

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 30, 2016

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 30, 2016, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
Robert B. Arlett	Councilman
George B. Cole	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Councilwoman Joan Deaver was absent.

**Call to
Order**

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

Mr. Vincent called the meeting to order.

**M 434 16
Amend
and
Approve
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to amend the Agenda by deleting "Approval of Minutes" and "Introduction of Proposed Zoning Ordinances" and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Corre-
spondence**

Mr. Moore noted that the only correspondence received relates to Change of Zone No. 1802 and that the correspondence received will be made a part of the record for that zoning application.

**Public
Comments**

Public Comments

Melissa Golden referenced the Hazard Mitigation Plan and expressed appreciation for the public meeting on hazard mitigation scheduled on Thursday, September 1st, at Mallard Lakes. Ms. Golden commented that there are still Delaware residents that are suffering from Hurricane Sandy.

Paul Reiger commented on the District 2 appointment to the Planning and Zoning Commission.

Dan Kramer commented on Change of Zone No. 1802 (filed on behalf of J. G. Townsend, Jr. & Co.) and referenced the fact that the public record was

Public Comments (continued) left open for written comments (until the close of business on August 30th) and that he believes the letters should be read into the record and not just made a part of the record.

M 435 16 Approve Consent Agenda A Motion was made by Mr. Cole, seconded by Mr. Arlett, to approve the following items listed under the Consent Agenda:

Wastewater Agreement No. 1048
Sussex County Project No. 81-04
Park Shore (Henlopen Station)
West Rehoboth Expansion of the Sanitary Sewer District

Wastewater Agreement No. 626-3
Sussex County Project No. 81-04
Swann Cove – Phase 8
Fenwick Island Sanitary Sewer District

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

DelDOT/ TID Concept DelDOT Secretary Jennifer Cohan was present with Bill Brockenbrough, Josh Thomas, and Drew Boyce of DelDOT to present an update on the proposed Transportation Improvement District (TID) for Sussex County. Mr. Thomas referenced DelDOT's partnership with the County on this effort and stated that, over the last few months, DelDOT has been working with the County on furthering the concept of the TID. Mr. Brockenbrough presented the proposed Henlopen TID including the boundary, the 12-month timeline from 2016 through 2017 to include the following:

September – December 2016

- Council to initiate a Comprehensive Plan amendment stating that the County wants to create a TID
- DelDOT studies existing conditions, including traffic counts
- County staff and Planning and Zoning Commission will produce future land use projections and develop service standards

January – February 2017

- Council adopts Comprehensive Plan amendment
- Planning and Zoning Commission could hold hearings on land use projections and service standards
- Council and DelDOT enter into TID Agreement
- County staff, Planning and Zoning Commission and DelDOT begin work on a Land Use and Transportation Plan (LUTP)

**DelDOT/
TID**

**Concept
(continued)**

March – July 2017

- DelDOT develops future traffic projections and conducts analysis
- DelDOT presents conceptual transportation improvements
- Planning and Zoning reviews improvements
- DelDOT publishes draft Land Use and Transportation Plan (LUTP)

June – September 2017

- DelDOT produces implementation plan for LUTP with projects and cost estimates
- DelDOT proposes fee structure to fund implementation plan
- Planning and Zoning Commission holds hearing on LUTP and fee structure
- Council and DelDOT amend TID Agreement to include the implementation plan and the fee structure

Mr. Thomas stated that the purpose of the presentation on this date is for approval of the TID concept and the name, boundary and tentative timeline.

A discussion was held on the TID concept.

**M 436 16
Move
Forward
with
TID
Concept**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to move forward with the TID concept, as presented.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Adminis-
trator's
Report**

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

1. All Hazard Multi-Jurisdictional Mitigation Plan

The Sussex County Emergency Operations Center (EOC) is inviting residents and property owners to attend an upcoming public meeting to offer ideas and comments on a federally required update to the County's All Hazard Multi-Jurisdictional Mitigation Plan. The meeting will be held from 1:30 to 3:30 p.m. on Thursday, September 1st, at the Sussex County EOC, 21911 Rudder Lane, next to the Delaware Coastal Airport.

The hazard mitigation plan serves as a comprehensive, long-term planning tool used to identify various strategies local emergency planners would use in the event of a disaster. The overall goal of the

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

effort is to reduce or eliminate the loss of human life and damage to property as a result of hazards, both natural and man-made.

Local jurisdictions must update their plans every five years. As part of that process, the public has the opportunity to review the plan, offer input, and help shape the update. County emergency planners intend to present updated mitigation actions for the plan revision later this fall.

