

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 10, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 10, 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 346 21
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Agenda, as posted.

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 July 27, 2021 were approved by consent.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from the Girl Scouts of the Chesapeake Bay in appreciation of a grant.

**Public
Comments**

Public comments were heard and the following spoke:

Lori Johnson of Selbyville raised questions about police, fire and ambulance presence on Route 54.

**M 347 21
Approve
Consent
Agenda
Items**

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

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-1156
Cardinal Grove Project, West Rehoboth Area**
- 2. Use of Existing Wastewater Infrastructure Agreement, IUA-1126
Southern Landing Project, Millville Area**

**M 347 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**

**Retiree
Recognition**

The Council recognized Mark Sheridan, Deputy Director of EMS, who is retiring after 27 years of service with the County.

**Adminis-
trator's
Report**

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

1. Certificate of Achievement for Excellence in Financial Reporting

I am pleased to announce that the Government Finance Officers Association of the United States and Canada has awarded Sussex County its Certificate of Achievement for Excellence in Financial Reporting for the 2020 Comprehensive Annual Financial Report. This is the 19th consecutive year that the County has received this prestigious award acknowledging the financial report. The award is among the highest forms of recognition for governmental accounting and financial reporting.

Congratulations to Gina Jennings, Finance Director/Chief Operating Officer, Kathy Roth, Deputy Finance Director, and the accounting staff for their efforts in achieving this award.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Marsh Island Phase 1B (PS & FM) and Marsh Island Phase 5 (Construction Record), effective July 21st; Millville by the Sea, Seabreeze Village 8, Phase 2 (Construction Record), effective August 2nd; Marsh Farm Estates, Phase 4A, effective August 5th; and Americana Bayside, Weidman Parcel, Phase 1B (Construction Record), effective August 6th.

3. FY 2022 Human Service Grant Program

Applications for the Fiscal Year 2022 Human Service Grant Program are now being accepted. The Human Service Grant Program provides grants to County-wide non-profit agencies for the purpose of enhancing health and human services which contribute to a safe, healthy and self-sufficient community. Funds provide grants that assist organizations with resources in support of programs or capital purchases.

To be eligible for a grant, organizations must fill out an application which is available on the County's website at www.sussexcountyde.gov. The deadline for filing grant requests is Thursday, September 30th.

**Administrator's
Report
(continued)**

4. Council Meeting Schedule

A reminder that Council will not meet on August 17th. The next regularly scheduled Council meeting will be held on Tuesday, August 24th, at 10:00 a.m.

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

**Vehicle
Request
RFP**

Michael Costello, Government Affairs Manager, presented the bid results and the Fleet Team's award recommendation for the Vehicle Purchases Request for Proposals (RFP). A total of three bids were received. The bid results were included in the Council's packets for this meeting.

**M 348 21
Award
Vehicle
RFP**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based on the Fleet Team's recommendation, that the Sussex County Council awards bid specifications A-1, B-1, C-6, C-7, D-1 and E-1 to Hertrich's Fleet, A-1-1 and C-2 to Chas S. Winner, Winner Ford, and F-1, H-1 and G-1 to First Due Customs.

Motion Adopted: 5 Yeas.

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

**Public
Safety
Building/
Bid
Results
and
Architec-
tural
Amend-
ments
2 and 3**

Hans Medlarz, County Engineer, presented the bid results for the EMS Public Safety Building Project, Project C19-04. Eight (8) bids were received; Bancroft Construction Company (Bancroft) of Wilmington, Delaware, submitted the lowest responsive base bid in the amount of \$8,282,169.00. The Engineering Department recommends awarding the bid to Bancroft. Mr. Medlarz also presented Amendments 2 and 3 to the Architectural Contract for the Project. Mr. Medlarz reported that, following the presentation to Council in March, the scope still evolved considerably due to design revisions and added design features. Consequently, George, Miles & Buhr (GMB) and its subcontractors have exceeded the previously approved allocations bringing the project to bid. Mr. Medlarz presented Amendment No. 2 in the amount of \$75,000.00 for Additional Design Services and Amendment No. 3 in the amount of \$244,500.00 for the Construction Phase Services Contract. The Engineering Department recommends the approval of GMB's Amendment Nos. 2 and 3, increasing the not-to-exceed amount to \$681,400.00.

