

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 23, 2022**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 23, 2022, at 10:00 a.m., in Council Chambers, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>Douglas B. Hudson</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>John L. Rieley</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 383 22  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas.**

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

**Minutes**

**The minutes of the August 9, 2022 meeting were approved by consensus.**

**Corres-  
pondence**

**Mr. Moore read correspondence received from Girl Scouts of the Chesapeake Bay and Delaware Technical Community College in appreciation for Council's support.**

**Public  
Comment**

**There were no public comments.**

**Lochwood  
Communit-  
ies Area  
Sewer  
Extension**

**Hans Medlarz, County Engineer presented a request for approval of a purchase order for Headwater Cove sewer modifications for Council's consideration.**

**M 384 22  
Approve  
PO/Headwa-  
ter Cove  
Sewer**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that County Council approve a purchase order to Melvin L. Joseph Construction Co. in the amount of \$49,836.00 for the modifications to the Headwater Cove sewer infrastructure.**

<b>Modifications</b>	<b>Motion Adopted: 5 Yeas</b>  <b>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</b>
<b>EMS Public Safety Bldg/CO No. 16</b>	<b>Hans Medlarz, County Engineer presented Change Order No. 16 for the EMS Public Safety Building for Council's consideration. Mr. Medlarz explained that the Change Order includes changes with signage.</b>
<b>M 385 22 Approve CO No. 16/EMS Public Safety Bldg.</b>	<b>A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 16 for Contract C19-04, Sussex County Public Safety Building, be approved, for an increase of \$2,361.79.</b>  <b>Motion Adopted: 5 Yeas</b>  <b>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</b>
<b>South Coastal WRF/CO No. 24</b>	<b>Hans Medlarz, County Engineer presented Change Order No. 24 for general construction, project C19-11 for Council's consideration. Mr. Medlarz explained that the County asked for additional programming options on the new blowers on the emergency power operation that required additional programming. In addition, the Change Order includes installation of a isolation valve.</b>
<b>M 386 22 Approve CO No. 24/South Coastal WRF</b>	<b>A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 24 for Contract C19-11, South Coastal WRF Treatment Process Upgrade No. 3 &amp; Rehoboth Beach WTP Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contract by \$12,829.83.</b>  <b>Motion Adopted: 5 Yeas</b>  <b>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</b>
<b>Lead &amp; Copper Proposal</b>	<b>Hans Medlarz, County Engineer presented a proposal for lead and copper rule revisions for Council's consideration. Mr. Medlarz explained that Delaware Rural Water has spearheaded this since it is so unusual.</b>

**M 387 22  
Approval of  
Lead &  
Copper  
Proposal**

A Motion was made by Mr. Schaeffer, seconded Mr. Rieley, that be it moved based upon the recommendation of the Sussex County Engineering Department, County Council approve the 120-water proposal, in the amount not to exceed \$37,500.00 over a 3-year period, to achieve compliance with the EPA's lead and copper rule revisions.

**Motion Adopted: 5 Yeas**

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

**LBPW  
Mutual Aid  
Agreement**

Hans Medlarz, County Engineer presented a mutual aid agreement with Lewes Board of Public Works for Council's consideration. Mr. Medlarz explained that it is on the agenda for LBPW to consider during their scheduled meeting tomorrow. The long-range planning study is nearing completion.

**M 388 22  
Approval of  
LBPW  
Mutual Aid  
Agreement**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that County Council approve the agreement for Mutual Operational assistance with the Lewes Board of Public Works, 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**

**Herring  
Creek  
Sanitary  
Sewer  
Expansion  
CO**

Hans Medlarz, County Engineer presented Herring Creek Sanitary Sewer Expansion Change Orders for Council's consideration. Mr. Medlarz reported that there are some claims that are believed to have some merit but nowhere near the compensation levels requested. Therefore, JJID and the Department have agreed to pause operations to allow review of this issue. In order to achieve a mutually agreeable solution, the Department suggests seeking a "no fault" contract close out balancing Change Order of Project S20-07 where both parties withdraw any and all claims, the County grants final acceptance of the infrastructure installed and pays out any retainage held under the contract. Once achieved, the County would issue a quantity adjustment Change Order under Project S20-08 at the respective unit prices bid, completing the missing infrastructure under the S20-07 project.

**M 389 22  
Approval of  
CO/Herring  
Creek  
Sanitary**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved, that County Council authorize the Engineering Department to pursue a no-fault close-out balancing Change Order for Herring Creek Contract S20-07 & a unit quantity increase Change Order for Contract S20-08 with final approval by County Council.

