

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 27, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 27, 2021, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina 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 320 21
Amend
and
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to amend the Agenda by deleting “Recognition of former Board of Adjustment member Brent Workman”, and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

It was noted that the recognition will be rescheduled.

**Minutes
Approved**

The minutes of July 13, 2021 were approved by consent.

**M 321 21
Amend
06/29/21
Minutes**

A Motion was made by Mrs. Green, seconded by Mr. Rieley, to amend the minutes of June 29, 2021 (Motion No. M 273 21) to reflect that the donation to the Little League Baseball, Inc. for Woodbridge Little League field upgrades was \$5,000.00, not \$2,500.00 (\$5,000.00 from Mrs. Green’s Councilmanic Grant Account).

Motion Adopted: 5 Yeas.

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

**M 322 21
Approve
Consent
Agenda
Item**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the following item listed under the Consent Agenda:

- 1. Use of Existing Wastewater Infrastructure Agreement for 7-Eleven Bridgeville Project (Western Sussex Area) – IUAWS-1**

Motion Adopted: 5 Yeas.

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

**Library
Advisory
Board**

Mr. Lawson announced that a vacancy exists on the Library Advisory Board (District 4). John Monahan's term expired in June and he has indicated that he can no longer serve on the Committee.

**M 323 21
Approve
Appoint-
ment to
Library
Advisory
Board**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council approves the appointment of Kathy Green to the Sussex County Library Advisory Board, effective immediately, until such time as the term expires in June 2024.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

- 1. Delaware State Police Activity Report**

The Delaware State Police year-to-date activity report for June 2021 is attached listing the number of violent crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 193 troopers assigned to Sussex County for the month of June.

- 2. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Coastal Corner (Fred Hudson Property) effective July 1st; Marsh Farm Estates - Phase 4B, effective July 15th; and Americana Bayside - Weideman Parcel - Phase 3 (Construction Record) effective July 22nd.

- 3. Council Meeting Schedule**

A reminder that Council will not meet on August 3rd. The next regularly scheduled Council meeting will be held on Tuesday, August

**Adminis-
trator's
Report
(continued)**

10th, at 10:00 a.m.

4. Ray Webb

It is with sadness that we note the passing of County pensioner Ray Webb on Sunday, July 18th. Mr. Webb began his career with Sussex County in August 1977 and retired as the Facilities Manager in January 2010 with 32 years of service. We would like to extend our condolences to the Webb family.

5. Joanna Johnson

It is with sadness that we also note the passing of County pensioner Joanna Johnson on Monday, July 19th. Ms. Johnson began her career with Sussex County in November 1979 and retired as a Permit Tech III in November 2002 with 23 years of service. We would like to extend our condolences to the Johnson family.

(Attachments to the Administrator's Report are not attached to the minutes.)

**Housing
Trust
Fund**

Brandy Nauman, Director of Community Development and Housing, gave a presentation on the new Housing Trust Fund initiative. Mrs. Nauman noted that, in April 2019, the County contracted with LSA Planning for a Housing Needs & Market Analysis, an Economic Feasibility Analysis, and a Housing Opportunities and Market Evaluation (HOME). The final recommendations resulting from the Housing Opportunities and Market Evaluation (HOME) are as follows:

- Strategy 1 – Modify the Zoning Code to promote housing affordability in growth areas identified in the Comprehensive Plan**
- Strategy 2 - Establish a Local Housing Trust Fund**
- Strategy 3 - Preserve the existing supply of affordable housing**

Mrs. Nauman noted that discussion on this date focuses on Strategy 2. The Housing Trust Fund initiative was approved by Council in the FY2021 Budget; however, due to the COVID-19 pandemic and economic uncertainty, this initiative was tabled until this year. County Council recently voted to approve \$500,000 for the Housing Trust Fund for the FY2022 Budget. She reported that the Housing Trust Fund (1) will fill the gap between the cost of producing market-rate housing and producing below market-rate housing for lower-income households, especially for those earning 50% of Area Median Income (AMI) and below, (2) can be used to leverage other funding, and (3) offers greater flexibility with fewer regulations than federal or state resources. Mrs. Nauman stated that they are proposing a pilot program of \$500,000 and that there are two parts to the Trust Fund: \$400,000 for the Development Loan Fund and \$100,000 for direct homebuyer assistance. She noted that with the Council's assistance, an Advisory Board will be created to oversee funding approvals. Advisory

