

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 14, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 14, 2018, at 10:00 a.m. in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
George B. Cole	Vice President
Robert B. Arlett	Councilman
Irwin G. Burton III	Councilman
Samuel R. Wilson Jr.	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 443 18 Amend and Approve Agenda

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to amend the agenda by deleting “Introduction of Proposed Zoning Ordinances” and to approve the agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of July 31, 2018, were approved by consent.

Corre- spondence

Mr. Cole reported that the following correspondence was received:

**OCEAN VIEW HISTORICAL SOCIETY, OCEAN VIEW, DELAWARE.
RE: Letter in appreciation of grant.**

Public Comments

Public Comments

Paul Reiger commented on two variance requests presented at the August 6, 2018, meeting of the Board of Adjustment, and the Board’s understanding of the intent of the Zoning Code.

Dan Kramer commented on variance requests before the Board of Adjustment that qualify for a hardship, and action by the Board on items that have not been properly advertised.

**M 444 18
Approve
Consent
Agenda
Items**

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

- 1. Wastewater Agreement No. 892-4
Sussex County Project No. 81-04
Marsh Farm Estates – Off-Site DelDOT Work
Angola Neck Sanitary Sewer District**
- 2. Wastewater Agreement No. 1026
Sussex County Project No. 81-04
Tidalwalk (AKA Back Creek)
South Bethany Sanitary Sewer District**

Motion Adopted: 5 Yeas.

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

**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 2017 Comprehensive Annual Financial Report (CAFR). This is the 16th 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. FY 2019 Human Service Grant Program

Applications for the Fiscal Year 2019 Human Service Grant Program are now being accepted. The Human Service Grant Program provides grants to county-wide nonprofit 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.sussexcountysde.gov.

The deadline for filing grant requests is Friday, September 28th.

**Administrator's
Report
(continued)**

3. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for July 2018 is attached listing the number of violent crime and property 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 195 troopers assigned to Sussex County for the month of July.

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

**Draft
Ordinance
Relating to
Calculation of
Permitted
Density**

Councilman Burton presented for discussion and possible introduction a draft ordinance relating to the calculation of permitted density. The draft ordinance is in follow-up to recent discussions relating to concerns with the calculation of permitted density in wetlands areas, and amends Sussex County Code to define density calculations for lots in an AR-1 cluster subdivision, lots in Environmentally Sensitive Development District Overlay Zone subdivisions, and lot area calculations for multifamily dwellings in all districts.

Discussion was held regarding wetlands designations, including State (around rivers and streams that flow into bodies of water), tidal, and freshwater Federal 404, the current calculation of permitted density, if in fact the current calculation has negatively impacted waterways and the environment, as well as the intent and ultimate goal of the ordinance.

**Introduction
of Proposed
Ordinance
Relating to
Calculation of
Permitted
Density**

Mr. Burton introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115 ("ZONING"), ARTICLE III ("PROVISIONS APPLICABLE TO ALL DISTRICTS"), ARTICLE IV ("AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS") AND ARTICLE XXV ("SUPPLEMENTARY REGULATIONS") WITH RESPECT TO THE CALCULATION OF PERMITTED DENSITY."

The Proposed Ordinance will be advertised for Public Hearing before the Planning and Zoning Commission and the County Council.

**Public
Hearing/
Burton
Pond
Community
Expansion/
Herring
Creek
Area**

A Public Hearing was held to consider expanding the boundary of the Herring Creek Area of the Sussex County Unified Sanitary Sewer District. Hans Medlarz, County Engineer, and John Ashman, Director of Utility Planning, discussed the annexation request submitted by Davis, Bowen & Friedel for their customers, Burton Pond, LLC, to include Parcels 234-11.00-97.00 and 98.00 (Burton Pond) and 234-17.00-17.00. Notices were placed on the County's website on July 31, 2018, and the expansion was posted on August 1, 2018. To date, Mr. Ashman stated that one call has been received questioning the impact to the Herring Creek project timeline and costs, to which Mr. Ashman advised there will be no negative impact. The expansion will consist of 211.00 acres, more or less, and the property

**Public Hearing/
Burton Pond
Community
Expansion
(continued)** owner(s) will be responsible for System Connection Charges of \$6,360.00 per EDU based on current rates. A Use of Existing Infrastructure Agreement will be required for the sewer connection. Mr. Medlarz noted that the proposed annexation is distinctly separate from the Herring Creek project and is 100 percent privately funded.