**Sewer  
Expansion**

**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. Projects Receiving Substantial Completion**

**Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: The Villages at Red Mill Pond South – Phase 3 (Construction Record) effective August 5<sup>th</sup>, Beach Tree Preserve – Phase 1 (Construction Record) effective August 12<sup>th</sup>, and Beach Tree Preserve – Phase 2A (Construction Record) effective August 12<sup>th</sup>.**

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

**Delaware  
Transit  
Reimburse-  
ment  
Program  
Request**

**Mrs. Jennings reported that DART, a division of DelDOT has allocated \$796,868.00 for funding of transportation expenses for various senior centers in Sussex County. Mrs. Jennings noted that this amount is the same as last year. The County's responsibility is to approve a recommended funding amount for Fiscal Year 2023 as per State law; this process is an allocation of State grant funds to various senior agencies for transportation purposes. The recommended funding for each agency is the same as the previous year:**

<b>Nanticoke Senior Center</b>	<b>\$ 44,962</b>
<b>Indian River Senior Center</b>	<b>2,100</b>
<b>Laurel Senior Center</b>	<b>99,083</b>
<b>Lewes Senior Center</b>	<b>27,123</b>
<b>Cape Henlopen Senior Center</b>	<b>43,066</b>
<b>CHEER, Inc.</b>	<b><u>580,534</u></b>
<b>TOTAL</b>	<b>\$796,868</b>

**M 390 22  
Approve  
Allocation of  
DART  
Funds**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved that the Sussex County Council approve the recommended allocation to the various senior centers in Sussex County, 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**

**Agreement  
for Removal  
of Improve-  
ments**

Michael Costello, Government Affairs Manager presented an agreement to remove improvements on County property in Millsboro. Mr. Costello added that this is the future site for an EMS station. A RFP was issued to solicit bids for the sale and removal of the improvements. There was one bid received in the amount of \$10,000.

**M 391 22  
Approval of  
Agreement  
for Removal  
of Improve-  
ments**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved that the Sussex County Council approve the agreement for removal of improvements on 26897 Dickerson Road in Millsboro in the amount of \$10,000.

**Motion Adopted: 5 Yeas**

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

**Clinical  
Agreement/  
DTCC**

Robbie Murray, Director of Emergency Services presented a clinical agreement between Delaware Technical Community College and Sussex County EMS for Council's consideration. Mr. Murray explained that as part of their accreditation requirement, they are required to have clinical agreements on file with all clinical partners. Since 2017, Sussex County EMS have hosted final semester nursing students on the paramedic trucks and allowed them to get clinical hours by riding along.

**M 392 22  
Approval of  
Clinical  
Agreement/  
DTCC**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved that Sussex County enter into the proposed clinical agreement with Delaware Technical Community College that allows Sussex County EMS to be recognized as a clinical site for their nursing program.

**Motion Adopted: 5 Yeas**

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

**Expansion  
of SCUSSD/  
Permission  
to Prepare  
& Post  
Notices/  
Bethany  
Forest Area**

John Ashman, Director of Utility Planning & Design Review reported that the Engineering Department received a request from the Homeowners Association several years ago and sent petitions in October 2019. There was insufficient interest at that time and the project was shelved. The HOA had a meeting more recently and there was again the topic of central sewer for the community. The HOA distribute polling letters to all residents of the community. The results they submitted to the Engineering Department showed 60 in favor, 12 opposed and 21 failed to respond. The Engineering Department would like to request permission to prepare and post notices

**for a Public Hearing on the annexation of the area.**

**M 393 22**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved**  
**Approval to**      **by the Sussex County Council that the Sussex County Engineering**  
**Prepare &**      **Department is authorized to prepare and post notices for the Bethany**  
**Post Notices/**      **Forest Expansion of the Sussex County Unified Sanitary Sewer District to**  
**Bethany**      **include parcels within the Bethany Forest subdivision as presented.**  
**Forest Area**

