

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 26, 2016

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 26, 2016, 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
Robert B. Arlett	Councilman
Joan R. Deaver	Councilwoman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
David N. Rutt	Assistant County Attorney

Councilman George Cole was absent.

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 378 16
Approve
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to amend the Agenda by deleting "Approval of Minutes" and "Introduction of Proposed Zoning Ordinances"; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Corre-
spondence**

Mr. Rutt read the following correspondence:

BAYHEALTH, DOVER, DELAWARE.

RE: Letter in appreciation of Council's support of Bayhealth's new health campus project.

**Public
Comments**

Public Comments

Paul Reiger commented on diversification of members on the Planning and Zoning Commission.

**Adminis-
trator's
Report**

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

1. Free Shot Clinic

Administrator's Report (continued)	<p>The Office of Animal Welfare will be hosting a free shot clinic on Saturday, August 6th, from 10:00 a.m. to 12:00 noon at their office located at 26351 Patriots Way in Georgetown. Free vaccinations and microchips will be available. For more information, please contact the Georgetown office at 302-516-1004.</p>
	<p>Mr. Vincent recused himself from the discussion and possible vote on the Agenda item entitled "Mobile Command Unit – Frontline Contract".</p>
Pass Gavel	<p>Mr. Vincent passed the gavel to Mr. Wilson.</p>
Mobile Command Unit	<p>Joe Thomas, Director of Emergency Operations, presented a Proposed Agreement and Contract to purchase a new Mobile Command Unit. He explained the uses of the Mobile Command Unit (MCU) and noted that the current MCU is 15 years old with outdated technology. Mr. Thomas reported that the purchase would be made through a State contract vendor; Government Support Services, Office of Management and Budget has entered into a cooperative agreement with Houston-Galveston Area Council of Governments (HGACBUY) and Frontline is the vendor awarded in the HGACBUY agreement. Mr. Thomas reviewed the cost of the equipped MCU (\$1,640,200) and the grants that will help fund the purchase (DEMA/FEMA grant funding in the amount of \$945,400); total cost to the County would be \$694,800. It was noted that there may be the opportunity to sell the current MCU to another agency.</p>
M 379 16 Agreement/ Mobile Command Unit/ Motions Withdrawn	<p>A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, that the Sussex County Council approves the Director of Emergency Operations Center to move forward with an Agreement with Frontline Communications to purchase a Mobile Command Unit in the amount of \$1,369,736.60.</p> <p>Mrs. Deaver and Mr. Arlett withdrew their Motions.</p>
M 380 16 Defer Action on Mobile Command Unit	<p>A Motion was made by Mr. Arlett, seconded by Mrs. Deaver, to defer action on "Mobile Command Unit – Frontline Contract" for one week.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
Pass Gavel	<p>Mr. Wilson passed the gavel to Mr. Vincent.</p>
County Rental Program	<p>Brandy Nauman, Fair Housing Compliance Officer, discussed modifying the Sussex County Rental Program (SCRIP) to encourage the development of more affordable rental housing. She noted that the</p>

**Proposed
Modifi-
cations to
County
Rental
Program
(continued)**

need in the County has shifted from home ownership to rentals and the County's Rental Program needs to be updated so it reflects current market conditions. Mrs. Nauman reported that the Community Development & Housing Department held an initial meeting with stakeholders for some preliminary input on potential changes to the SCRPP. Following are some proposed modifications to the SCRPP that were discussed:

- Changing the current affordable unit set-aside requirements
- Setting fixed rental rates based on bedroom size
- Eliminating the 25-unit minimum project size
- Developer/Property Manager to determine tenant eligibility
- Floating unit concept to accommodate increases in tenant income

Mrs. Nauman presented information on household incomes and rental costs and advised that, with Council's approval, the Community Development & Housing Department will work with Legal to prepare a proposed amendment to the existing ordinance for Council's consideration.

**Lease
Amend-
ment/
Deli
Days,
LLC**

Jim Hickin, Director of Airport and Industrial Park, presented a Lease Amendment with Deli Days, LLC for the restaurant space at the Airport. Deli Days, LLC has operated Arena's at the Airport since March 2013. Mr. Hickin reported that the Lease Amendment will do the following:

- Extends the initial term of the lease from March 31, 2018 to March 31, 2022
- Changes the rent structure from a percent of sales (with cap) to a fixed rent
- Transfers ownership of the restaurant equipment and furniture to Deli Days
- County to loan Deli Days up to \$25,000 for new furniture and equipment; loan to be repaid over five years

Mr. Hickin noted that the Lease Amendment will maintain Arena's as a tenant for four additional years, as well as assist in a much needed upgrade to the facility.