There were no public comments.

The Public Hearing and public record were closed.

**M 445 18
Adopt
R 012 18** A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Resolution No. R 012 18 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), HERRING CREEK AREA, TO INCLUDE SEVERAL PARCELS IN THE BURTON POND HOLLYMOUNT ROAD AREA LOCATED IN THE INDIAN RIVER 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Delaware
Transit
Reimburse-
ment
Program
Request** Mrs. Jennings reported that DART, a division of DelDOT, has allocated \$796,850 for funding of transportation expenses for various senior centers in Sussex County. This amount is the same as last year. The County's responsibility is to approve a recommended funding amount for Fiscal Year 2019 as per State law. This is an allocation of State grant funds to various senior agencies for transportation purposes. The recommended funding for each agency is the same as in previous years.

Nanticoke Senior Center	\$ 44,958.62
Indian River Senior Center	2,099.97
Laurel Senior Center	99,081.45
Lewes Senior Center	27,120.00
Cape Henlopen Senior Center	43,065.00
CHEER, Inc.	<u>580,524.96</u>

TOTAL	<u>\$796,850.00</u>
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**M 446 18
Allocate
State Funds
to Senior
Agencies** A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council approves the allocation of State funds to various senior agencies within Sussex County, as presented.

Motion Adopted: 4 Yeas, 1 Absent.

**M 446 18
(continued)**

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

**Professional
Environ-
mental
Services
Consultant
Selection**

Hans Medlarz, County Engineer, reported that a Request for Proposals was publicly advertised on May 7, 2018, for services including, but not limited to, professional environmental and engineering services for development of environmental remediation projects and programmatic assistance in setting up stormwater management districts and/or stormwater management banking in the Inland Bays and Sussex County portion of the Chesapeake Bay Watersheds. Seven firms responded to the Request for Proposals by the deadline of June 8, 2018. Formal interviews were held with the shortlisted firms of EA Engineering, JMT, and RK&K. All members of the Consultant Selection Committee ranked RK&K first based on the team cohesiveness and specialized experience related to the proposed scope of work. It is the recommendation of the selection committee to offer an hourly base consultant contract limited to environmental professional services to RK&K for a five-year term.

**M 447 18
Approve
Contract
for
Professional
Environ-
mental
Services**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Consultant Selection Committee, that the Sussex County Council approves the selection of Rummel, Klepper & Kahl, LLP (RK&K) to provide environmental engineering services to include, but not limited to, professional environmental and engineering services for the development of environmental remediation projects and programmatic assistance in setting up stormwater management districts for the Inland Bays and the Sussex County portion of the Chesapeake Bay Watersheds.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Addendum
to Waste-
water
Agreement/
Town of
Georgetown**

Mr. Medlarz presented an Addendum to the Agreement for Wastewater Services with the Town of Georgetown for the Delaware Coastal Business Park, as well as the entities located at the Coastal Airport along Rudder Lane which receive wastewater treatment services from the Town of Georgetown. An Agreement was approved by the Town Council on April 25, 2018, in which the County will be billed in bulk at the in-town rate for the Delaware Coastal Business Park, and the individual Coastal Airport entities will be billed directly by the Town at the out-of-town rate. Additional capacity can be purchased by paying the applicable sewer impact fees at issuance, if new building permits in either location. Given the limited availability of municipal sewer capacity, the Agreement allows for the surrender of capacity under Article VIII by redirecting it to alternate wastewater service providers. On July 25, 2018, the Town Council approved an Addendum to the Agreement which would allow the Town the