**M 349 21
Award Bid/
Public
Safety
Building**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract C19-04, Sussex County Public Safety Building, be awarded to Bancroft Construction Company, for their low bid of \$8,282,169.00.

**M 349 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 350 21
Approve
Amend-
ments to
Architec-
tural
Services
Contract**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Amendment Nos. 2 and 3 to the Architectural Services Contract with George, Miles & Buhr, for the Sussex County Public Safety Building, be approved in the amounts not to exceed \$75,000.00 and \$244,500.00, respectively.

Motion Adopted: 5 Yeas.

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

**Inland Bays
Regional
Wastewater
Facility/
Profes-
sional
Environ-
mental
Services
and Geo-
technical
Engineering
Services/
Contract
Amendment
and Budget
Revision
to Base
Contract**

Hans Medlarz, County Engineer, presented a request for an increase to the Professional Environmental Services Contract (Project 19-05), Inland Bays and the Sussex Portion of the Chesapeake Bay Watershed. Previously, as a result of comments received from DNREC, additional data acquisition, soil testing, hydrogeologic evaluations and surface water assessments were necessary to update the project design documents and advance the project to the permit stage; the Council approved a Motion on February 2, 2021 to cover this work. Since that time, the Soils Investigative Report has been completed and identified a restrictive layer and concluded that areas exist within the project area that are favorable for construction of a submerged gravel wetland. Mr. Medlarz stated that additional testing is necessary and will require additional services from RK&K and Hillis-Carnes, the County's Geotechnical Consultant. The Engineering Department is requesting Council's approval of RK&K's 3rd Base Contract Amendment in the not to exceed amount of \$46,571.00. Mr. Medlarz also reported that additional geotechnical engineering services in the amount of \$4,070.00, as per a proposal from Hillis-Carnes, are required to support the testing for the final constructed Submerged Gravel Wetland design. To cover these services and other miscellaneous initiatives and activities, the Engineering Department is requesting that the ceiling for FY2022 be increased by \$25,000.00.

**M 351 21
Increase
Environ-
mental
Services
Base
Contract**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Professional Environmental Services Base Contract with RK&K, Inc. be increased in the amount of \$46,571.00 for Hydrological Scaled Basin Testing and Subsequent Design Implementations.

Motion Adopted: 5 Yeas.

SCRWF Treatment Process revealed site conditions require the full demolition of the upper level of the headworks as well as the channel between it and the splitter box).

Upgrade & Rehoboth Beach WTP (continued) Mr. Medlarz noted that Change Order No. 13 will be fully paid for by the City under their financing agreements; however, since it's the County's project, the County has to take the official action.

M 354 21 Approve C/O #10/ Contract C19-17/ SCRWF Treatment Process Upgrade & Rehoboth Beach WTP A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 10 for Contract C19-17, South Coastal Regional Wastewater Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2, Electrical Construction, be approved, increasing the Contract by \$7,320.00.

Motion Adopted: 5 Yeas.

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

M 355 21 Approve C/O #13/ Contract C19-11/ SCRWF Treatment Process Upgrade & Rehoboth Beach WTP A Motion was made by Mr. Schaeffer, seconded by Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 13 for Contract C19-11, South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2, General Construction, be approved, increasing the Contract by \$1,043,243.92.

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 356 21 Councilmanic Grant A Motion was made by Mrs. Green, seconded by Mr. Hudson, to give \$4,000.00 (\$2,000.00 each from Mrs. Green's and Mr. Vincent's Councilmanic Grant Accounts) to the First State Community Action Agency for building repairs to the Walker's Mill Community Center.

Motion Adopted: 5 Yeas.

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

**M 357 21
Council-
manic
Grant**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$3,500.00 from Mr. Schaeffer's Councilmanic Grant Account to the Partnership for the Delaware Estuary for an ecotourism investment strategy.

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 AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WAREHOUSING FACILITY WITH OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.13 ACRES, MORE OR LESS" (Conditional Use No. 2263) filed on behalf of Southern Comfort Delaware, LLC (Tax I.D. No. 134-7.00-143.00) (911 Address: None Available).

Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRES, MORE OR LESS" (Conditional Use No. 2272) filed on behalf of Charles Stanley (Tax I.D. No. 231-12.00-40.01) (911 Address: 24250 Old Meadow Road, Seaford).

Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A MICROBREWERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.35 ACRES, MORE OR LESS" (Conditional Use No. 2282) filed on behalf of Lawrence Davies (Tax I.D. No. 134-9.00-27.00) (911 Address: 38450 Hickman Road, Ocean View)

Mr. Hudson 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 C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.76 ACRES, MORE OR LESS" (Change of Zone No. 1940) filed on behalf of Community Bank Delaware, c/o Stephen W. Spence (Tax I.D. No. 234-23.00-262.00) (911 Address: 31816 & 24882 Indian Mission Road, Millsboro).

The Proposed Ordinances will be advertised for Public Hearing.

M 358 21 **At 10:35 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to recess the Regular Session and go into Executive Session to discuss matters relating to potential litigation and land acquisition.**
Go Into
Executive
Session

Motion Adopted: 5 Yeas.

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

Executive **At 10:40 a.m., an Executive Session of the Sussex County Council was held in**
Session **the Basement Caucus Room to discuss matters relating to potential litigation**
and land acquisition. The Executive Session concluded at 11:50 a.m.

M 359 21 **At 11:55 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley,**
Reconvene **to come out of Executive Session and to reconvene the Regular Session.**
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

E/S Action **There was no action on Executive Session matters.**

M 360 21 **At 11:56 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley,**
Recess **to recess until 1:30 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

M 361 21 **At 1:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to**
Reconvene **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 reviewed the rules of procedure for public hearings.**

**Public
Hearing/
CU 2250**

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 CONSTRUCTION BUSINESS, WORK TRAILER, AND OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.968 ACRES, MORE OR LESS” (Conditional Use No. 2250) filed on behalf of Paola Pacheco Vazquez (Tax I.D. No. 230-12.00-10.04) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on June 24, 2021 at which time action was deferred. On July 8, 2021, the Commission recommended approval with the following conditions:

- a. This use shall be limited to the Applicant’s construction business with work trailer and equipment storage. No retail sales or other business shall be conducted from the site.**
- b. No manufacturing or concrete mixing shall occur on the site. This prohibition includes the shredding or grinding of any materials.**
- c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.**
- d. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- e. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- f. There shall be no dumping or storage of concrete or similar materials on the site.**
- g. All maintenance of vehicles and equipment shall be performed indoors or offsite.**
- h. 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.**
- i. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated June 24 and July 8, 2021.)

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

The Council found that Paola Pacheco was present on behalf of her application. She stated that she is the property owner and that they operate a small family construction business; and that they wish to comply with the County’s regulations.

**Public
Hearing/
CU 2250
(continued)**

Following a review of the Planning and Zoning Commission’s recommended conditions, the Applicant expressed concern about Condition “g” which states “All maintenance of vehicles and equipment shall be performed indoors or off-site.” She stated that they would want to perform some equipment maintenance on the site.

Public comments were heard.

Hunter Emory (representing White Mahogany Investments, LLC and Fitzgerald Deputy Teatown Road, LLC, which are adjacent property owners) stated that a complaint was filed on the use taking place on this parcel which caused the Applicant to make application; that there is water on the property; that their concern is the water run-off onto area properties and that they are working with the Sussex Conservation District to get ditching; that the Applicant is already bringing dirt onto the site which will cause more run-off; that the Applicant currently has a pop-up tent/trailer on the site that someone is living in; that the Applicant may need a retention pond on the site; that another concern is the lack of bathroom facilities or a septic system on the property; and that proper preparation and proper steps need to be taken prior to permitting this use.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 362 21
Amend
Condition**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to amend Condition “g” to read as follows: “All maintenance of vehicles and equipment, except routine light maintenance such as oil changes and power washing, shall be performed indoors or offsite.”

Motion Adopted: 5 Yeas.

