

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 29, 2017

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 29, 2017, 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 417 17
Approve
Agenda**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to approve the agenda, as posted.

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of August 22, 2017 were approved by consent.

Mr. Cole joined the meeting.

**Public
Comments**

Public Comments

Paul Reiger commented on receiving his tax bill and the increase in his taxes. He referenced assessments and noted that a number of people do not get permits and thereby avoid higher assessments. Mr. Reiger stated that enforcement needs to be improved.

Dan Kramer commented on poultry houses and the new regulations that the Council is considering.

**Adminis-
trator's
Report**

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

1. Norman "Bud" Rickard

Norman "Bud" Rickard, member of the Sussex County Board of Adjustment, has announced his retirement. Mr. Rickard's last Board meeting will be September 18, 2017. Mr. Rickard began his employment with Sussex County in the Planning and Zoning office where he worked as an Inspector from 1989 to 2002 and as Operations Coordinator from 2007 to 2009. Mr. Rickard has served on the Board of Adjustment since January 1, 2012. We wish him all the best in the future and thank him for his willingness to serve Sussex County.

2. Council Meeting/Holiday Schedule

A reminder that Council will not meet on September 5th or September 12th. The next regularly scheduled Council meeting will be held on September 19th at 10:00 a.m.

County offices will be closed Monday, September 4th, for the Labor Day holiday.

3. Margaret H. Pepper

Margaret "Peggy" Pepper, Clerk III Technician, Recorder of Deeds office, will retire on Friday, September 1st. Ms. Pepper began her employment with Sussex County on September 1, 1987, and is retiring with 30 years of service. We wish her good health and happiness in the future.

The Council recognized Margaret "Peggy" Pepper for her service to Sussex County.

**Third
Quarter
Employee
Recognition
Awards**

Mrs. Jennings reported that the County recognizes employees for exceptional service and that a total of thirty-seven (37) employees received recognition for the Third Quarter of 2017. Mrs. Jennings announced that three employees received recognition for the Third Quarter of 2017. Joanne Williams in the Office of the Register of Wills was selected to receive the Third Quarter Customer Service Award, and two employees received Honorable Mention: Alison Jernigan in Security and Shawn Lewis in Utility Engineering.

**Delaware
Transit
Reimburse-
ment
Program
Request**

Mrs. Jennings reported that DART, a division of DelDOT, has allocated \$796,850.00 for funding of transportation expenses for various senior centers in Sussex County. This amount decreased \$12.00 from last year. The County's responsibility is to approve a recommended funding amount for Fiscal Year 2018 as per State law; this is an allocation of State grant funds to various senior agencies for transportation purposes. The

**Delaware
Transit
(continued)**

recommended funding for each agency is the same as in previous years minus the allocation of the \$12.00:

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	\$796,850.00

**M 418 17
Allocate
State
Funds to
Senior
Agencies**

A Motion was made by Mr. Cole, seconded Mr. Arlett, that the Sussex County Council approves the allocation of State funds to various senior agencies within Sussex County, as presented.

Motion Adopted: 5 Yeas.

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

**Quarterly
Pension
and OPEB
Update**

Mrs. Jennings, and Michael Shone of Marquette Associates, presented an update on the pension performance and a request to change the Pension Investment Policy Statement to reallocate funds to the Pension and Other Post Employee Benefit (OPEB) Funds, including the international target allocation in the Pension Fund from 12 to 14 percent, which mirrors the allocation in the OPEB Fund. Also presented was information on Dupont Capital Investment's (Dupont) performance and a recommendation to move the money out of Dupont into an index fund and to reallocate those funds. Mrs. Jennings reviewed the proposed allocations to the Pension Fund and OPEB Fund.

**M 419 17
Amend
Pension
Fund
Investment
Policy**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, based on the recommendation of the Pension Committee and Marquette Associates, to amend the Pension Fund Investment Policy by increasing international equities by 2 percent and decreasing domestic equities target by 2 percent.

Motion Adopted: 5 Yeas.

