have already turned in a petition stating that they did not want sewer, sidewalks, streetlights, or water; that she questions if Reese's Lane (part of Condition 17) has been transferred; that in accordance with the Ordinance that was passed, Reese's Lane would go to the property owners and the easement rights would be transferred to the individuals abutting the lane; that it was to be transferred, without stipulation; that she questions how the easement rights "to Mr. and Mrs. Reese and the parties abutting the driveway" can be given to another party when it was not specified in the ordinance; that there is an issue regarding the sewer and Reese's Lane; that, in regards to sewer, residents of Jimtown were told that they were covered under Marine Farm's application to have the sewer lines going down the street and they would have to connect; that it is her understanding from the Public Service Commission, that the application only covers the lots that were in Marine Farm and she questions how the individuals in Jimtown can be made to connect to a sewer; that they were supposed to have a choice; that how could they even be made to choose when they were not covered under the PSC application; that this is a misrepresentation of their choices then and now; that the citizens of Jimtown are not insular and they understood their

**Public
Hearing/
CZ 1764
(continued)**

choices; that their petition in opposition was based on knowledge and information provided; that they declined sewer service because some of the individuals in the town were disabled and did not have the income; that they contacted several organizations to get information about loans and grants for individual septic systems; that accepting the sewer service would put them at risk of losing their homes; that they looked at the November 18th letter, which was part of the ordinance and gave them a choice as to whether or not to connect; that they have been given no accurate information about sewer service costs; that they have had their wells checked and they do not want water service; that they do not want streetlights which will cause light pollution and may cause more crime; that they do not need streetlights; that in regard to ditches and Mr. Miller's presentation on ditches, Ms. Echols stated that the ditches have been cleaned and the broken conduit's replaced and that they had little to no standing water; that they want their earlier petition in opposition respected and their will respected; that they do not want letters to the Planning and Zoning Director taken out; and that they want the letter of November 18th to be a matter of record stating that they are in the same position as 10 years ago.

Gaye Allen, a resident of Maryland, stated that she owns 3 parcels of land in Jimtown; that she concurs with Rose Allen Echols' comments; that she does not want to give any portion of her land toward having sidewalks installed; and that she does not see a need for sidewalks.

Mr. Moore commented on Ms. Echols comment on Reese's Lane and stated that this matter is being researched and Council will be advised.

There were no additional public comments.

At the request of Mr. Moore, Michael Izzo, County Engineer, responded to a question as to when the sewer hook-up would take place. Mr. Izzo stated that the original application that was approved in 2005 allowed for a three year period; and that when the Department submitted comments on the revised application, they mimicked the original application, which said 3 years from the original date that construction commences. That this date has been established as May 23, 2014; therefore, sewer would have to be completed by May 22, 2017. Mr. Izzo advised that a Concept Plan has been approved; and that sewer would extend down Reese's Lane to Jimtown Road to the Beaver Dam Road intersection.

The public record and Public Hearing were closed.

**M 215 15
Defer
Action/
CZ 1764**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1764) filed on behalf of Coastal Club, LLC.

Motion Adopted: 4 Yeas, 1 Absent.

**M 215 15
(continued)**

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

**Public
Hearing/
CZ 1768**

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-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 49.66 ACRES, MORE OR LESS” (Change of Zone No. 1768) filed on behalf of Convergence Communities (Tax Map I.D. No. 134-17.00-12.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on April 9, 2015 at which time the Commission deferred action for further consideration and for review of the amenities.

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

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

The Applicant provided copies of an Exhibit Book and Exhibit Booklet, which were distributed to the Council.