Addendum (continued)	option to gain capacity beyond the County flows without initial capital contribution, while allowing the County to recuperate all capital funds over the life of the investment. Administration and the County Engineering Department recommend approval of the Addendum to the Agreement in its Town approved form.
M 448 18 Approve Addendum to Waste- water Agreement/ Town of Georgetown	<p>A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Council approve the Addendum to the Agreement for Wastewater Services with the Town of Georgetown, Article VIII, as presented.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea</p>
South Coastal Library Reading Garden Alterations	<p>Mr. Medlarz discussed the South Coastal Library Reading Garden Alterations, Project L19-03. The project was initially bid on August 22, 2016. Two bids were received which were significantly above the architect's estimate and were rejected by Council on August 30, 2016. The project was re-bid in June 2018. During the application for renewal of the Fire Marshall's permit, the Engineering Department was advised that installation of the proposed roof panels would require a fire suppression system throughout the reading garden. The information was received too late for an addendum and on August 1, 2018, two bids were opened. John L. Briggs & Co. provided the low base bid Part A in the amount of \$204,800.00. Discussions with John L. Briggs & Co. regarding the possible removal of labor and material associated with the roof panels resulted in a change order reduction of \$10,012.00. The Sussex County Engineering Department recommends award of the total bid to John L. Briggs & Co. in the amount of \$204,800.00, and approval of Change Order No. 1 in the amount of \$10,012.00, for a revised total project value of \$194,788.00.</p>
M 449 18 Award Bid/ South Coastal Library Reading Garden Alterations	<p>A Motion was made Mr. Cole, seconded by Mr. Burton, based upon the recommendation of the Sussex County Engineering Department, that Contract L19-03, South Coastal Library Reading Garden Alterations, be awarded to John L. Briggs & Co., for their base bid of \$204,800.00.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea</p>

- M 450 18**
Approve
Change
Order
No. 1/
South
Coastal
Library
Reading
Garden
- A Motion was made by Mr. Cole, seconded by Mr. Burton, based upon the recommendation of the Sussex County Engineering Department, that Council approve Change Order No. 1 to Contract L19-03, South Coastal Library Reading Garden Alterations, resulting in a cost reduction of \$10,012.00, for a revised project total of \$194,788.00.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea;**
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea
- Grant**
Requests
- Mrs. Jennings presented grant requests for Council's consideration.**
- M 451 18**
Council-
manic
Grant
- A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$5,000.00 (\$2,500.00 each from Mr. Wilson's and Mr. Arlett's Councilmanic Grant Accounts) to Millsboro Historical Society for restoration and maintenance of the Jacob Godwin School.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea;**
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea
- M 452 18**
Council-
manic
Grant
- A Motion was made by Mr. Wilson, seconded by Mr. Burton, to give \$500.00 from Mr. Wilson's Councilmanic Grant Account to Just A Hand Up Navigation Association for playground restoration in the Coverdale Crossroads community.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea;**
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea
- M 453 18**
Council-
manic
Grant
- A Motion was made by Mr. Cole, seconded by Mr. Burton, to give \$2,497.00 from Mr. Cole's Councilmanic Grant Account to the Delaware State College Alumni Association for Delaware State University Marching Band's performance in Rehoboth Beach.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea;**
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

M 454 18 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$3,000.00 (\$600.00 from each Councilmanic Grant Account) to Laurel American Legion Post 19 for Veterans Day Parade expenses.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 455 18 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$2,500.00 from Mr. Cole's Councilmanic Grant Account to ITN Southern Delaware, Inc., for transportation program expenses.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Council Members' Comments

Council Members' Comments

Mr. Cole requested that a joint meeting of the Board of Adjustment, Planning and Zoning Commission, and Sussex County Council be scheduled before the end of the year to discuss issues which have recently been brought to Council's attention.