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

**M 420 17
Terminate
Agreement/
Dupont
Capital**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based on the recommendation of the Pension Committee and Marquette Associates, after contributing the additional \$5,000,000 to the Pension Fund, to allocate the portfolio, as presented, which will terminate the County's Investment Agreement with Dupont Capital Investment.

**M 420 17
(continued)**

Motion Adopted: 5 Yeas.

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

**M 421 17
Allocate
Portfolio/
OPEB**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based on the recommendation of the Pension Committee and Marquette Associates, after contributing an additional \$5,000,000 to the OPEB Fund, to allocate the portfolio, as presented.

Motion Adopted: 5 Yeas.

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

**Update on
Trash and
Property
Clean-Up
Project**

Mike Costello, Government Affairs Manager, and Alan Shields, Constable, presented an update on the clean-up project that was conducted on the property located on Kennel Road in Frankford. This parcel was the subject of a complaint related to a large amount of trash and waste that had been illegally dumped on the property and an investigation was conducted by DNREC. Mr. Costello reported that the clean-up of the property was completed as a result of a partnership between the County and the property agent and that following an inspection in August, it was determined that the property is in compliance.

**Lewes BPW
Assistance
Request**

Hans Medlarz, County Engineer, referenced a September 20, 2016 Agreement with the Lewes Board of Public Works (BPW) for the wastewater treatment and disposal of up to 75,000 gallons per day into the BPW's system and presented an assistance request (under the FY18 General Labor & Equipment Contract) from the BPW for intersection work at Savannah Road and Gills Neck Road with full reimbursement to the County by the BPW. The BPW requests that County Council agree to utilize George, Miles & Buhr, the Board's Engineer of Record, for the design of the improvements on a reimbursement basis. In addition, the Engineering Department proposed implementation of the improvements via the General Labor & Equipment Contract. County Council concurred in both requests and moved to reimburse the Board of Public Works for incurred engineering expenses, and to implement construction under the General Labor & Equipment Contract, with prior approval of a change order by the Council.

**FY18
General
Labor &
Equipment
Contract**

Mr. Medlarz presented Change Order No. 6 to the FY 18 General Labor & Equipment Contract, which is associated with the assistance request submitted by the Board of Public Works (BPW) for intersection work at Savannah Road and Gills Neck Road. Change Order No. 6, in the amount of \$1,669,669.00 is required to cover the construction of all phases of the interconnection, including the estimated reimbursement amount by the

FY18 General Labor & Equipment Contract (continued) **BPW in the amount of \$804,846.00 (Phase 1C and 1B(2) as part of the County's Gills Neck Road project). Mr. Medlarz reported that the Engineering Department recommends acceptance of the BPW's request to conduct the Phase 1C and 1B(2) work as part of the County's Gills Neck Road project, as well as approve scope modification Change Order No. 6 to the General Labor & Equipment Contract, contingent upon approval of a construction agreement by both parties.**

M 422 17 Approve Lewes BPW Assistance Request **A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Council approves the Lewes Board of Public Works' assistance request, contingent upon execution of an associated Construction Agreement.**

Motion Adopted: 5 Yeas.

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

M 423 17 Approve Change Order/ General Labor and Equipment Contract #17-01 **A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 6 for Contract #17-01, FY18 General Labor and Equipment Contract, be approved in the amount of \$1,669,669.00.**

Motion Adopted: 5 Yeas.

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

Western Sussex County Property Maintenance RFP **Hans Medlarz, County Engineer, reported that a Request for Proposals was advertised for a one year site maintenance agreement, with the option to renew annually, for up to five (5) years for the three (3) Sussex County Government properties known as Woodland Park Site, Woodland Dredge Site and the Consalo Site. Proposals from three bidders were received; the lowest responsive and responsible bidder was William F. Betts II, with a base bid of \$3,650.00 for the first year, and \$9,700.00 for each remaining year of the contract.**

M 424 17 Award Bid/ Western Sussex County Property Site Maintenance **A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that the base bid for the 2017 Western Sussex County Property Site Maintenance, be awarded to William Betts in the amount of \$3,650.00 for the first year and \$9,700.00 for each sequential year, for an up to five year contract at the discretion of the Engineering Department based on performance.**

Motion Adopted: 5 Yeas.