**Expansion**      **Motion Adopted:      5 Yeas**  
**into**

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

**Expansion**      **John Ashman, Director of Utility Planning & Design Review reported that**  
**of SCUSSD/**      **this includes all parcels within the Warwick Park Subdivision, Gull Point &**  
**Permission**      **Warwick Cove. The Engineering Department received a request from the**  
**to Prepare**      **President of the Warwick Cove Condominium Association for information**  
**& Post**      **and petitions for annexation into the sewer district. Within a few days,**  
**Notices/**      **another interest was received from the Warwick Park Co-President**  
**Warwick**      **requesting polling letters for their community. A call was also received from**  
**Park**      **Gull Point Condominium Association looking for additional information on**  
      **possibly being included. Therefore, the three entities were grouped together**  
      **into one request. The Engineering Department would like to request**  
      **permission to prepare and post notices for a Public Hearing on annexation**  
      **of the area.**

**M 394 22**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved**  
**Approval to**      **by the Sussex County Council that the Sussex County Engineering**  
**Prepare &**      **Department is authorized to prepare and post notices for the Warwick Park**  
**Post Notices/**      **Area Expansion of the Sussex County Unified Sanitary Sewer District to**  
**Warwick**      **include parcels within the Warwick Park Subdivision, Gull Point &**  
**Park**      **Warwick Cove as presented.**

**Expansion**      **Motion Adopted:      5 Yeas**  
**into**

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

**Old**      **Under Old Business, Jamie Whitehouse, Planning and Zoning Director**  
**Business/**      **presented Ordinance No. 22-05, CZ1949 and CU2304 filed on behalf of**  
**Ordinance**      **J.G. Townsend Jr., Co.; all three relate to the same site which is a 21.62-**  
**No. 22-05/**      **acre parcel located on the west side of John J. Williams Highway**  
**CZ1949/**      **approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284].**  
**CU2304**      **All three items were subject to a public hearing that were held on July**  
      **26, 2022. At that time, all three items were deferred for further**  
      **consideration with the record being left open for the applicant to submit**

a response in relation to the design. Mr. Whitehouse confirmed that a written response was received on August 9th and has been included in the record for the applications.

**Old  
Business/  
Ordinance  
No. 22-05**

Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04”.

The public record was closed.

**Old  
Business/  
CZ1949**

Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” filed on behalf of J.G. Townsend Jr. & Co.

The public record was closed.

**Old  
Business/  
CU2304**

Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” filed on behalf of J.G. Townsend Jr. & Co.

The public record was closed.

**Grant  
Requests**

Mrs. Jennings presented grant requests for Council’s consideration.

**M 395 22  
West Side  
New  
Beginnings**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,500 (\$2,500 from Mr. Schaeffer’s Councilmanic Grant Account) to the West Side New Beginnings, Inc. for Project Safety Street Lights.

**Motion Adopted: 5 Yeas**

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

**M 396 22  
Delaware  
State  
College**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give \$1,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant account) to Delaware State College Alumni Association for Band to the Beach.

**Alumni  
Association**

**Motion Adopted: 5 Yeas**

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

**M 397 22  
Friends of  
the Milton  
Public  
Library**

**A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$500 (\$500 from Mrs. Green's Councilmanic Grant Account) to Friends of the Milton Public Library for restoration of Milton High School yearbooks 1950-1974.**

**Motion Adopted: 5 Yeas**

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

**M 398 22  
AIDS  
Delaware,  
Inc.**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer's Councilmanic Grant Account and \$500 from Mr. Hudson's Councilmanic Grant Account) to AIDS Delaware, Inc. for their AIDS Walk Delaware.**

**Motion Adopted: 5 Yeas**

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

**M 399 22  
Autism  
Delaware,  
Inc.**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,000 (\$400 from each Councilmanic Grant Account) to Autism Delaware, Inc. for their Blue Jean Ball.**

**Motion Adopted: 5 Yeas**

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

**M 400 22  
Lewes  
Public  
Library**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$2,000 (\$1,500 from Mr. Schaeffer's Councilmanic Grant Account and \$500 from Mr. Rieley's Councilmanic Grant Account) to Lewes Public Library for their "A Christmas Carol" event.**

**Motion Adopted: 5 Yeas**

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



**M 401 22**  
**Concerns of**  
**Police**  
**Survivors,**  
**Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer's Councilmanic Grant Account and \$250 from Mr. Hudson's Councilmanic Grant Account and \$250 from Mr. Rieley's Councilmanic Grant Account) to Concerns of Police Survivors, Inc. for their 20<sup>th</sup> Anniversary Celebration of the Delaware Chapter.