**Housing
Trust
Fund
(continued)**

Board Members are recommended to include the Finance Director, Community Development & Housing Director, Economic Development Director, an Affordable Housing Advocate, and a Financial Institution Representative.

Mrs. Nauman explained the Development Loan Fund initiative including the application process, applicants/projects qualifications, funding sources, financing terms, review and evaluation of applications by the Advisory Board, intended activities, and goals and objectives.

Mrs. Nauman explained that the Homebuyer Assistance component would be administered internally by the Community Development and Housing Department. She further explained qualifying criteria, funds availability, and the disbursement procedure. She noted that the Homebuyer Assistance is in the amount of \$100,000 - \$10,000 maximum per household. Mrs. Nauman noted that these monies could assist homebuyers with closing/settlement costs. Additionally, Mrs. Nauman explained the funding source, finance terms, and the goals and objectives of the program.

Mrs. Nauman commented on the next steps: seek feedback from stakeholders, establish the Housing Trust Fund framework, receive Council's final approval, appoint the Advisory Board, and make funding available. The goal is to have the program available at the beginning of 2022.

**Western
Sussex Area/
Municipal
Transition
Agreement/
Greenwood**

Hans Medlarz, County Engineer, presented Addendum No. 1 to the Municipal Transition Agreement between the County and the Town of Greenwood concerning the wastewater system (Western Sussex Area of the Unified Sewer District). Addendum No. 1 adds additional entities with pre-paid sewer connection fees to the agreement. Mr. Medlarz reported that the Town of Greenwood has approved the agreement.

**M 324 21
Approve
Addendum
to Sewer
Operations
and
Transition
Agreement/
Town of
Greenwood**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Addendum No. 1 to the Sewer Operations and Transition Agreement between Sussex County and the Town of Greenwood, in principle.

Motion Adopted: 5 Yeas.

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

**New Road
Estates
Pavement
Improvements**

Hans Medlarz, County Engineer, presented a Final Balancing Change Order and request to grant Substantial Completion for the New Road Estates Pavement Improvements Project, Project T21-08. The Change Order, in the amount of \$1,790.64, is to reconcile items and quantities and is a result of a design change and overruns/underruns in quantity.

**M 325 21
Approve
Change
Order/
New Road
Estates
Pavement
Improve-
ments
Contract**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract T21-08, New Road Estates Pavement Improvements, be approved for final balancing, increasing the total contract amount by \$1,790.64, and that Substantial Completion be granted effective July 1, 2021, with retainage released in accordance with the Contract documents.

Motion Adopted: 5 Yeas.

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

**Ocean
Outfall
Inspection
Project/
Inspection
Results and
Future
Actions**

Mark Parker, Assistant County Engineer, reported on the inspection results and future actions for the Ocean Outfall Inspection Project, Project G21-06. In 2020, TNJ Marine, Inc. was awarded the project. The inspection was performed in May 2021, with the Final Inspection Report being submitted on July 2, 2021. Mr. Parker reported that the results of the inspection were generally favorable and he presented the recommended actions including system repairs, system observations, and pipeline cathodic protection upgrade.

**M 326 21
Establish
Detailed
Scope and
Cost for
System
Repairs/
Ocean
Outfall
Inspection
Project**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department and based on recent inspection results of the Ocean Outfall System, that the design build team consisting of GHD Group and Specialty Underwater Services be established to develop a detailed scope and cost for the required system repairs for an initial not to exceed cost of \$25,000.00.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Warrington
Road
Extension
of the
SCUSSD**

A Public Hearing was held to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), West Rehoboth Area, to include four parcels of land on the south side of Warrington Road in Rehoboth Beach.