**M 424 17
(continued)** **Vote by Roll Call:** **Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Combine
Project/
Bid
Results** Hans Medlarz, County Engineer, presented the bid results for the Combine-275 HP Project No. 18-04. Three bids were received and one bid was deemed non-responsive. The Engineering Department recommends award of the project to Hooper, Inc. for Bid Alternate 3 and Additive Bids D1 and D2, in the total amount of \$184,800.00.

**M 425 17
Award
Bid/
Combine
Project** A Motion was made by Mr. Arlett, seconded by Mr. Burton, based upon the recommendation of the Engineering Department, that the base bid for Contract 18-04, Combine – 275 HP, be awarded to Hooper, Inc. of Seaford, Delaware, for Alternate 3 and Additive Bid Items D1 and D2, for a total amount of \$184,800.00.

Motion Adopted: 5 Yeas.

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

**Dual Wheel
Tractor
Project/
Bid
Results** Hans Medlarz, County Engineer, presented the bid results for the Dual Wheel Tractor with Loader-140 HP Project No. 18-5 to replace a dual-wheel tractor that is not operational. Four bids were received of which all were non-compliant. The Engineering Department recommends rejecting all bids because all bidders had incomplete submittals and recommends and to re-advertise the project. Mr. Medlarz stated that, in addition, the Department is seeking authorization to dispose of the non-operational farm tractor.

**M 426 17
Reject
Bids/
Dual Wheel
Tractor
Project** A Motion was made by Mr. Arlett, seconded by Mr. Cole, based upon the recommendation of the Engineering Department, that all incomplete bids for Contract 18-05, Dual Wheel Tractor with Loader – 140 HP, be rejected, and that the contract be re-bid.

Motion Adopted: 5 Yeas.

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

**North
Coastal
Planning
Area Base
Contract
Amend-
ment** Hans Medlarz, County Engineer, presented Amendment No. 11 to the North Coastal Planning Area Base Contract for the Wolfe Neck Regional Wastewater Facility and the Piney Neck Regional Wastewater Facility for permitting of effluent spray irrigation expansions. He noted that the base contract for engineering services for the North Coastal Planning area was previously awarded to Whitman Requardt & Associates (WR&A). Mr. Medlarz reported that the Engineering Department requested WR&A to

North Coastal Planning Area (continued)

provide a scope of services to update the hydrogeologic studies at Piney Neck and Wolfe Neck as well as address the permitting aspects of the planned Wolfe Neck conversion to a natural setting with fixed head irrigation. Mr. Medlarz presented a Contract Amendment covering this scope of work.

M 427 17 Approve Amendment No. 11/ North Coastal Planning Area

A Motion was made by Mr. Arlett, seconded by Mr. Cole, based upon the recommendation of the Engineering Department, that Amendment No. 11 to the Base Engineering Contract for the North Coastal Planning Area with Whitman, Requardt and Associates be approved in the amount not to exceed \$280,463.00 for permitting effluent spray irrigation modifications at the Wolfe Neck Regional Wastewater Facility and Effluent Spray Irrigation Expansions at the Piney Neck Wastewater Facility.

Motion Adopted: 5 Yeas.

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

Request to Prepare and Post Project Notices

Hans Medlarz, County Engineer, and John Ashman, Director of Utility Planning, presented requests to prepare and post notices for the following four projects in the Sussex County Unified Sanitary Sewer District: Conley's Chapel Village Expansion, Joy Beach Expansion, Tuck's Road Expansion and Mallard Creek Expansion.

M 428 17 Post Notices/ Conley's Chapel Village Expansion

A Motion was made by Mr. Arlett, seconded by Mr. Cole, that the Engineering Department is authorized to prepare and post notices for the Conley's Chapel Village Expansion of the Sussex County Unified Sanitary Sewer District to include all parcels in the subdivision and Parcel No. 234-6.00-22.00, as presented.