Spencer Van Schaack, the Applicants’ representative, was present with James Fuqua, Attorney, and Zac Crouch, Professional Engineer. They stated that they are proposing to develop this 49.66 acre site with 164 residential units (120 single family dwellings and 44 townhouse units); that the site is located north of Muddy Neck Road and to the rear of the Ocean View Beach Club development which is currently under construction; that the Ocean View Beach Club development is a Residential Planned Community (RPC) approved by the Town of Ocean View for 300 residential units (150 single family dwellings and 150 multi-family dwellings) and a .6 acre parcel of commercial use within the Town of Ocean View; that residential developments surround the property with Ocean Way Estates Subdivision to the north and west and the Assawoman Canal and Sea Colony West RPC to the east, with Clearwater RPC, South Hampton RPC, Waterside RPC, and Bethany Meadows, and many other developments in the area; that Convergence Communities are purchasing the property from the Trustees of the Protestant Episcopal Church of Delaware, except for a 5.25 acre parcel with an access easement which is intended for a church in the future; that the property was originally gifted to the Trustees by Mary Lighthipe; that the Trustees entered into an agreement with Martha’s Light, LLC who applied for a Conditional Use for a continuing care

**Public
Hearing/
CZ 1768
(continued)**

retirement facility; that the facility was never built and the applicants are now applying for this Residential Planned Community; that water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Sussex County; that the site is located in the Millville Fire Company service area; that there are no endangered species or critical animal habitat, archaeological sites, or National Register listed sites associated with the property; that Delmarva Power will provide electrical service; that access is proposed through the Ocean View Beach Club which is being developed by the same developers; that the same entrance from Muddy Neck Road will be utilized; that Convergence Communities is the developer of both sites; that this proposal is an additional phase of the Ocean View Beach Club; that the recreational amenities that will be built in the Ocean View Beach Club include an 8,000 square foot clubhouse consisting of a fitness center, spa, and indoor swimming pool; that there will also be an outdoor swimming pool, multi-use sports courts, community walking trails, and gardens; that these amenities will serve both projects; that in the proposed development will be areas containing open space for small park areas and tot lots and a right-of-way along the Assawoman Canal for a proposed canal trail; that according to the Strategies for State Policies and Spending documents the site is located in an Investment Level 2 Area, where growth is anticipated; that this is a highly dense area; that the parcel is in the Environmentally Sensitive Development Area, a growth area; that DNREC asked that there be a connection to the Assawoman Canal which is part of the Ocean View Beach Club; that 5 parcels are interconnected to reach out to the Assawoman Canal; that stormwater management facilities and erosion and sedimentation control facilities will be improved per the requirements of the Sussex Conservation District; that the existing ditches will remain and be cleaned out; that the pipes in the ditches will be cleaned out and regraded and the 12-inch pipe will be replaced with a 36-inch pipe; that they are planning on using retention ponds and bio-swales in the design; that a 20-foot wide landscape buffer will surround the project; that this is an infill residential project; and that the use is in character with the area.

In response to questions, Mr. Fuqua noted that the Ocean View Beach Club is in the Town of Ocean View; that this application is located outside of the Town and is in the County's jurisdiction; that calls for police will most likely go to the Town and to the State Police; that it is a possibility they will seek annexation in the future; that annexation is an option for a property owner; and that it was a business decision to not seek annexation. Mr. Crouch noted that the streets in the Ocean View Beach Club will be owned by the Town of Ocean View and the streets in the proposed project will be owned by the HOA and will be built to County specifications.

Mr. Fuqua submitted proposed Findings of Fact and Conditions of Approval.

**Public
Hearing/
CZ 1768
(continued)**

Mr. Fuqua stated that Colby Cox is the managing partner of Convergence Communities and he has authorized Mr. Fuqua to represent that Convergence Communities or its successors will voluntarily donate \$500 to the Sussex County Land Trust from the initial sale of each home in the new development. The money would be collected and paid at settlement.

There were no public comments.

The public record and Public Hearing were closed.

**M 216 15
Defer
Action on
CZ 1768**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1768 filed on behalf of Convergence Communities.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 217 15
Adjourn**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 6:55 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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

Respectfully submitted

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