**M 381 16
Execute
Lease
Amendment
for Deli
Days, LLC**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, that the Sussex County Council authorizes the Council President to execute a Lease Amendment with Deli Days, LLC for the restaurant and banquet room space in the Airport Terminal Building, as presented.

Motion Adopted: 4 Yeas, 1 Absent.

M 381 16 (continued)	Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
M 382 16 Recess and Go Into Executive Session	At 10:40 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Wilson, to recess and go into Executive Session to discuss matters relating to Pending Litigation and Land Acquisition. Motion Adopted: 4 Yeas, 1 Absent. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
Executive Session	At 10:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to Pending Litigation and Land Acquisition. The Executive Session concluded at 11:50 a.m.
M 383 16 Reconvene	At 11:57 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted: 3 Yeas, 2 Absent. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent; Mr. Arlett, Yea; Mr. Wilson, Absent; Mr. Vincent, Yea
E/S Action	There was no action on Executive Session matters.
M 384 16 Recess	At 11:57 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to recess until 1:30 p.m. Motion Adopted: 3 Yeas, 2 Absent. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent; Mr. Arlett, Yea; Mr. Wilson, Absent; Mr. Vincent, Yea
M 385 16 Reconvene	At 1:33 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to reconvene.
Rules	Mr. Rutt read the Rules of Procedure for Public Hearings.
Public Hearing/ CZ 1801	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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN

**Public
Hearing/
CZ 1801
(continued)**

RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.689 ACRE, MORE OR LESS” (Change of Zone No. 1801) filed on behalf of Long Neck Road, LLC (Tax Map I.D. No. 234-23.00-307.02) (911 Address: 32549 Long Neck Road, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on June 23, 2016 at which time the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated June 23, 2016.)

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

Mr. Lank distributed Exhibit Booklets provided by the Applicant.

The Council found that Dennis Schrader, Attorney, was present on behalf of the application with Chris Kalil, a Principal of Long Neck Road, LLC. They stated that the property is owned by Long Neck Road, LLC; that the property is located on the existing thoroughfare for the Long Neck area, an area of significant residential and commercial growth; that the site is presently improved with a dwelling, detached garage, and outbuildings; that the site is virtually surrounded by properties that are zoned for commercial and business activities; that DelDOT has reviewed the project and did not require a Traffic Impact Study; that the proposed project is in character with the area; that the proposed project complies with the County’s Comprehensive Plan and the Environmentally Sensitive Development District Overlay Zone requirements; that the Applicant proposes to develop the property for retail; that there will be security lighting and screening for privacy; and that the rezoning is an infill parcel surrounding by other business and commercial zonings; and that the proposed project will not negatively impact the value of properties in the area.

Public comments were heard.

Debra Harmon stated that she is an adjacent property owner and that she questions the type of retail store that is proposed due to traffic concerns.

In response, the Applicant stated that the limited availability of parking spaces (18) will limit the retail use of the property.

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

**M 386 16
Adopt
Ordinance
No. 2459**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to Adopt Ordinance No. 2459 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN

**M 386 16
Adopt
Ordinance
No. 2459/
CZ 1801
(continued)**

AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.689 ACRE, MORE OR LESS” (Change of Zone No. 1801) filed on behalf of Long Neck Road, LLC.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
CU 2049**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.5052 ACRES, MORE OR LESS” (Conditional Use No. 2049) filed on behalf of Blue Claw, LLC (Tax I.D. No. 234-34.00-298.01 & 292.00) (911 Address: 30842 Downs Landing Road, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on May 26, 2016 at which time action was deferred. On June 23, 2016 the Commission recommended that the application be denied.

(See the minutes of the Planning and Zoning Commission dated May 26 and June 23, 2016.)

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

Mr. Lank reported that a total of 18 letters of support and 19 letters of opposition have been received.

The Council found that John VanCleve was present on behalf of his application. He explained that he purchased the property from Blue Claw, LLC; that Blue Claw, LLC no longer exists; and that his Attorney mis-filed the application under the name of Blue Claw, LLC. Mr. VanCleve stated that that he is a resident of Gull Point; that a lot of false information has been presented regarding his application, including in a petition and in a letter from the law office of Robert J. Valihura. Mr. VanCleve stated that his application is for a limited use of a boat storage lot - a parking lot only for the parking of boats on trailers or parking of boat trailers; that there will not be a boat lift; that no repair work would be done on the site with the exception of changing tires; that the proposal is for the back lot only although the application was required to consist of both portions of the lot; that a barn exists on the property; that there will be no increase in traffic as a result of this application; that there have been no reports of vagrants on the property; that it is only speculation that the proposed use will