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

**M 363 21
Adopt
Ordinance
No. 2793/
CU 2250**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2793 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONSTRUCTION BUSINESS, WORK TRAILER, AND OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.968 ACRES, MORE OR LESS” (Conditional Use No. 2250) filed on behalf of Paola Pacheco Vazquez, with the following conditions, as amended:

**M 363 21
Adopt
Ordinance
No. 2793/
CU 2250
(continued)**

- a. This use shall be limited to the Applicant's construction business with work trailer and equipment storage. No retail sales or other business shall be conducted from the site.
- b. No manufacturing or concrete mixing shall occur on the site. This prohibition includes the shredding or grinding of any materials.
- c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- d. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- e. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- f. There shall be no dumping or storage of concrete or similar materials on the site.
- g. All maintenance of vehicles and equipment, except routine light maintenance such as oil changes and power washing, shall be performed indoors or offsite.
- h. 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.
- i. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and 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/
CU 2254**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR AN AUTO GLASS TINTING SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.021 ACRES, MORE OR LESS" (Conditional Use No. 2254) filed on behalf of Richard L., Jr. & Kelsey R. Dickerson Tilghman (Tax I.D. 532-19.00-52.00) (911 Address: 8227 W. Line Road, Delmar).

The Planning and Zoning Commission held a Public Hearing on this application on June 24, 2021 at which time action was deferred. On July 8, 2021, the Commission recommended approval of the application with the following conditions:

- a. The use shall be limited to a glass-tinting business. No other uses or sales shall occur on the property.
- b. The glass-tinting operation shall only occur within the existing pole building, and all materials shall be stored within the building.

**Public
Hearing/
CU 2254
(continued)**

- c. The hours of operation shall be limited to 7:00 a.m. until 5:00 p.m.
- d. Signage shall be limited to one lighted sign along the roadway not to exceed thirty-two (32) square feet in size.
- e. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
- f. All entrances shall be subject to all DelDOT requirements.
- g. Failure to comply with any of these conditions of approval shall be grounds for termination of this Conditional Use approval.
- h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated June 24, 2021 and July 8, 2021.)

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

The Council found that Richard Tilghman was present on behalf of his application. He stated that he wishes to start his own window-tinting business; that his application is for a 26 x 30 pole building in which to operate a window tinting shop; that hours would be 7:00 a.m. to 5:00 p.m.; that most vehicles only need to be on the site for two to three hours; that, at most, he would have three customers' cars in his driveway at any given time; that he wants to erect a 32 square foot sign; and that he is in agreement with the conditions recommended by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 364 21
Adopt
Ordinance
No. 2794/
CU 2254**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2794 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR AN AUTO GLASS TINTING SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.021 ACRES, MORE OR LESS" (Conditional Use No. 2254) filed on behalf of Richard L., Jr. & Kelsey R. Dickerson Tilghman, with the following conditions:

- a. The use shall be limited to a glass-tinting business. No other uses or sales shall occur on the property.
- b. The glass-tinting operation shall only occur within the existing pole building, and all materials shall be stored within the building.
- c. The hours of operation shall be limited to 7:00 a.m. until 5:00 p.m.
- d. Signage shall be limited to one lighted sign along the roadway not to exceed thirty-two (32) square feet in size.
- e. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
- f. All entrances shall be subject to all DelDOT requirements.

**M 364 21
Adopt
Ordinance
No. 2794/
CU 2254
(continued)**

- g. Failure to comply with any of these conditions of approval shall be grounds for termination of this Conditional Use approval.**
- h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Years.

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

**Public
Hearing/
CU 2259**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT FOR MULTI-FAMILY DWELLING UNITS (30 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.96 ACRES, MORE OR LESS” (Conditional Use No. 2259) filed on behalf of The Evergreene Companies, LLC, c/o Tim Naughton (Tax I.D. No. 134-13.00-72.02) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on June 24, 2021 at which time action was deferred. On July 22, 2021, the Commission recommended approval with the following conditions:

- A. The maximum number of residential units within this entire development shall be 30.**
- B. The Applicant shall form a condominium association to be responsible for the perpetual maintenance of the development’s roadways, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. All entrance, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- D. The project shall be served by Sussex County sewer. the Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- G. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- H. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**