John Ashman, Director of Utility Planning & Design, reported that the Engineering Department received a request from the property owners of Parcel Nos. 334-12.00-117.00 and 118.00. This annexation would also include two adjacent parcels. Mr. Ashman stated that all four parcels can receive sanitary sewer service with the installation of a low pressure line installed along Warrington Road with the use of an individual grinder pump system. The project would be responsible for System Connection Charges in place at the time of connection.

**Public Hearing/
Warrington Road
Extension
of the
SCUSSD
(continued)**

Mike and Tina Fannin, and C.J. Bailey, property owners on Warrington Road, spoke in support of the proposed extension and stated that their septic systems are showing signs of failing.

David Walters, property owner on Warrington Road, stated that he has no objections to the proposed extension; however, he has concerns with the Engineering Department's proposal for a mechanical pressure system instead of the gravity fed system, due to the higher maintenance issues associated with a mechanical pressure system.

There were no additional public comments.

Mr. Ashman and Hans Medlarz, County Engineer, responded to questions raised by Council regarding Mr. Walters' concerns. They reported that the Engineering Department would need to obtain four easements for a gravity fed system and that one of the easements would need to be obtained from the Homeowners Association. Additionally, a DelDOT permit would be needed.

The Public Hearing was closed.

The Council left the record open for a report from Council on the possibility of obtaining the necessary easements; the Engineering Department will report back within 60 days.

**M 327 21
Adopt
R 018 21**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Resolution No. R 018 21 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) TO INCLUDE PARCELS 334-12.00-117.00, 118.00, 118.01 AND 118.02 ON THE SOUTH SIDE OF WARRINGTON ROAD; THE PARCELS ARE LOCATED IN THE LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas.

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

**Proposed
Marlin Cove
Expansion
of the
SCUSSD/
Request
to Post
Notices**

John Ashman, Director of Utility Planning and Design, presented a request to prepare and post notices for the Proposed Marlin Cove Expansion of the Sussex County Unified Sanitary Sewer District (Fenwick Island Area). The Engineering Department received a request from Vista Design, Inc. on behalf of their client, Atlantic Building Associates, Inc., the owners/developers of a project to be known as Marlin Cove. The project is proposing 49 units. Two of the three parcels are already in the sewer district; this request is to include Parcel No. 533-19.00-8.01. The project

(continued) will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.

M 328 21
Authorize
Notices/
Marlin Cove
Expansion
of the
SCUSSD

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, that the Sussex County Engineering Department is authorized to prepare and post notices for the Marlin Cove Expansion of the Sussex County Unified Sanitary Sewer District to include Parcel No. 533-19.00-8.01, as presented.

Motion Adopted: 5 Yeas.

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

Proposed
Scenic
Manor
Expansion
of the
SCUSSD/
Request
to Post
Notices

John Ashman, Director of Utility Planning and Design, presented a request to prepare and post notices for the Proposed Scenic Manor Expansion of the Sussex County Unified Sanitary Sewer District (Mulberry Knoll Area). The Engineering Department received a request from Morris & Ritchie Associates, Inc. on behalf of their client, MKR Land Investment, LLC, the owners/developers of a project to be known as Scenic Manor. The project is proposing 319 units. This request is to include Parcel No. 334-18.00-43.00. The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.

M 329 21
Authorize
Posting
of Notices/
Proposed
Scenic
Manor
Exp. of the
SCUSSD

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Engineering Department is authorized to prepare and post notices for the Scenic Manor Expansion of the Sussex County Unified Sanitary Sewer District to include Parcel No. 334-18.00-43.00, as presented.

Motion Adopted: 5 Yeas.

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

Grant
Requests

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

M 330 21
Council-
manic
Grant

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$1,000.00 from Mr. Vincent's Councilmanic Grant Account to the Western Sussex Chamber of Commerce for the Broad Creek Bike and Brew fundraiser.

Motion Adopted: 5 Yeas.