For more information, to view the current plan and future updates, as well as submit comments, visit <http://www.sussexcountyde.gov/all-hazard-mitigation-plan>. For questions, please contact Joe Thomas, EOC Director, at 855-7801.

2. Council Meeting/Holiday Schedule

A reminder that Council will not meet on September 6th or September 13th. The next regularly scheduled Council meeting will be held on September 20th at 10:00 a.m.

County offices will be closed Monday, September 5th, for the Labor Day holiday.

**IRB/
Cadbury
at Lewes
Project**

Mrs. Jennings reported that on Wednesday, August 24, 2016, the Industrial Revenue Bond (IRB) Committee held a public hearing on the Cadbury at Lewes, Inc. application requesting the issuance of up to \$21,000,000 of economic refunding revenue bonds. Mrs. Jennings presented for Council's consideration a Project Resolution authorizing the issuance of the bonds; the IRB Committee recommended the approval of the Resolution at the August 24th meeting. The bonds will be payable solely from the revenues received by the applicant and neither the full faith and credit nor the taxing power of the County will be pledged to pay this debt. As required by the IRS, Cadbury at Lewes goes through the County's process in order for the bonds to be issued as tax-exempt. Cadbury at Lewes has agreed to pay all costs of the County, including fees of its bond counsel in connection with the issuance of the bonds. They will also pay the one-half of a percent of the bonds to the County generating up to \$105,000 in revenue to the County. Emilie Ninan, Esquire, a partner at Ballard Spahr LLP, was in attendance and provided a brief background of the process of the County acting as a conduit on a bond financing.

**M 437 16
Adopt
R 015 16**

A Motion was made Mr. Cole, seconded by Mr. Arlett, to Adopt Resolution No. R 015 16 entitled "A PROJECT RESOLUTION AUTHORIZING ISSUANCE OF UP TO \$21,000,000 FIXED RATE REFUNDING REVENUE BONDS (CADBURY AT LEWES PROJECT) SERIES 2016.

Motion Adopted: 4 Yeas, 1 Absent.

**M 437 16
(continued)**

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

**IBRWF/
Phase 2
Treatment
Capacity
Expansion
and
Regional
Biosolids
& Septage
Upgrades**

Hans Medlarz, County Engineer, referenced Council's approval on January 24, 2014, of the five (5) year, cost plus fixed fee type, base contract regarding engineering services for the North Coastal Planning Area to Whitman, Requardt and Associates, LLP (WRA). Since then, the Council utilized the contract by approving six (6) amendments totaling \$3,109,354.00 in value. Also on January 24, 2014, the Council authorized contract negotiations with WRA for design of a 2.0 million gallons per day treatment capacity expansion as well as regional biosolids and septage upgrades.

Mr. Medlarz presented a request for the approval of Contract Amendment No. 7 to the original North Coastal base contract with WRA in the amount of \$1,290,820.00 for the required Scope of Services for design engineering for the Inland Bays Regional Wastewater Facility - Phase 2 Treatment Capacity Expansion and Regional Biosolids & Septage Upgrades.

**M 438 16
Approve
Contract
Amend-
ment 7/
WR&A
Base
Engineering
Contract/
Phase 2
IBRWF**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Amendment No. 7 to the Base Engineering Contract for the North Coastal Planning Area with Whitman Requardt & Associates be approved in an amount not to exceed \$1,290,820.00 covering treatment and expansion as well as biosolids and septage upgrades.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Bulk
Wastewater
Services
Agreement**

Hans Medlarz, County Engineer, presented a Bulk Wastewater Services Agreement between Sussex County and Artesian Wastewater Management, Inc. Mr. Medlarz reported that the proposed agreement is a result of the Engineering Department's proposal to avoid installing additional infrastructure in the ground and trying to utilize existing infrastructure when the County can access it (transmission and treatment only). Mr. Medlarz noted that the Proposed Agreement allows the County to access existing capacity where Artesian has resources for transmission and vice versa; both parties would be responsible for their own infrastructure and connection costs.

**M 439 16
Approve
Bulk Waste-
water
Services
Agreement**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council approves the Bulk Wastewater Services Agreement between Sussex County Council and Artesian Wastewater Management, Inc. for utilization of each parties' existing wastewater transmission and treatment facilities.