**Public
Hearing/
CU 2259
(continued)**

- I. The interior street design shall meet or exceed Sussex County’s street design requirements. There shall be sidewalks on at least one side of all streets.**
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.**
- K. Recreational amenities shall be completed no later than the issuance of the 15th residential building permit. These amenities shall include a pool, pool deck and bathrooms.**
- L. Construction, site work and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24 inch by 36 inch “NOTICE” sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- M. All of the buildings shall be set back at least 20 feet from all non-tidal wetlands.**
- N. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the western perimeter of this development. This shall utilize the existing poplar trees within the buffer area with vegetation added as a screen in accordance with the requirements of Sections 115-218D and 99-5 of the County Code. Where the trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. In addition, a split rail or similar type of fence shall be installed along the boundary line of the property next to this buffer.**
- O. The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas and the forested areas that will be preserved. This Landscape Plan shall further identify all “Limits of Disturbance” within the site.**
- P. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until a Lot Grading Plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual Site Grading Plan.**
- Q. As proffered by the Applicant, the Final Site Plan and the recorded condominium covenants shall prohibit the application of fertilizers or similar soil additives on the property by the individual unit owners. All such applications shall be managed by the Condominium Association and a contractor of its designation using Best Management Practices to seek to minimize the risk of runoff into the stormwater management system, wetlands and waterways.**
- R. The failure to abide by these conditions shall result in the termination of this Conditional Use.**
- S. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

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(continued)**

(See the minutes of the Planning and Zoning Commission dated June 24, July 8, and July 22, 2021)

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

Mr. Whitehouse reported that 83 letters (some possibly duplicates) were received in opposition to the application.

It was noted that DelDOT representative Steve McCabe was in attendance by teleconference.

The Council found that James Fuqua, Esq., was present on behalf of the application along with Tim Naughton, Applicant, and Cliff Mumford of Davis, Bowen & Friedel.

Mr. Fuqua stated that there is a zoning history relevant to this application (Conditional Use No. 2259) and he provided a history of the applications previously approved for this site. A 48-unit multi-family townhouse project was approved by the Sussex County Council for this site on two separate occasions (in 2004, Conditional Use No. 1519 was filed on behalf of Inland Bays, LLC and in 2010, Conditional Use No. 1850 was filed on behalf of Inland Bays, LLC). Conditional Use No. 1519 did not proceed and the preliminary approval expired, and Conditional Use No. 1850 did not proceed due to a recession and thereafter, with the project not being substantially underway, the approval expired.

Mr. Fuqua reported that this Conditional Use application is different when compared to the two prior applications in that it is for 30 multi-family units which will all be single family detached condominium units; that the site consists of 11.96 acres; that the density would be 2.5 units per acre (which is a reduction in density from 4 units in comparison to the previously approved applications); that the site is located in Investment Levels 2, 3 and 4 according to the Strategies for State Policies and Spending; that since the proposed site plan stays out of the Level 4 Area, the Office of State Planning stated that they have no objection to the proposed development; that there are a number of single-family, multi-family and commercial uses in the general area; that the area is urban in character; that the site contains 6 acres of non-tidal wetlands; that the wetlands were delineated by Environmental Resources; that the western side of the site is uplands which is the area to be developed; that the wetlands area will remain undisturbed; that the site is located in a County operated sewer district and wastewater capacity is available; that Sussex Shores Water Company will provide central water for domestic use and fire protection; that stormwater management facilities will be designed and constructed in accordance with DNREC's regulations and approved by the Sussex Conservation District; that DelDOT did not require a Traffic Impact Study; that DelDOT stated that the traffic impact would be negligible, as stated in DelDOT's letter dated October 8, 2020; that DelDOT will require the Applicant to dedicate additional right-of-way along the site

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frontage to provide a 40 foot right-of-way on the side of the road that the entrance will be designed; that improvements will be required at the entrance; that there will be one cul-de-sac street for entering and leaving the development; that 16 units will be located on the west side of the street and 14 units will be located on the east side of the street; that there will be a recreational area on the east side of the street; that the recreational area will include a swimming pool; that each unit will have the capacity for 4 parking spaces; that there will be an additional 7 parking spaces in front of the recreational area; that sidewalks are proposed along the east side of the street; that there will be a minimum of a 10 foot building setback from the non-tidal wetland line; that the average setback is significantly greater than this; that one building will maintain at least the 10-foot setback and all other buildings will have a larger setback; that the western boundary and half of the northern boundary of the site that borders the Bethany Lakes development will have a 20-foot landscape buffer; that the buffer will be continued along the western boundary around the corner to approximately where the cul-de-sac is located; that the buffer cannot continue further because the 20 foot wide area will be where the County's sewer easement will be located; that they are proposing a privacy fence of at least 6 feet in height which would be constructed along the boundary from where the easement begins to where the wetlands begin; that the application complies with the purpose of the MR District; that the application is in accordance with the Comprehensive Plan, that the proposed development is in character with the nature of the area; that the proposed 30 units is a significant reduction in the 48 units previously approved in two separate applications; that the State Planning Office has no objection to the development; and that the Planning and Zoning Commission unanimously recommended approval of the application subject to conditions.