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

M 331 21 Councilmanic Grant **A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to give \$4,000.00 from Mrs. Green’s Councilmanic Grant Account to the Town of Ellendale for park playground renovations.**

Motion Adopted: 5 Yeas.

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

M 332 21 Councilmanic Grant **A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to give \$2,500.00 from Mrs. Green’s Councilmanic Grant Account to the Town of Georgetown for National Night Out event expenses.**

Motion Adopted: 5 Yeas.

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

M 333 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$1,000.00 (\$500.00 each from Mr. Hudson’s and Mr. Schaeffer’s Councilmanic Grant Accounts) to AIDS Delaware, Inc. for the AIDS Walk Delaware fundraiser.**

Motion Adopted: 5 Yeas.

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

M 334 21 Councilmanic Grant **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$500.00 from Mr. Rieley’s Councilmanic Grant Account to the Lower Sussex Little League for Eastern Regional traveling expenses.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinances **Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR OUTDOOR BOAT STORAGE AND OVERFLOW PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.006 ACRES, MORE OR LESS” (Conditional Use No. 2257) filed on behalf of Indian River Volunteer Fire Co., Inc. (Tax I.D. No. 234-34.08-53.00 (part of) (911 Address: None Available).**

**Introduction
of Proposed
Ordinances
(continued)**

Mrs. Green introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE UNITS AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.63 ACRES, MORE OR LESS” (Conditional Use No. 2261) filed on behalf of What Is Your Voice, Inc. (Tax I.D. No. 334-6.00-515.00) (911 Addresses: 17583 Shady Road, 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 AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.902 ACRES, MORE OR LESS” (Conditional Use No. 2278) filed on behalf of Branson James (Tax I.D. No. 231-22.00-16.00) (911 Address: 17638 Dusty Road, Georgetown).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Conditional Use No. 2292) filed on behalf of Gulfstream Development, LLC (Tax I.D. No. 533-19.00-56.05) (911 Addresses: None Available).

Mr. Rieley introduced 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Change of Zone No. 1945) filed on behalf of Gulfstream Development, LLC (Tax I.D. No. 533-19.00-56.05) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

**M 335 21
Go Into
Executive
Session**

At 10:55 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to recess the Regular Session and go into Executive Session to discuss matters relating to land acquisition and pending/potential litigation.

Motion Adopted: 5 Yeas.

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

Executive Session **At 11:00 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to land acquisition and pending/potential litigation. The Executive Session ended at 12:15 p.m.**

M 336 21 Reconvene Regular Session **At 12:20 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.**

Motion Adopted: 5 Yeas.

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

M 337 21 Authorize Land 2021-I **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the County Administrator be authorized to negotiate, enter into a contract and proceed to closing for Land 2021-I.**

Motion Adopted: 5 Yeas.

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

M 338 21 Authorize Land 2021-J through S **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that the County Administrator be authorized to negotiate, enter into a contract and proceed to closing for Land 2021-J through S.**

Motion Adopted: 5 Yeas.

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

M 339 21 Authorize Land 2021-T **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the County Administrator be authorized to negotiate, enter into a contract, and/or take necessary legal action and proceed to closing for a Utility Easement for Land 2021-T.**

Motion Adopted: 5 Yeas.

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

M 340 21 Recess **At 12:21 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to recess until 1:30 p.m.**

**M 340 21
(continued)**

Motion Adopted: 5 Yeas.

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

**M 341 21
Reconvene**

At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to reconvene.

Motion Adopted: 5 Yeas.

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

Rules

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

**Public
Hearing/
Coastal
Area
Ordinance**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE IV BY AMENDING SECTION 115-25 TO REPLACE THE REFERENCE TO THE “ENVIRONMENTALLY SENSITIVE DEVELOPING AREA” WITH “COASTAL AREA” AND TO DELETE REDUNDANT LANGUAGE REGARDING BONUS DENSITY”.

The Planning and Zoning Commission held a Public Hearing on this Proposed Ordinance on June 10, 2021 at which time the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated June 10, 2021.)