Motion Adopted: 5 Yeas.

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

M 429 17 Post Notices/ Joy Beach Expansion

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Engineering Department is authorized to prepare and post notices for the Joy Beach Expansion of the Sussex County Unified Sanitary Sewer District, to include parcels primarily along Waterview Road and Bookhammer Landing Road from Camp Arrowhead Road to Joy Beach, as presented.

Motion Adopted: 5 Yeas.

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

**M 430 17
Post
Notices/
Tucks
Road
Expansion**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Engineering Department is authorized to prepare and post notices for the Tucks Road Expansion of the Sussex County Unified Sanitary Sewer District (Long Neck Area) to include all parcels fronting on Tucks Road and Abby Way, as well as parcels along Route 24 in the Long Neck Area, as presented.

Motion Adopted: 5 Yeas.

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

**M 431 17
Post
Notices/
Mallard
Creek
Expansion**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Engineering Department is authorized to prepare and post notices for the Mallard Creek Expansion of the Sussex County Unified Sanitary Sewer District to include all parcels in the subdivision of Mallard Creek in the Holts Landing Area, as presented.

Motion Adopted: 5 Yeas.

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

**Grant
Request**

Mrs. Jennings presented a grant request for Council's consideration.

**M 432 17
MOTION
DIED**

A Motion was made by Mr. Cole to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Delaware Community Foundation for the Melody Joy Foundation fundraiser.

The Motion died for the lack of a Second.

**M 433 17
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to give \$1,000.00 (\$200.00 from each Councilmanic Grant Account) to the Delaware Community Foundation for the Melody Joy Foundation fundraiser.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Burton 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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND

Introduction of Proposed Ordinances (continued) **REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.98 ACRES, MORE OR LESS” (Change of Zone No. 1834) filed on behalf of Colonial East, L.P. (Tax I.D. No. 334-5.00-165.00 (portion of) and 334-5.00-166.00 (portion of) (911 Address: 30769 Lewes-Georgetown Highway, Lewes).**

Mr. Vincent 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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.181 ACRES, MORE OR LESS” (Change of Zone No. 1843) filed on behalf of Shailesh Patel (Tax I.D. No. 132-2.00-325.01 (portion of)) (911 Address: 11342 Circle Drive, Seaford).

Mr. Cole 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 GR-RPC GENERAL RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.26 ACRES, MORE OR LESS” (Change of Zone No. 1844) filed on behalf of Broadkill Development, LLC, aka Westridge Shores (Tax I.D. No. 234-17.00-165.00) (911 Address: None Available).

Council Members’ Comments

Council Members’ Comments

Mr. Arlett referenced public comments on this date relating to building permits and fees, the monitoring of building permits, recouping fees, and penalties.

Mr. Arlett commented on the formula for Delaware’s funding of transportation expenses for senior centers in Sussex County.

Mr. Arlett commented on monies spent on the clean-up project that was conducted on the property located on Kennel Road in Frankford.

Mr. Arlett commented on wastewater treatment expansions and communicating those expansions to the Planning and Zoning Commission and to DelDOT.

Mr. Cole commented on emails received relating to the Fairway Village development.

**M 434 17
Go Into E/S**

At 11:46 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to recess the Regular Session and to go into Executive Session.

**M 434 17
(continued)**

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 11:49 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 litigation. The Executive Session concluded at 12:20 p.m.

**M 435 17
Reconvene
Regular
Session**

At 12:22 p.m., a Motion was made by Mr. Arlett, 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, Yea; Mr. Burton, Yea;
Mr. Wilson, Absent; Mr. Cole, Absent;
Mr. Vincent, Yea**

E/S Action

There was no action on Executive Session matters.

**M 436 17
Recess**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to recess until 1:30 p.m.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 437 17
Reconvene**

At 1:34 p.m., a Motion was made by Mr. Cole, seconded by Mr. Burton, to reconvene.

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**

Rules

Mr. Moore reviewed the Rules of Procedure for public hearings.