James H. Baxter, Jr.

Mr. Lawson noted the passing of James H. Baxter, Jr., former Sussex County Recorder of Deeds, on August 11, 2018. Mr. Baxter held the office of Recorder of Deeds from January 1967 until December 1975.

M 456 18 Go Into Executive Session

At 10:59 a.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and land acquisition.

Motion Adopted: 4 Yeas, 1 Absent.

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

Executive Session

At 11:05 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation and land acquisition. The Executive Session concluded at 12:18 p.m.

- M 457 18 Reconvene Regular Session** **At 12:22 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to come out of Executive Session and to reconvene the Regular Session.**
- Motion Adopted:** **3 Yeas, 2 Absent.**
- Vote by Roll Call:** **Mr. Arlett, Absent; Mr. Burton, Yea;
Mr. Wilson, Absent; Mr. Cole, Yea;
Mr. Vincent, Yea**
- E/S Action** **There was no action on Executive Session matters.**
- M 458 18 Recess** **At 12:23 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to recess until 1:30 p.m.**
- Motion Adopted:** **3 Yeas, 2 Absent.**
- Vote by Roll Call:** **Mr. Arlett, Absent; Mr. Burton, Yea;
Mr. Wilson, Absent; Mr. Cole, Yea;
Mr. Vincent, Yea**
- M 459 18 Reconvene** **At 1:35 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Burton, to reconvene.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mr. Arlett, Absent; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**
- Mr. Arlett was not present for the afternoon session.**
- Rules** **Mr. Moore read the rules of procedure for zoning hearings.**
- Public Hearing/
CZ 1851
and
CU 2134** **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 7.33 ACRES, MORE OR LESS” (Change of Zone No. 1851) and on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 7.33 ACRES, MORE OR LESS” (Conditional Use No. 2134) filed on behalf of The Evergreene Companies, LLC (Tax I.D. No. 335-8.00-44.00) (911 Address: 16386 Gills Neck Road, Lewes).**

**Public
Hearing/
CZ 1851
and
CU 2134
(continued)**

The Planning and Zoning Commission held a Public Hearing on these applications on July 12, 2018, at which time action was deferred. On July 26, 2018, the Commission recommended that Change of Zone No. 1851 be approved, and that Conditional Use No. 2134 be approved with conditions.

(See the minutes of the Planning and Zoning Commission dated July 12 and July 26, 2018.)

Janelle Cornwell, Director of Planning and Zoning, presented the applications.

An Exhibit Booklet provided by the Applicant was previously distributed to Council.

Ms. Cornwell reported that after the Planning and Zoning Commission's Public Hearing, one additional letter in opposition to the applications was received from George and Margaret Rudgers.

The Council found that James Fuqua, Attorney; Tim Naughton, representing the Applicant; and Robert Palmer with Beacon Engineering were present on behalf of the applications. Mr. Fuqua stated that the applications involve a 7.33-acre parcel of land located on the north side of Gills Neck Road, just south of the City of Lewes boundary, the first to rezone the property from AR to MR, and the second a Conditional Use filed for 26 multifamily residential units in 13 duplex-type buildings; that there is a variety of housing types including single family homes, townhouses, apartments, duplexes, condominiums, and an assisted living facility in the surrounding area; that the original application requested a Conditional Use for 26 residential units in 13 duplex buildings which has been reduced at the recommendation of the Planning and Zoning Commission to 24 units in 12 duplex buildings, a density of 3.27 units per acre; that the proposed use is in accordance with the State, County, and City of Lewes plans; that the property is located in the Level 1 State Strategies; that the land use classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area; that the property is located close to Lewes where the median age of residents is 63 years old; that the Lewes Comprehensive Plan recognizes that many of the residents desire to age in place; that the proposed development of 24 residential units provides an alternative housing option in that area; that water will be provided by the City of Lewes and sewer will be provided by Sussex County; that stormwater management and sediment control will comply with all regulations; that a Traffic Impact Study was not required; that the entrance to the site will be constructed per DelDOT standards; that there will be a 5-foot right-of-way dedication along the site frontage; that there will be a 15-foot permanent easement granted to DelDOT along the right-of-way, and the Applicant will construct a shared use path within the easement; that in conformity with the Lewes Historic Byway master plan there will be extensive and attractive