Mr. Fuqua reviewed the site plan and described the area including adjacent residential developments (including densities) and commercial activities.

Mr. Fuqua referenced some of the comments made at the Planning and Zoning Commission in opposition to the application:

- **Comment:** That 9.2 acres of the site is woodlands/wetlands and should not be utilized when determining density.

Response: That statement is incorrect. Tidal wetlands cannot be used to determine density but all wetlands located on this site are non-tidal wetlands which have always been permitted to be used for density calculations. Two (2) acres of the existing 9.2 acres of woodlands will be removed, leaving 7.38 acres undisturbed as part of the wetland areas. Under the proper density calculation, the proposed 30 units represent a density of 2.5 units per acre and the density permitted in the MR District is 4.35 units per acre.

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- **Comment: There is runoff and flooding in the area.**

Response: The development of the stormwater management system will be designed and constructed in accordance with DNREC regulations which will be reviewed and approved by the Sussex Conservation District. Under the regulations of DNREC, stormwater run-off on the site cannot run off or flood adjacent properties; that run-off must be captured and contained on the site in accordance with the regulations.

- **Comment: DelDOT did not require a Traffic Impact Study (TIS) but did recommend one.**

Response: This is incorrect. DelDOT did not recommend a TIS. DelDOT's comments in the PLUS letter of December 18, 2020 states that a TIS is not warranted. In Bill Brockenbrough's letter of October 8, 2020, he stated that, because vehicle trips do not meet TIS minimum warrants, DelDOT considers the Development's impact to be negligible in the context of DelDOT's agreement with the County regarding land development coordination. DelDOT recommended that the Applicant not be required to perform a TIS.

In response to questions, Mr. Steve McCabe of DelDOT confirmed that a Traffic Impact Study (TIS) was not required. Mr. Hudson stated that he believes the Council can request a TIS in accordance with the most recent Memorandum of Understanding signed by the County and DelDOT. Mr. McCabe stated that, if the MOU states that, it would be the Council's right to make that request. In response to questions, Mr. McCabe commented on the Level of Service on Fred Hudson Road stating that he is unsure what that Level is, but that he can find out and report back. Mr. McCabe commented on improvements that DelDOT will be requiring to Fred Hudson Road.

Mr. Fuqua addressed a matter of concern that came up during the Planning and Zoning Commission's Public Hearing and in emails received by the County thereafter. Mr. Fuqua reported that an allegation was made at the Planning and Zoning Commission's public hearing "which unfairly attacked the reputation of Evergreene Companies and improperly influenced the conditions of approval recommended by the Commission". In response to those allegations, Mr. Fuqua stated that neither he nor the Applicant knew about this alleged violation. Mr. Fuqua also stated concerns regarding comments made by the Commission Members when they were discussing the application. Mr. Fuqua stated that he later found out that the County had never notified Evergreene of this alleged violation nor had the County taken any corrective or enforcement action against the alleged violation. The allegation that trees were removed in violation of conditions of approval is not true. Mr. Fuqua noted that he has submitted a letter into the record, with attached exhibits. He also noted that there has been no violation of the conditions of approval for the Coastal Corner development.

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(continued)**

Mr. Fuqua stated that the Planning and Zoning Commission’s recommended conditions for this application are an “element of punishment” for the stated allegation, including a condition for a mandatory 20 foot setback from non-tidal wetlands and a condition that a violation of a condition terminates the Conditional Use. Mr. Fuqua stated that there is no provision for requiring the 20 foot setback and the County cannot impose a condition that treats one applicant unequally and that the condition regarding a violation affords no opportunity for correction.