Mr. Wilson and Mr. Arlett joined the meeting.

**Public
Hearing/
CU 2089**

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 AN AMENDMENT TO ORDINANCE NO. 2378 FOR CONDITIONAL USE NO. 1963 FOR A CAMPGROUND TO AMEND CONDITION OF

**Public
Hearing/
CU 2089
(continued)**

APPROVAL NO. 9 RELATING TO PARKING OF “PARK MODEL RV’S” AND CAMPGROUND FOOD TRAILER(S) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS” (Conditional Use No. 2089) filed on behalf of Massey’s Landing Properties, LLC (Tax I.D. No. 234-25.00-31.02, 234-25.00-31.05, 234-25.00-31.04, and 234-25.00-31.00) (911 Address: 36625 Long Neck Road and 20628 Long Beach Drive, Millsboro).

Janelle Cornwell, Planning and Zoning Director, presented the Conditional Use application.

The Planning and Zoning Commission held a Public Hearing on this application on July 27, 2017 at which time action was deferred. On August 24, 2017, the Commission recommended that the application be denied.

(See the minutes of the Planning and Zoning Commission dated July 27 and August 24, 2017.)

The Council found that Jeff Clark with Land Tech Land Planning, LLC and Jack Burbage, one of the campground owners and managing partner, were present on behalf of the application. They stated that the campground is an upscale camping facility with amenities; that it is a transient campground and all guests are transient; that no guests remain for the entire camping season and no campers/guests are permitted during the period that the campground is closed; that there are three types of transient guests – tent campers, RV guests, and park model RV guests; that the park models are owned by the campground; that in 2014, the Council approved Ordinance No. 2378 for the campground (Conditional Use No. 1963) with twenty conditions; that currently, in accordance with Ordinance No. 2378 (Condition No. 9) “The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campground during the period that the campground is closed.” and therefore, the park models have to relocate off-site during the time the campground is closed; that the facility opens no earlier than April 1st each year and closes no later than the first Sunday of November of each year; that it is expensive to move the park models offsite (approximately \$150,000 to move 32 units); that a total of 70 units were approved; that they are requesting that park models be permitted to remain on the site when the campground is closed by an amendment to Condition No. 9 of Ordinance No. 2378 stating that “The campground/RV park shall remain vacant and no campers or RV’s except Park Model RV’s shall be stored on the campground during the period that the campground is closed.”; and that the Park Model RV’s located in flood zone areas would meet flood plain requirements. Mr. Clark presented photographs of the campground and amenities.

There were no public comments in support of or in opposition to the application.

**M 438 17
Defer
Action/
CU 2089**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to defer action on Conditional Use No. 2089 filed on behalf of Massey's Landing Properties, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2090**

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 SHOP FOR PAINTING BUSINESS AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.4583 ACRES, MORE OR LESS" (Conditional Use No. 2090) filed on behalf of Edgar Reyes Hernandez (Tax I.D. No. 234-14.00-30.01) (911 Address: 25203 Zoar Road, Georgetown).

Janelle Cornwell, Planning and Zoning Director, presented the Conditional Use application.

The Planning and Zoning Commission held a Public Hearing on this application on July 27, 2017 at which time action was deferred. On August 10, 2017, the Commission recommended that the application be approved with the following conditions:

- A. The use shall be limited to a shop for a painting business and storage. The storage shall only be used for materials directly associated with the painting business.**
- B. There shall be no retail sales from the property.**
- C. There shall not be any outside storage of paint, equipment or other materials associated with the use.**
- D. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- E. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways.**
- F. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- G. The hours of operation shall be Monday through Saturday from 7:00 a.m. until 6:00 p.m. No deliveries to or from the site shall occur before 7:00 a.m.**
- H. Signage shall not exceed 32 square feet on each side and shall not be lighted.**
- I. All vehicle parking areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicles and employees' vehicles, must only be parked within the designated areas.**

**Public
Hearing/
CU 2090
(continued)**

- J. No more than 15 vehicles may be parked on the site at any one time.**
- K. The use shall be limited to the existing buildings on the site. Any new or expanded buildings shall require a new public hearing.**
- L. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.**
- M. 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 July 27 and August 10, 2017.)