Jamie Whitehouse, Planning and Zoning Director, and Vince Robertson, Assistant County Attorney, presented the Proposed Ordinance to amend Chapter 115 of the Sussex County Code reporting that it is necessary to replace a reference to the “Environmentally Sensitive Developing Area” (ESDA) with “Coastal Area”. He reported that this revision is necessary because the ESDA name was revised to “Coastal Area” in the current Comprehensive Plan. Mr. Robertson stated that Ordinance No. 2656 previously made this change throughout the entire Code; however, there are two remaining places in Section 115-25 that still refer to the ESDA; that there is a bonus density option that was listed twice in Section 115-25 which created confusion; and that this deletion does not change the Code requirements for subdivision design and would generate less potential for confusion by removing the redundant language. The Proposed Ordinance does not change the substance of the Code.

There were no public comments.

The Public Hearing and public record were closed.

**M 342 21
Adopt
Ordinance
No. 2791**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2791 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE IV BY AMENDING SECTION 115-25 TO REPLACE THE REFERENCE TO THE “ENVIRONMENTALLY SENSITIVE DEVELOPING AREA” WITH “COASTAL AREA” AND TO DELETE REDUNDANT LANGUAGE REGARDING BONUS DENSITY”.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
C-4
Ordinance
Amendment**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XID, SECTIONS 115-83.25, 115-83.26, 115-83.30 AND “115 ATTACHMENT 4, SUSSEX COUNTY TABLE IV”.

The Planning and Zoning Commission held a Public Hearing on this Proposed Ordinance on June 10, 2021 at which time the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated June 10, 2021.)

Jamie Whitehouse, Planning and Zoning Director, and Vince Robertson, Assistant County Attorney, presented the Proposed Ordinance to amend Chapter 115 of the Sussex County Code regarding the C-4 Planned Commercial District to allow its use and implementation to occur, including minimum lot sizes and types and percentages of residential uses permitted in the District: (1) that the minimum district dimensions outlined within Chapter 115 be amended to permit a minimum district area of 3 acres, (2) to further amend the Zoning District to permit a maximum of 40% of its developable area to consist of duplexes, townhomes or multi-family dwellings (this is an increase from the 20% currently permitted), and (3) making the minimum lot area 7,500 square feet (instead of 3 acres).

There were no public comments.

The Public Hearing and public record were closed.

**M 343 21
Adopt
Ordinance
No. 2792**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2792 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XID, SECTIONS 115-83.25, 115-83.26, 115-83.30 AND “115 ATTACHMENT 4, SUSSEX COUNTY TABLE IV”.

Motion Adopted: 5 Yeas.

**M 343 21
(continued)**

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

**Council
Member
Recusal**

Mr. Moore stated that Mr. Hudson would be recusing himself from participating in or voting on the Public Hearing on Conditional Use No. 2236 due to a potential conflict of interest.

Mr. Hudson left the meeting.

**Public
Hearing/
CU 2236**

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 HOTEL AND RESTAURANT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.2 ACRES, MORE OR LESS” (Conditional Use No. 2236) filed on behalf of Carl M. Freeman Companies (Tax I.D. No. 533-20.00-22.00 & 20.00 (Portion of) (911 Address: None Available).

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

The Planning and Zoning Commission held a Public Hearing on this application on June 10, 2021 at which time action was deferred. Commission Member Wingate recused herself from this case. On July 8, 2021, the Commission considered the application. On that date a Motion was made and Seconded to recommend denial of Conditional Use No. 2236. The Motion to recommend denial failed with a vote of 2 to 2. Mr. Whitehouse noted that the Planning and Zoning Commission’s Rule 5.5 provides that 3 affirmative votes are needed to approve any matter within the Commission’s jurisdiction and failure to receive 3 affirmative votes shall be deemed to disapprove any matter.

(See the minutes of the Planning and Zoning Commission dated June 10 and July 8, 2021.)