**Public
Hearing/
CU 2049
(continued)**

depreciate the value of homes in the area; that the 6 foot fence on the property does not belong to him; that the fence runs the property line; that all the trees bordering Gull Point have been removed and tree replacement is an issue for Gull Point to address on the other side of the fence; that he has applied to DelDOT for a 40 foot right-of-way area for an easement on the opposite side of the house in question; that there is a 40 foot expanse between his property line and the house, which is sufficient to get in and out of the lot and to allow an access road to come in off of Downs Landing Road; that the lot is covered by surveillance; that he has cleared and cleaned the site; that there is no sewer, water or electric available on the lot to be used for parking but there is for the house and the garage on the lot; that it is a parking lot only; that there has not been any increase in road traffic on Downs Landing Road; that his intention for the Conditional Use was to start a small business to allow friends and residents in the community to park boats/boat trailers on the lot (approximately 30-40 trailers; 40-50 would be capacity); that boats will not be washed on the lot; that the entire lot is outside of the Gull Point property; that the lot is a continuation of his property (30842 Downs Landing Road) and that he rents the house on the property (front lot); that every trailer is currently tagged, with the exception of one that is from North Carolina and North Carolina does not require that it be tagged; that all trailers and boats currently on the lot are owned by residents of Gull Point; and that there are currently 13 units on the site, one of which he owns.

Mr. Lank explained that the application had to include both lots because the only access to the rear lot is through the front lot.

The Applicant submitted Exhibits 1 through 7 consisting of photos and a survey.

Mr. Rutt questioned the filing of the application under Blue Claw, LLC and stated that he thinks it creates a problem and that he would like time to look into it.

Mr. Lank stated that the application was originally filed by James Fuqua, Attorney, on behalf of Blue Claw, LLC; that after the application was introduced, the Applicant clarified it was his property and that he wanted it to continue through the process; and that the application was left under the name of Blue Claw, LLC since that was the original application reference and it had already been introduced.

Public comments were heard.

Richard Robichaud and Dr. Brian Rebisz spoke in support of the application. They stated that the proposed use is in line with the adjacent marina community (Gull Point); that the proposed use offers an additional amenity in the area; that it will provide a service to area residents – a place where they can store their boats, especially in storm situations; that the area is a boating community and there is a boat ramp nearby; that the proposed

**Public
Hearing/
CU 2049
(continued)**

use will not negatively impact the area; that the Applicant cleaned up a “dump” and improved the property and quality of life for Gull Point; that there are other business/commercial uses in the area, some of which are not in compliance; and that someone lives on the site which will provide more security.

Robert J. Valihura, Attorney, spoke on behalf of the Gull Point Homeowners Association in opposition to the proposed Conditional Use. He stated that there is no Applicant present on this date; that there is only a paper record of someone who made application; that the Applicant is not before the Council at this Public Hearing; that the person in attendance on this date is the landowner; that it is unknown if there is any authority to move forward with this application; and that for this reason, the application cannot go forward until the real party applies; that if the application is approved, it is unknown if the application can be transferred to the current owner; that this is unprecedented; that the proposed use would be a commercial establishment in the middle of a residential development; that the Applicant wants to expand the facility; that in regard to access to the site, it is unknown if DelDOT has granted access; that there is no need for this facility; that the proposed use should be placed on a site that is properly zoned; that there are already existing facilities to meet boat storage needs in the area; and that if he receives approval, he could expand the use to include multiple layer stacks of boats which the 6 foot high fence will not sufficiently screen. Mr. Valihura’s letter was made a part of the record.

Alfred Haynes, Wolfgang von Baumgart, George Oakjones, and Teresa Townsend spoke in opposition to the application. They commented on how the proposed use will impact the community and stated that none of the residents in the community are boaters; that it would be a convenience for Gull Point residents but not for the six area residents; that there are other boat storage businesses in close proximity; that it is a departure from the County’s Land Use Plan; that the proposal is for a marine use in an Agricultural Residential District; that the application is not properly or legally filed; that there are overriding safety considerations; that the proposed use is a security concern; and that they have a petition with 44 signatures and a letter opposing the proposed boat yard.

The Opposition submitted Exhibits 1 – 4 consisting of letters, a petition, and photos.

The Public Hearing was closed.

Mr. Rutt advised that he will look into the matter of whether or not the application can move forward as filed under Blue Claw, LLC and Council discussed deferring action on the application for the opinion of the County’s Legal Counsel.

**Public
Hearing
(continued)**

It was noted that this application is located in Councilman Cole's District and that since he was absent for the Public Hearing, he may wish to listen to the recording of the Hearing and participate in the vote on the application.

**M 387 16
Defer
Action
CU 2049**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to defer action on Conditional Use No. 2049 filed on behalf of Blue Claw, LLC.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 388 16
Adjourn**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to adjourn at 3:22 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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

Respectfully submitted,

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

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