**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 a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO AN LI-2 LIGHT INDUSTRIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 19.71 ACRES, MORE OR LESS"**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PORTION OF CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS"**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS"**

**Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (portion of)"**

**Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS"**

**Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR**

**Introduction of Proposed Ordinances (continued)**      **(MEDIUM RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (102 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS”**

**The Proposed Ordinances will be advertised for Public Hearings.**

**Council  
Member  
Comments**

**Mr. Schaeffer commented on the passing of Senator Richard Cordrey.**

**M 402 22  
Go Into  
Executive  
Session**

**At 10:44 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess the Regular Session, and go into Executive Session for the purpose of discussing 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 10:50 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 concluded at 11:24 a.m.**

**M 403 22  
Reconvene**

**At 11:26 a.m., a Motion was made by Mr. Schaeffer, seconded by Mrs. Green 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**

**E/S Action**

**There was no action on Executive Session matters.**

**M 404 22  
Recess**

**A Motion was made by Mr. Hudson, seconded by Mrs. Green to recess until 1:30 Public Hearings.**

**Motion Adopted:      5 Yeas**

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

**M 405 22  
Reconvene**

**At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer 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

**Mr. Moore read the procedures for public hearings on zoning matters.**

**Public  
Hearing/  
CU2300**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.93 ACRES, MORE OR LESS” (property lying on the southwest side of McCary Road [S.C.R. 385], approximately 857-ft south of Frankford School Road [S.C.R. 92]) (911 Address: N/A) (Tax Parcels: 533-5.00-38.00 & 41.04)**

**The Planning and Zoning Commission held a Public Hearing on this application on July 14, 2022, and on August 11, 2022, the Planning & Zoning Commission recommended approved of the application for the eight reasons stated and subject to the twenty recommended conditions.**

**(See the minutes of the Planning and Zoning Commission dated July 14, and August 11, 2022.)**

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

**The Council found that Mr. Steve Marsh, Engineer with GMB, Inc., spoke on behalf of the Application; that also present were Mr. R. Lawton Myrick, Business and Property Owner of MRBP, LLC., Mr. Doug Brown of Bunting and Murray and Mr. Edward Launay, with Environmental Resources, Inc.; that MRBP, LLC, is seeking a Conditional Use for the site, located on McCary Rd., for a borrow pit operation; that the total acreage is approximately 57.03 acres; that the Conditional Use application was submitted on July 16, 2021; that the parcels are zoned AR-1 (Agricultural Residential) Zoning District; that the parcels are located within the Coastal Area; that the immediate area consists primarily of agricultural use and low-density residential; that there are some substantial chicken farm operations in the area; that there is significant development activity plan in the general area, particularly in the Town of Millville; that no public water or sewer services are proposed for the operation; that stormwater management will meet the requirements of the Sussex Conservation District; that there is no intended discharge from the site; that the bulk of the operational activity is contained to the interior of the site; that a 100-ft. buffer is required along all road frontage; that a 50-ft. buffer is required for all other adjacent property boundaries; that much of the 50-ft. buffer is already in place; that some planting will be required in areas where the buffer is not located or requires enhancing; that the single access to the site will be a small commercial entrance from McCary Rd.; that Century Engineering, Inc. prepared the entry plan; that DelDOT approved the**

**Public  
Hearing/  
CU2300  
(continued)**

entrance plan in April of 2021; that the owner is anticipating an average of 30 trips per day; that Mr. Edward Launay performed a site investigation in 2021; that Environmental Resources, Inc. has advised GMB that the proposed plan avoids impacts to any potential wetland areas; that a wetland report and plan will be submitted to the U.S. Army Corp of Engineers; that tax ditches run along the western and southern boundary of the site; that no tax ditches are proposed to be disturbed by the project; that the property does contain some man-made channels; that impacts to drainage channels at the perimeter of the project have been avoided in order to maintain drainage conditions for adjacent properties; that during the permitting process, a design team will ensure that drainage from adjacent properties is maintained, causing no negative impacts; that the site is located within the Coastal Area; that the Coastal Area is a designated growth area; that the project has been through the PLUS process; that the PLUS responses and Environmental Assessment and Public Facility Evaluation Report were included in the project binders.