Mr. Whitehouse reported that 386 comments have been received in opposition to the application and 1 comment in favor. He noted that of those comments received in opposition, some of them appear to be duplicates.

The Council found that Jim Fuqua, Esq. was present on behalf of the Applicant along with Josh Mastrangelo on behalf of Freeman Companies; Katja Kalinski with George, Miles & Buhr; Ed Launay with Environmental Resources; and William Conway with Century Engineering.

Mr. Fuqua commented on the misinformation reported in the media that the Applicant wants to build a hotel and restaurant on State- and Federal-regulated wetlands and also that the Planning and Zoning Commission

**Public
Hearing/
CU 2236
(continued)**

recommended denial of the application. Mr. Fuqua stated that neither of these two things are true; that the proposed hotel and restaurant would not be built on wetlands and no wetlands will be encroached upon, disturbed, or touched; that not only is the required 50 foot buffer from tidal wetlands being provided, but the Applicant is voluntarily providing a minimum 20 foot buffer from the non-tidal wetlands; that it was originally reported that the Planning and Zoning Commission recommended denial because they didn't recommend approval; that a Motion was made to deny the application and the Motion was a 2-2 tie, so the Motion to deny failed; that there was not a Motion made to approve it, but if there had been, that would have also been a 2-2 tie and, therefore, there is no recommendation of approval, there is no recommendation of denial, and there is no recommendation. Mr. Fuqua asked Council to disregard any misinformation.

Mr. Fuqua stated that the application is for a 70 unit hotel and a separate restaurant; that the parcel of land contains 9.2 acres and fronts on Route 54 at Bennett Avenue, approximately 1 mile west of the Route One – Route 54 intersection at Fenwick Island; that the 9.2 acres are part of a 120 acre parcel of land that contains approximately 35 acres of uplands and 83 acres of wetlands; and that the land is under contract to the Applicant. Mr. Fuqua provided background information on the ownership of the property and background on the Freeman Companies' selection of this site for the proposed project. He stated that the Freeman Companies decided that the appropriate development plan for the property was a single family cluster subdivision on the majority of the uplands with the exception of the parcel fronting on Route 54 that is adjacent to existing commercial uses, which is the site of the proposed hotel and restaurant; that the Freeman Companies received approval from the Planning and Zoning Commission for a 70-lot single family cluster subdivision on the northern or rear 26 upland acres of the site in 2018 and a revised preliminary subdivision plan incorporating the conditions and modifications that were imposed by the Planning and Zoning Commission was approved on April 22, 2021; that the 9.2 acre parcel fronting on Route 54 is the remaining portion of the property that was not included as part of the approved subdivision; that of the 9.2 acres, 4.8 acres are uplands and 4.32 acres are the wetlands; that the front portion of the parcel would be the site of a quality restaurant with a square footage of 8,500 square feet; that the rear portion would be developed with a 70 room hotel with an outdoor pool; that Bennett Avenue is located along the east side; that a future 20 foot landscaped buffer, which is part of the approved cluster subdivision is located to the north (to the rear) of the site; that there is an expansive area of tidal and non-tidal wetlands located to the west of the site; that the site is located just west of the ditch which is a channel of water that connects the Assawoman Bay and the Little Assawoman Bay; that all of the lands fronting along Route 54 from the Route One intersection to the ditch is all zoned C-1 Commercial and is fully developed with a variety of residential and commercial uses; that water will be provided by Artesian; that the site is located within the County's West Fenwick Sanitary Sewer District and will be served by County sewer; that

**Public
Hearing/
CU 2236
(continued)**

stormwater management will be in accordance with DNREC regulations and the Sussex Conservation District; and that a wetland delineation was performed by Ed Launey of Environmental Resources, Inc. and was reviewed by the U.S. Army Corp of Engineers and a jurisdictional determination letter was issued by the Army Corps of Engineers.