Mr. Fuqua stated that the Applicant accepts the conditions recommended by the Planning and Zoning Commission with the following comments:

- In regards to Condition M, regarding the 20 foot non-tidal wetlands setback, there is no authority for that. However, with a realignment of the road, the units can meet the 20 foot non-tidal setback without the loss of any units. A revised site plan was submitted and it does incorporate the 20 foot non-tidal wetlands setback.**
- In regards to Condition N, the 20 foot landscaped buffer only addresses the western boundary. Mr. Fuqua stated that the Applicant is proposing to continue that landscaping buffer along the northern boundary to the point where the County’s sewer easement begins and to erect a six foot or higher privacy fence along the sewer easement area to where the wetlands begin. Mr. Fuqua submitted proposed language to amend Condition N.**
- In regards to Condition R which states “The failure to abide by these conditions shall result in the termination of this Conditional Use.”, Mr. Fuqua stated that this language is a little too much (the word “shall”).**

Public comments were heard.

There were no public comments in support of the application.

The following spoke in opposition to the application: Tom Haug, Steve Guthrie, and Susan Fischer. Mr. Haug responded to Mr. Fuqua’s comments regarding “disparaging” comments that were made at the Planning and Zoning Commission’s public hearing noting that he never said “Evergreene”, only the “owner of the property” in his comments regarding the removal of trees. Mr. Haug stated that he asked the owner to consider leaving the trees up as a buffer between the two neighborhoods.

Mr. Haug urged Council to review final engineering plans and to consider run-off, drainage, buffers, and wetlands. He stated that cutting down trees will make drainage problems worse. Mr. Haug urged the Developer to put in underground stormwater run-off, i.e. underground water discharge pipes, and he urged Council to ask the owner to not take the trees down.

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(continued)**

Mr. Fuqua responded that all of the trees within the 20 foot buffer on the western boundary line will remain until the Developer meets with the HOA.

Mr. Guthrie stated that his major objection is traffic; that there will be an additional 500 trips per day which is not not-negligible; that Fred Hudson Road is very heavily used and subject to frequent back-ups; that a Traffic Impact Study is needed; that the Coastal Corners development will also be adding to the Cedar Neck /Fred Hudson Road traffic; that the quality of life in the area will be impacted; that a forested buffer is needed between the two developments; that a buffer of 20 feet is not sufficient, it should at least be 25 feet in order to create a separation between the two developments; and that the number of houses should be reduced.

Susan Fischer referenced the MR zoning of this property and stated that the Applicant states that they seek a density of 2.5 units per acre; that considerations of calculations without consideration of the distribution of homes across the property make a mockery of this density claim; that the parcel is 11.96 acres of which 9.2 acres are woodlands, leaving 2.7 acres; that they will cut down 2 acres of trees which will provide a total of 4.7 acres for 30 homes; that this results in 6.3 homes per acre which does not meet the definition of medium density; that the number of homes should be reduced to 18 or less; that traffic in the area will be negatively impacted; that current traffic already at times prevents egress and is dangerous; that a Traffic Impact Study is needed; that the cumulative impact must be considered; that the approvals of two prior applications for this site is not a reason to approve this application since conditions change (such as sea level rise). Ms. Fischer commented on the lack of similarities between this application and Bethany Lakes, i.e. entrance, stormwater ponds, etc. Ms. Fischer stated her concerns about the removal of trees, drainage and flooding, the need for a 30-foot forested setback, the use of pilings and the effects of construction (pounding of pilings, etc.) on her property. Ms. Fischer also noted that in regards to Condition L recommended by the Planning and Zoning Commission, signage should be posted in English and Spanish. Ms. Fischer referenced the Applicant's revised site plan to relocate the road and she urged a 30-foot forested buffer set-back along the western and northern borders with Bethany Lakes stating that a 20 foot buffer cannot adequately separate two different communities and provide sound buffering, privacy and security; that the 20-foot buffer to the wetlands and the 30-foot forested buffer with Bethany Lakes should be provided or the number of homes should be reduced; and that a forested buffer be required at the western and northern area of the project. That Condition N addresses the buffer between the proposed project and Bethany Lakes and she suggests the language include the northern border.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 365 21
Defer
Action/
CU 2259**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Conditional Use No. 2259 filed on behalf of The Evergreene Companies, LLC, c/o Tim Naughton.

Motion Adopted: 5 Yeas.

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

**M 366 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to adjourn at 3:36 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,

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

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