The Council found that Mr. Myrick spoke on behalf of the application; that he and his wife are the owners of MRBP, LLC and are seeking a Conditional Use to operate a borrow pit; that the original intent was to mine the pit for the duration of its useful life and then potentially create a public park for locals and visitors; that he spoke with a representative from the Sussex County Land Trust regarding their potential interest in the site as open space; that there is some interest on their part but there have not been any commitments made at this time; that he has also met in person with the closest neighbor, Mr. Harrington and listened to his thoughts about a public space being hard to police properly and his concerns about potential drug activity within the space; that taking those concerns into account, there have been no final commitments made for the site; that the site will remain in private ownership until it is decided the highest and best use of the property; that part of the long term may include a private residence for personal use; that the slopes will be seeded and stabilized as part of the immediate process; that there was concerns regarding the duration of the permitted use so a proposed condition has been changed to a 15-year window of operation vs 30-years; that it is anticipated that the life of the pit will be approximately 10-12 years but he would like a little margin to account for market conditions and weather; that the proposed hours of operation have been changed; that there will be no hours of operation on Saturday; that a 7:00 a.m. start time Monday through Friday was compromised; that other neighbors have concerns about the final look of the small lake that will be the result of the mining operation; that Mr. Myrick shared pictures of an existing borrow pit and a completed borrow pit for reference; that that when the project is complete, the finished product will be a small lake that natural blends into the existing environment; that another neighbor has a concern about noise and sight lines into the project from his background; that the proposed site plan has been altered to include an additional planted buffer within a 50 foot required planted buffer; that part of this planted buffer will be in the area adjacent to the residence in question; that the Sussex County Code requires

**Public  
Hearing/  
CU2300  
(continued)**

all borrow pits to be at least 200 feet from any residences of other ownership; that the proposed pond is 347 feet away; that the existing residence of the easterly border is 347 feet away and the closest neighbor is over 260 feet away; that originally, the request was for a dredge to operate 24 hours a day; that it is likely that no dredge will be required and the borrow pit operations will be accomplished with a traditional excavator and load; that it is being proposed that no heavy equipment operate after 5:30 p.m.; that it is being requested that screened top soil be allowed as import to the site as part of the final reclamation of the finished borrow pit.

Mr. Hudson questioned the maximum depth of the borrow pit. Mr. Myrick replied that it is about 32-35 feet deep. Mr. Hudson discussed the depth of the wells that were close to the properties and questioned if the drinking water could be affected. Mr. Myrick replied that it should not be because it is believed that those wells would be greater than 35 feet.

Mr. Hudson asked how many loads were anticipated per day. Mr. Myrick replied that the range would be between 30-50 with an average of 40 trucks a day.

Mr. Hudson questioned the road width. Mr. Myrick explained that an approved small commercial entrance from DelDOT was received that just expired. He does not anticipate an issue getting it renewed if approval is given.

**Public Comments were heard.**

Mr. Mack McCary spoke in opposition of the application. Mr. McCary distributed a paper with names of 17 people that own property or live on McCary Road who are against this project. He added that there are 19 properties on McCary Road, and the road is only 1.2 miles long and 19 foot wide. Mr. MacCary expressed concerns about noise, truck traffic, where the trucks would exit and enter and equipment noise. Mr. McCary then discussed the length of the permit and that many people will not want to buy a piece of property next to an active borrow pit. Therefore, he believes that their property values will decrease. Mr. McCary requested for action to be deferred on this application. Mr. Moore explained that if action is deferred today, that does not mean that people will be able to come back to speak on this matter because the hearing would close today. He added that the Council does have the opportunity to keep the record open for written comments only.

Mr. Art Ford spoke in opposition of the application. He stated that this would become a mosquito lake and bring noise. He added that the number of trucks mentioned has increased that will be coming and going from this site. There are no trees to block him from seeing their trucks and hearing the constant noise from his property. In addition, the generators that they need to use for the pumps will bring a lot of noise that will have to run 24 hours a day.

**Public  
Hearing/  
CU2300  
(continued)**

Mr. Jeff Lynch spoke in opposition of the application. Mr. Lynch stated that currently this is all farmland that will go away if this project moves forward. He expressed concerns that this would affect his chicken farm, water quality and truck traffic.

Mr. Tyler White spoke in opposition of the application. Mr. White expressed concerns about the water, flooding, noise and property values decreasing. Mr. White believes that this land should be zoned agricultural; it is a commercial site. Mr. White shared concerns about the dangerous hole and children falling in or drowning.

The public hearing was closed.

**M 406 22  
Defer  
Action/  
CU2300**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action and to leave the record open for a week to allow either side to submit written comments and one week after that period of time for anyone to respond to the comments.

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/  
CU2301**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.00 ACRES, MORE OR LESS" (property lying on the west side of Roxana Road [Rt. 17] approximately 0.23 mile south of the intersection Powell Farm Road [S.C.R. 365] and Peppers Corner Road [S.C.R. 365]) (911 Address: 34018 Roxana Road, Frankford) (Tax Parcel: 134-15.00-20.04)

The Planning and Zoning Commission held a Public Hearing on this application on July 14, 2022 and on July 28, 2022, the Planning & Zoning Commission recommended approval of the application for the five reasons stated and subject to the twelve recommended conditions.