**Public
Hearing/
CZ 1851
and
CU 2134
(continued)**

landscaping along the road frontage on both sides of the entrance to the development; that the Applicant agrees that the reduction in units from 26 to 24 results in an improved and more attractive site design; that the closest duplex building will be 60 feet from Gills Neck Road, and the swimming pool is being relocated to the interior of the development; that the streets will be private, built to County street standards, and will have curbs and gutters, sidewalks on both sides of the street, and screened streetlights; that the average lot size per unit is 7,240 square feet; that each unit will have a garage with parking for two in the garage spots and two in the driveway; that approximately 1.32 acres of the wooded area along the east, west, and north boundaries will remain, which will be part of a 20-foot buffer; that fire and emergency services will be provided by the Lewes Fire Department; that the development will be subject to community covenants; and that the use and zoning is consistent with the area.

Public comments were heard.

Wayne Smith stated he feels there are too many multifamily units in the area, and Council should consider the hundreds of units that have previously been approved along Gills Neck Road when making their decision.

Ronald Smith commented that revising the original Conditional Use application by reducing the number to 24 duplex units in 12 buildings, as recommended by the Planning and Zoning Commission, is reasonable.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 460 18
Adopt
Ordinance
No. 2593/
CZ 1851**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt Ordinance No. 2593 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 7.33 ACRES, MORE OR LESS" (Change of Zone No. 1851) filed on behalf of The Evergreene Companies, LLC.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 461 18
Adopt
Ordinance
No. 2594/
CU 2134**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt Ordinance No. 2594 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 7.33 ACRES, MORE OR LESS” (Conditional Use No. 2134) filed on behalf of The Evergreene Companies, LLC, with the following conditions:

- A. The maximum number of residential units shall be 24.**
- B. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.**
- C. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements, including any off-site upgrades necessary to provide service to the project.**
- D. The project shall be served by central water to provide drinking water and fire protection.**
- E. Interior street design shall meet or exceed the Sussex County street design requirements.**
- F. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- G. All lots shall be set back at least 75 feet from the Gills Neck Road right-of-way. This is consistent with the design of other existing developments on both sides of Gills Neck Road.**
- H. Section 115-218 of the Zoning Code allows the County to require a 20-foot forested buffer around multifamily developments. Like other developments in the area, there shall be a vegetated or forested buffer of at least 20 feet in width around the entire perimeter of the project, with the exception of the area fronting along Gills Neck Road. This buffer area shall include the existing vegetation that exists along the boundary of this property.**
- I. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer area. The landscape plan shall clearly designate the existing 1.32 acres of forested area that will be preserved.**
- J. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 8:00 a.m. and 5:00 p.m., Monday through Friday.**
- K. No other outdoor construction activities shall occur at the site except between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- L. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.**
- M. The Applicant shall form a homeowners association responsible for the perpetual maintenance, repair, and replacement of the roads and**

**M 461 18
(continued)**

- any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities, and other common elements.
- N. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - O. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - P. As stated by the Applicant, there shall be a swimming pool and small pool house installed on the premises. The swimming pool shall be at least 15 feet by 30 feet in size.**
 - Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
CZ 1852**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1359, ORDINANCE NO. 1279, FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 65.125 ACRES, MORE OR LESS” (Change of Zone No. 1852) filed on behalf of Canal Corkran, LLC (Tax I.D. No. 334-13.00-363.00, 363.01, and 363.02 and 334-13.00-1298.00-1414.00 and 334-13.00-1447.00) (911 Address: Not Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 12, 2018, at which time action was deferred. On July 26, 2018, the Commission recommended approval, as follows:

- 1. The Canal Corkran MR-RPC was approved in 1998 and it has been in existence for years, with only a small number of vacant lots remaining at this time. At the time it was approved, the developer retained 2 very large lots at the northern end of the development. One lot was 1.3 acres and the other was 7.0 acres.**
- 2. The developer, who is the Applicant here, seeks to subdivide these large lots into a total of 8 lots, all of which will be consistent with the other lots in the development.**
- 3. This re-subdivision will create a total of 6 new lots, which is still less than the total number of lots permitted as part of the original approval.**

**Public
Hearing/
CZ 1852
(continued)**

4. The Canal Corkran Homeowners Association has approved this application. Originally, these 2 lots were excluded from contributing to the Homeowners Association. These new lots will all be part of the Homeowners Association and will contribute to it in the same way as all of the other existing lots in the Canal Corkran development.
5. All of the conditions of Ordinance No. 1279 shall remain in effect, except for Condition 6, which shall be amended to state as follows:
 - “6. The maximum number of units for the project shall not exceed 170 units, with no more than 51 multifamily condominium units, 14 multifamily duplex units, and 105 single family lots. By comparison, the existing zonings of C-1 General Commercial and AR-1 Agricultural Residential could permit 160 or more units, and a subdivision project with MR Medium Density Residential zoning could permit 200 or more units.”
6. The new lots shall all be subject to the Declaration of Covenants, Conditions, Easements, and Restrictions for Canal Corkran.
7. In addition to the conditions included in Ordinance No. 1279, a new condition shall be added with regard to these 8 new lots: “Any of the 8 new lots that have wetlands within their boundaries shall contain the ‘Wetlands Notice’ in their deed as required by Section 99-6H of the Subdivision Code. In addition, all of the wetlands areas within each lot shall be clearly marked with permanent markers to identify them as non-disturbance areas.”
8. A revised Master Plan for the MR-RPC showing these new lots shall be submitted to the Planning and Zoning Commission for approval.

(See the minutes of the Planning and Zoning Commission dated July 12 and July 26, 2018.)

Janelle Cornwell, Director of Planning and Zoning, presented the application.

An Exhibit Booklet provided by the Applicant was previously distributed to Council.

The Council found that David Hutt, Attorney, was present with Bryce Lingo, Principal of Canal Corkran, LLC, and Ring Lardner of Davis, Bowen & Friedel on behalf of the application. They stated that the application is requesting to amend a condition of the existing MR-RPC to further subdivide 2 large lots into 6 additional lots, for a total of 8 lots; that Council approved the Canal Corkran MR-RPC in 1998 with the adoption of Ordinance No. 1279; that the larger tracts were left and considered as personal lots by the developer, and there is no longer a need for larger lots; that Lot 21 is 1.3 acres and Lot 22 is 7 acres; that they would now like to fully incorporate the lots into the Canal Corkran community; that the lots will be subject to all of the restricted covenants of the community; that the Applicant is in agreement with the Planning and Zoning Commission

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(continued)**

recommendation that a wetlands notice be placed on each of the deeds for the 8 lots, in addition to physical signage being placed along the delineated wetlands boundary; that all of the lots use the same access and the same utilities; that the ordinance for the RPC was approved for 177 units with a maximum density of 2.76 units per acre; that 170 units is a density of 2.6 units per acre and is still under the approved original density; that the lots are similar in size with the rest of the area, and some are even larger; that they have submitted a request for a waiver from the 20-foot forested buffer requirement, as the wooded areas are in wetlands and cannot be disturbed; that there is no new common area to be conveyed to the Homeowners Association; that the adjacent subdivision has a large wooded area near the proposed lots; that the Homeowners Association provided a letter in support of the application; that the setbacks are 30-foot front yard, 10-foot side yard, and 10-foot rear yard; that they will use the wetlands as a de facto property line and establish a setback off of the wetlands; and that there will be deed restrictions, especially regarding the wetlands.