Mr. Launay responded to questions raised by Council regarding the comments in the PLUS Review in the wetlands section that hydric soils are present in the entire proposed project area in comparison to his own findings that hydric soils are limited to those areas classified as wetlands. Mr. Launay stated the comments regarding hydric soils in the PLUS Review rely on the USDA Soil Survey which can be highly inaccurate and that his report relies on a physical visit to the site and actual soil samples/borings.

Mr. Fuqua stated that almost all of this area around Fenwick Island and Route 54 is located in the 100 year flood plain which means that the Applicant has to comply with the construction elevations and other construction requirements; that one exception to being in the 100 Year Flood Plain is this 9 acre parcel – it is not in the flood zone, it is designated as being in Zone X which is outside of the flood zone; that the majority of the site being disturbed for development is in the Zone X area; that in regard to traffic impact, DelDOT determined that the Applicant could pay an Area Wide Study Fee in lieu of a Traffic Impact Study; that in accordance with DelDOT's letter of July 8, 2020, the entrance to the hotel and restaurant will be from Bennett Avenue; that Bennett Avenue is also the approved entrance to the Freeman subdivision; that there would be a secondary access at the rear of the hotel parking lot; that when the subdivision was being reviewed by DelDOT, a Traffic Operational Analysis (TOA) was required by DelDOT; that the TOA considered the traffic impact of the subdivision as well as the impact of the proposed commercial use of the parcel fronting on Route 54; as a result of the TOA, DelDOT is requiring improvements that would be the responsibility of the Applicant including the realignment of Bennett Avenue so that it intersects opposite of Monroe Avenue creating a 4-way intersection, which is a safer 90 degree intersection; that the Developer will be responsible for granting a 15 foot permanent easement along the site frontage and constructing a 10 foot shared use path; that a new TOA review letter was issued by DelDOT, dated February 15, 2021, which indicates that the Applicant will be responsible for the Bennett Avenue and Route 54 intersection realignment and installation of a traffic signal at the new realigned intersection and the required road configuration changes; and that the Applicant will be responsible for the cost of these significant improvements. In response to questions raised by Council, William Conway reported on traffic counts and the proposed enhanced Level of Service with the improvements. Mr. Fuqua stated that the original site plan, based on the shared use parking study, proposed 198 parking spaces which is in compliance with the Zoning Ordinance; however, the shared use parking request has been withdrawn and the Applicant's revised site plan includes a revised parking plan

**Public
Hearing/
CU 2236
(continued)**

providing 237 parking spaces which is more spaces than required by the Zoning Ordinance; that Condition K of the conditions proposed by the Applicant provides that parking shall meet or exceed the parking requirements for a stand-alone hotel and restaurant; that the parking areas will be lighted but the lighting fixtures will be designed to preserve the natural night environment to the greatest extent possible; that the proposed project will not add any light pollution to the area; that the project site is located in a high density residential and commercial area; that the maximum height of the hotel would not exceed 42 feet; that the Applicant is proposing a condition that the restaurant will not have drive-through capability or design; that an outdoor dining area is proposed on the western side of the building; that the Applicant is proposing a condition that any outdoor dining area would terminate service no later than 10:00 p.m.; that the Applicant is also proposing a condition that music and entertainment will be prohibited in the outdoor dining area; that two lighted signs are proposed and they would not be electronic message center signs; that a landscaped buffer area is proposed along Route 54 and the west side of Bennett Avenue; that the proposed site plan will result in approximately 53 percent of the 9.2 acre site remaining as open space; that the proposed Conditional Use is in accordance with the 2019 Comprehensive Land Use Plan; that the project site is located in the Coastal Area which is a Growth Area according to the Plan; that the Conditional Use is fully supported by the Plan; that the proposed use is not out of character with the area; that the Plan states that further development of the Leisure Tourism Market in the County should be a priority; that one of the Economic Development goals of the Plan is to maintain and strengthen the County's position as a tourist destination with the objective of continuing to support the growth of the tourism industry and the expansion of various types of tourism; that the proposed project is the type of development that is a goal and priority of the Economic Development Chapter of the Plan; and that the Planning and Zoning Commission's reasons/basis for denial are not justified.