Edgar Reyes, property owner, and Melanie Cervantes (interpreter) were present on behalf of the application. They stated that the application is for a painting business with storage; that there is an existing building on the site; that no business is conducted on site; that some employees come to the site to pick up supplies/equipment and others go directly to the job site; that they sometimes leave their cars at the site and go to the job site; and that there is a day care nearby.

There were no public comments.

The Public Hearing and public record were closed.

**M 439 17
Defer
Action/
CU 2090**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to defer action on Conditional Use No. 2090 filed on behalf of Edgar Reyes Hernandez.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2095**

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 AN AMENDMENT TO ORDINANCE NO. 1533 FOR CONDITIONAL USE NO. 1446 FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE TO REQUEST AN AMENDMENT TO CONDITION NO. 3 REGARDING HOURS OF OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS” (Conditional Use No. 2095) filed on behalf of Sposato Investments, LLC (Tax I.D. No. 134-18.00-31.01 and 134-18.00-31.02) (911 Address: 34742 Rickards Road, Frankford).

Janelle Cornwell, Planning and Zoning Director, presented the Conditional Use application.

**Public
Hearing/
CU 2095
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on July 27, 2017 at which time action was deferred. On August 10, 2017, the Commission recommended that the application be partially approved for the following reasons and with the following conditions:

- 1. County Council approved this Conditional Use in 2002 for a landscaping business. There were several conditions attached to this approval.**
- 2. Currently, Condition Number 3 of the Conditional Use states that “Business hours shall be from 7:00 a.m. until 7:00 p.m. There shall be no Sunday hours.”**
- 3. The Applicant seeks to amend Condition Number 3 to generally state: “Business Hours: 3 mechanics may arrive on site at 5:00 a.m.; management may arrive on site at 6:00 a.m.; and the remaining employees to arrive at 6:30 a.m. to prepare for daily operations with the daily end of all operations by 7:00 p.m. There shall be no Sunday hours.”**
- 4. The Applicant has stated that it is necessary for some of his employees to be on site early in the morning to keep the landscaping equipment maintained and ready to go out. And, the employees must arrive prior to 7:00 a.m. so that they can get the company equipment and vehicles to the various job sites on time.**
- 5. There were many letters in support of the request, including letters from surrounding property owners. There was opposition from an adjacent property owner although his residence is approximately 660 feet from the boundary of the Applicant’s property. The objections referenced early morning noise and traffic related to the operations occurring at the site.**
- 6. The approved Conditional Use is located in an otherwise agricultural and residential area. There must be some expectation of noise from nearby permitted agricultural uses, but not on a daily basis starting at 5:00 a.m.**
- 7. While I am not concerned about managers or employees arriving prior to 7:00 a.m., I do not believe that it is appropriate to allow mechanical and maintenance work on the vehicles and equipment to start at 5:00 a.m., 6 days a week. That is not compatible with the residential surroundings.**
- 8. For all of these reasons, an appropriate amendment to Condition #3 of Conditional Use #1446 and Ordinance #1533 is as follows:
“Business hours shall be from 6:00 a.m. until 7:00 p.m., Monday through Saturday. There shall not be any Sunday hours of operation. All employees may arrive on site no earlier than 6:00 a.m. However, no outdoor maintenance or mechanical work shall occur prior to 7:00 a.m. and no power equipment may be operated outdoors on the site until 7:00 a.m.”**

(See the minutes of the Planning and Zoning Commission dated July 27 and August 10, 2017.)

**Public
Hearing/
CU 2095
(continued)**

Ms. Cornwell reported that a new Exhibit Book was submitted by the Applicant and received by the Planning and Zoning Department on August 28, 2017. The new Exhibit Books were distributed to Council on this date.

Ms. Cornwell noted that two additional letters of opposition have been received since the Public Hearing before the Planning and Zoning Commission. The letters were made a part of the record.