Questions were raised by Council regarding setbacks, buffers, and use of the delineated wetlands as a de facto property line. It was noted that the property line for the 2 original lots extends through the wetlands. Mr. Hutt stated that the attempt was made not to adjust boundaries that would extend lands that the Homeowners Association would be responsible for maintaining as a result of adding the lots.

Mr. Moore stated that a condition could be added in regard to the 8 new lots clarifying that the building setback rear line will be measured from the wetlands delineation line, not from the rear lot line.

Public comments were heard.

Jason Abela spoke in favor of the application and stated that he is President of the Board of Directors for the Canal Corkran Homeowners Association which is in favor of bringing these 8 lots into the architectural covenants of Canal Corkran, thereby maintaining the status quo, and that the proposal will have a negligible effect on the community.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 462 18
Amend
Findings/
CZ 1852**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to amend the Findings of the Planning and Zoning Commission regarding Change of Zone No. 1852 filed on behalf of Canal Corkran, LLC, by adding a new number 8 to state as follows: "A further condition shall be added in regard to the 8 new lots: The building setback rear line will be measured from the wetlands delineation line, not from the rear lot line."; and to re-number the initial number 8 and make it number 9.

**M 462 18
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 463 18
Adopt
Ordinance
No. 2595/
CZ 1852**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to Adopt Ordinance No. 2595 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1359, ORDINANCE NO. 1279, FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 65.125 ACRES, MORE OR LESS” (Change of Zone No. 1852) filed on behalf of Canal Corkran, LLC, based on the following Findings, as amended:

- 1. The Canal Corkran MR-RPC was approved in 1998 and it has been in existence for years, with only a small number of vacant lots remaining at this time. At the time it was approved, the developer retained 2 very large lots at the northern end of the development. One lot was 1.3 acres and the other was 7.0 acres.**
- 2. The developer, who is the Applicant here, seeks to subdivide these large lots into a total of 8 lots, all of which will be consistent with the other lots in the development.**
- 3. This re-subdivision will create a total of 6 new lots, which is still less than the total number of lots permitted as part of the original approval.**
- 4. The Canal Corkran Homeowners Association has approved this application. Originally, these 2 lots were excluded from contributing to the Homeowners Association. These new lots will all be part of the Homeowners Association and will contribute to it in the same way as all of the other existing lots in the Canal Corkran development.**
- 5. All of the conditions of Ordinance No. 1279 shall remain in effect, except for Condition 6, which shall be amended to state as follows:
“6. The maximum number of units for the project shall not exceed 170 units, with no more than 51 multifamily condominium units, 14 multifamily duplex units, and 105 single family lots. By comparison, the existing zonings of C-1 General Commercial and AR-1 Agricultural Residential could permit 160 or more units, and a subdivision project with MR Medium Density Residential zoning could permit 200 or more units.”**
- 6. The new lots shall all be subject to the Declaration of Covenants, Conditions, Easements, and Restrictions for Canal Corkran.**

**M 463 18
(continued)**

7. In addition to the conditions included in Ordinance No. 1279, a new condition shall be added with regard to these 8 new lots: “Any of the 8 new lots that have wetlands within their boundaries shall contain the ‘Wetlands Notice’ in their deed as required by Section 99-6H of the Subdivision Code. In addition, all of the wetlands areas within each lot shall be clearly marked with permanent markers to identify them as non-disturbance areas.”
8. A further condition shall be added in regard to the 8 new lots: “The building setback rear line will be measured from the wetlands delineation line, not from the rear lot line.”
9. A revised Master Plan for the MR-RPC showing these new lots shall be submitted to the Planning and Zoning Commission for approval.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 464 18
Adjourn**

A Motion was made by Mr. Burton, seconded by Mr. Cole, to adjourn at 2:58 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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

Respectfully submitted,

**Susan W. Webb
Administrative Secretary**

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