(See the minutes of the Planning and Zoning Commission dated July 14, and July 28, 2022.)

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found Mr. Jason Tedesco spoke on behalf of his Application; that he and his wife began a small landscape maintenance company 15

**Public  
Hearing/  
CU2301  
(continued)**

years ago; that their operation should not impact the traffic; that he has a total of 6 full time employees; that there are numerous businesses located on Rt. 17, which are already zoned for commercial use; that normal working hours are 7:30 a.m. until 5:30 p.m.; that shown was a drawing of a proposed mulch bin area; that he had no problems with the conditions set by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 407 22  
Adopt  
Ordinance  
No. 2879/  
CU2301**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2879 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.00 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning and Zoning Commission as follows:

1. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business is consistent with the underlying agricultural zoning of the property.
2. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. This low-impact type of use is appropriate within this Area.
3. The use will not adversely affect area roadways or neighboring properties.
4. The applicant has stated that his landscaping company provides a service to a wide variety of Sussex County residents and businesses. This intended use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.
5. There are other small businesses in the area with approved conditional uses, including another landscaping business and an indoor/outdoor storage facility. This conditional use is consistent with these other existing small businesses.
6. This recommendation is subject to the following conditions:
  - A. This use shall be limited to a landscaping and lawn care business. The area set aside for the landscaping operations shall be shown on the Final Site Plan.
  - B. No manufacturing shall occur on the site. This prohibition includes the shredding or grinding of any materials and the dyeing of mulch or similar materials.
  - C. There shall not be any retail sales occurring from the site.
  - D. One lighted sign shall be permitted. It shall not exceed 32 square feet on each side.
  - E. The hours of operation shall be limited to 8:00 a.m. through 6:30 p.m., Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on

**M 407 22  
Adopt  
Ordinance  
No. 2879/  
CU2301  
(continued)**

- an as-needed basis for limited situations such as snow removal, storm damage cleanup, and similar events.
- F. There shall not be any dumping of trees, branches, grass, or other debris on the site.**
  - G. The on-site storage of mulch, stone, topsoil, and similar materials shall be located in bins or enclosures. The location of these storage areas shall be shown on the Final Site Plan.**
  - H. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
  - I. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
  - J. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.**
  - K. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.**
  - L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**

**Motion Adopted: 5 Yeas**

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

**Public  
Hearing/  
CU2303**

**A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FOOD TRUCK BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.238 ACRES, MORE OR LESS" (property lying on the northwest side of Jersey Road [S.C.R. 305], approximately 500-feet southwest of the intersection of John J. Williams Highway [Rt. 24] and Hollyville Road [S.C.R. 305]) (911 Address: 26719 Jersey Road) (Tax Parcel: 234-32.00-55.00)**

**The Planning and Zoning Commission held a Public Hearing on this application on July 14, 2022 and on July 28, 2022, the Planning & Zoning Commission recommended denial of the application for the seven reasons stated.**

**(See the minutes of the Planning and Zoning Commission dated July 14, and July 28, 2022.)**

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

**There was no representative present for the application.**



**Public  
Hearing/  
Code  
Amendment**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, BY AMENDING SECTION 115-77.1 (LARGE SCALE USES) TO CLARIFY HOW FLOOR AREA IS CALCULATED”.**

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

**Public comments were heard.**

**Mr. David Hutt, attorney with Morris & James spoke in support of the Ordinance. He added that this will help prepare site plans.**

**The public hearing and the public record were closed.**

**M 408 22  
Adopt  
Ordinance  
No.  
2880/Code  
Amendment**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2880 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, BY AMENDING SECTION 115-77.1 (LARGE SCALE USES) TO CLARIFY HOW FLOOR AREA IS CALCULATED”.**

**Motion Adopted: 5 Yeas**

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

**The Public Hearing and public record were closed for CU2303.**

**M 409 22  
DENIED/  
CU2303**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve CU2303 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FOOD TRUCK BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.238 ACRES, MORE OR LESS”.**

**Motion Denied: 5 Nays**

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

**M 410 22  
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mrs. Green to adjourn at 2:33 p.m.**

**Motion Adopted: 5 Yeas**

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

**Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Respectfully submitted,**

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

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