The Council found that Shannon Burton Carmean, Attorney, was present with Tony Sposato, President of Sposato Investments, LLC and Sposato Landscape Company, Inc., and Rich McCracken, Ocean View Branch Manager of Sposato Landscape Co., Inc. They discussed the application to amend a condition of approval of Ordinance No. 1533 (Conditional Use No. 1446) relating to hours of operation. They stated that they are asking for an amendment to Condition No. 3. Condition No. 3 now states that “Business hours shall be from 7:00 a.m. to 7:00 p.m. There shall be no Sunday hours.” and they would like the condition modified to allow three mechanics to arrive at 5:00 a.m., management to arrive at 6:00 a.m., and the remaining employees to arrive at 6:30 a.m. to prepare for daily operations; that the daily end time would remain at 7:00 p.m. and there would still be no Sunday hours; that the primary purpose of the request is to permit maintenance on vehicles/equipment prior to departure time; that all work would be performed inside; that Mr. Sposato did not know that he could not have employees arrive to the site prior to 7:00 a.m.; that the property consists of two parcels located on Rickards Road in Frankford; that the conditions of approval were amended in 2016 by the Planning and Zoning Commission to permit the grinding of yard waste to mulch; however, this is not being done; that there are other businesses in close proximity to the site; that letters of support have been received from area residents; that the Applicant did receive a violation notice from the County; that there would be no deliveries prior to 7:00 a.m.; that the site is not open to the public; that customers do not come to the site; that Mr. Sposato makes every effort to minimize impact to neighbors; that there is no signage advertising the business; that there is a forested buffer surrounding the property; that amending the hours of operation will have no adverse or detrimental impact on neighboring areas; and that all other conditions of Ordinance No. 1533, as amended, will remain unchanged.

There were no public comments in support of the application.

Public comments were heard in opposition to the application. Kyle McCabe, Jennica Kwiecien and Michael Kwiecien spoke in opposition to the application. They stated that noise is a problem and that they can hear loud diesel engines as well as beeping noises from trucks backing up during early morning hours; that there is noise from the mulch grinding operation; that the use impacts an area wildlife reserve; that public safety is a concern; that traffic is a problem and creates many safety concerns, including school bus safety; that the road is in disrepair and is not appropriate for truck traffic; that Rickards Road is a quiet residential road; that it is a tar and

**Public
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(continued)**

chip road with no center line and that the road is not wide enough for activity associated with this Conditional Use; that the existing roadway cannot support the truck traffic, and the truck traffic is a danger to area residents and vehicles traveling on the roadway; that expanding this business will have a negative impact on the area, the roadway and the residents; that the Conditional Use permit has been violated for years; that they have fought this operation for years; that there are 60 to 80 vehicles accessing the site daily; that this property is not suitable for the use; that the Applicant can have trucks and equipment serviced on rainy days and does not need additional hours; that there is a regional business being operated out of this location; that many complaints have been filed to the Planning and Zoning Department over the past 5 to 10 years; that the operation continues to grow and the number of employees continue to grow; and that they want the original conditions upheld and enforced. Mr. Kwiecien submitted pictures into the record.

The Public Hearing and public record were closed.

**M 440 17
Adopt
Proposed
Ordinance/
CU 2095**

A Motion was made by Mr. Wilson to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT TO ORDINANCE NO. 1533 FOR CONDITIONAL USE NO. 1446 FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE TO REQUEST AN AMENDMENT TO CONDITION NO. 3 REGARDING HOURS OF OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS” (Conditional Use No. 2095) filed on behalf of Sposato Investments, LLC for the reasons stated, and with the conditions recommended, by the Planning and Zoning Commission.

**MOTION
DIED**

The Motion died for the lack of a Second.

**M 441 17
Defer
Action/
CU 2095**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to defer action on Conditional Use No. 2095 filed on behalf of Sposato Investments, LLC.

Motion Adopted: 5 Yeas.

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

**M 442 17
Adjourn**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to adjourn at 3:15 p.m.

Motion Adopted: 5 Yeas.

**M 442 17
(continued)**

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