Public comments were heard.

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

Frank Cintron, Doris Pierce, Ed Waysz, Nancy Flacco (speaking on behalf of SSCCAG – Southern Sussex County Community Action Group), Henry Bennett, Fran Lazero, Barbara Smolinski, Samantha Danaher, Lori Goss, Ben Moses, Brian Radcliffe, Fred Pioggia, Ken Hahn, Jim Jewell, Kirsten McGuigan, Boe Daley, Dave Breen, Julie Moses, Andy Twarowski, Quin Revel, Jeanette Akhter, Thomas Reilly, Mary Rozell, Paul and Dorothy Elder, Cynthia Harper, and Patty Gregorio spoke in opposition to the application.

**Public
Hearing/
CU 2236
(continued)**

They expressed concerns about over-development, the additional traffic that will create more congestion on the area roadways, the impact on the quality of life of area residents, public safety impacts including pedestrian and bicycle safety, emergency response times, emergency evacuations, environmental impacts including impacts on the wetlands; stormwater runoff and flooding, at-risk wildlife, lack of sufficient support services as development continues, the impact on farming including the inability to move agriculture equipment around, light pollution, the effect on local businesses where staffing shortages are already a problem; the amount of impervious surface; and traffic reports and the lack of proper research in regard to increased traffic on Route 54.

The opposition referenced the letter from the Director of Office of State Planning, dated 8/19/20. The letter states that this project represents a commercial development within the Level 4 and out-of-play areas according to the 2015 Strategies for State Policies and Spending and that Investment Level 4 indicates where State investments will support agriculture preservation, natural resource protection, and the continuation of the rural nature of these areas; that new commercial development activities are not supported in Investment Level 4 Areas; and that this development is inconsistent with the 2015 Strategies for State Policies and Spending and the Office of State Planning does not support this commercial use.

The opposition stated that existing and increased traffic problems impact local businesses; that the area's infrastructure, beaches, etc. are already overwhelmed; that the project site is an elevated soil disposal site; that the proposed hotel will be situated on the uplands and they question where the water/run-off will go, stating that it will go into the Inland Bays; that Council needs to listen to the USDA soil studies and not the report from the Applicant's representative (Environmental Resources); that in regards to the hydric soils, there is no information in the packet on the core sampling results; that DelDOT cannot keep up with development now and does not need any more development added; that this is not an in-fill project; that there are currently no hotels on Route 54, that the area is predominantly residential; that there is not enough parking in the area to accommodate summer crowds; that they question how the Applicant will increase the number of parking spaces; that this application is in direct opposition to the AR-1 District; that a hotel is not a permitted use; that construction traffic and road closures will create additional traffic problems and traffic accidents; that they question the duration of construction; that there will be wetlands disturbance; that the public hearing notice and signage on the site was inadequate; that future sea level rise needs to be considered; that an independent traffic study should be performed; that DelDOT should require a formal Traffic Impact Study; that the proposal does not consider the overall traffic impact on Route 54; that a regional assessment of traffic was not done; that the project should require a regional impact study; that they ask Council to deny this application or at least delay it until the review of the Southeast Sussex Study (a comprehensive traffic analysis) is to be completed in 2022; that on Page 19 of the detailed transportation analysis

**Public
Hearing/
CU 2236
(continued)**

(TOA review dated 2/15/21), a table of Level of Service figures shows that with the traffic circle, the Level of Service on eastbound Route 54 is rated as an E (and a score of 44) and putting a signal light at the same intersection will result in a Level of Service D (with a score of 51 which rates a F), that approval of this project will set a precedent; that the Planning and Zoning Commission did not get the required three votes; that every part of this project is a nuisance; that area residents have given an overwhelming message of opposition to the project; and that eastern Sussex County is at capacity and “enough is enough”.

A petition containing 97 signatures was submitted into the record.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 344 21
Defer
Action on
CU 2236**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to defer action on Conditional Use No. 2236 filed on behalf of Carl M. Freeman Companies.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 345 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 5:11 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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