**M 439 16
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**Love Creek
Woods/
Expanded
Sewer
Participa-
tion
Agreement**

Hans Medlarz, County Engineer, presented a Sewer Participation Agreement between NSBM, LLC and Sussex County and the Love Creek Woods Homeowners Association. Mr. Medlarz explained that this pertains to the Angola North Expansion and deals with a District which was created by Resolution in October 2014; funding is in place and 90 percent of the design has been completed. The one property in question is the Boat Hole property located next to Love Creek; this property is the key easement acquisition because it contains the pump station for the larger area. Mr. Medlarz reported that, previously, an outside third party agreement had been reached between the Love Creek Woods Homeowners Association and the Developer of the Boat Hole; the agreement deals with the hook-up connection after the sewer installation and it defines a contribution from the Developer; this was done independent of the County. Mr. Medlarz also reported that there has been an impasse between the County and the Developer for the easement and the Developer has proposed that the County assume the responsibilities of this Agreement (Sewer Participation Agreement) with the contribution previously promised to the HOA to be paid to the County and the County would supervise and conduct the implementation. Mr. Medlarz further noted that, in addition to the County, the Board of Directors of the HOA and the Developer must also agree to the Proposed Agreement. Mr. Medlarz advised that the alternative is that the County will engage in a legal process to acquire the necessary right of ways for the utility easement. Mr. Medlarz recommended approval of the Sewer Participation Agreement.

**M 440 16
Approve
Approach
of Sewer
Partici-
pation
Agreement/
Love
Creek
Woods**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that the Sussex County Council approves the approach outlining the Sewer Participation Agreement between Sussex County, NSBM, LLC and Love Creek Woods Homeowners Association in principle, with a final Agreement to be presented to Sussex County Council at a later date for consideration.

Motion Adopted: 4 Yeas, 1 Absent.

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

**South
Coastal
Library/
Reading
Garden
Project**

Hans Medlarz, County Engineer, presented the bid results for the South Coastal Library, Reading Garden Alterations Project, Project 16-31. Only two bids were received, one from Common Sense Solutions in the amount of \$172,819.76 and one from Kent Construction in the amount of \$299,500.00, both of which were significantly above the architectural consultant's

Library Reading Garden Project (continued)	estimate of \$81,150.00. The Engineering Department recommends that Council reject the bids with the intention to rebid the project. Mr. Medlarz noted that, prior to re-advertising, the project scope will be reviewed with South Coastal Library staff to determine what elements and materials must remain.
M 441 16 Reject Bids/ South Coastal Library Reading Garden Project	<p>A Motion was made by Mr. Wilson, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that all bids for Contract 16-31, South Coastal Library Reading Garden Alterations, be rejected and that the Contract be rebid identifying the cost centers.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Yea; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
Request to Post Notices/ High Tide Church Expansion	<p>John Ashman, Director of Utility Planning, presented a request to prepare and post notices for the High Tide Church Expansion of the Sussex County Unified Sanitary Sewer District. This expansion, consisting of 122.65± acres, was requested by High Tide Church, a project currently known as PGS Properties and Allen Harim. The church and PGS properties will be responsible for gravity sewer to a connection point on the west side of Route 113. This provides a connection point for the American Legion Post #24 which has been on a holding tank since approximately 2008; Allen Harim will be connecting to the gravity system installed by High Tide and PGS. There are several other parcels included in this expansion to fill in the donut hole and to maintain a contiguous path; some will be receiving a connection point from the High Tide/PGS infrastructure. The parcels will be responsible for System Connection Charges of \$5,775.00 based on current rates. Pending approval, a Public Hearing will be held on September 27, 2016 at 10:15 a.m.</p>
M 442 16 Authorize Posting of Notices/ High Tide Church Expansion	<p>A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Engineering Department is authorized to prepare and post notices for the High Tide Church Expansion of the Sussex County Unified Sanitary Sewer District (Dagsboro/Frankford Area) to include parcels along Nine Foot Road, as presented on August 30, 2016.</p> <p>Motion Adopted: 3 Yeas, 2 Absent.</p> <p>Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Yea; Mr. Arlett, Absent; Mr. Wilson, Yea; Mr. Vincent, Yea</p> <p>(Mr. Arlett left the room during the discussion and vote on this matter.)</p>
Old Business/	<p>Under Old Business, the Council discussed Change of Zone No. 1802 filed on behalf of J. G. Townsend, Jr. & Co. Vince Robertson, Assistant County</p>

**Old
Business/
CZ 1802
(continued)**

Attorney, reported that a Public Hearing was held on August 23, 2016 at which time the record was left open for public comments (in writing) until close of business on August 30, 2016.

Mr. Robertson reported that quite a bit of information has been received including correspondence, petitions, and various publications and he noted that these will all be shared with the Council members and made a part of the record, along with anything else that comes in prior to the close of business on this date.

**M 443 16
Close
Public
Comment/
CZ 1802**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the time period for the receipt of written public comments on Change of Zone No. 1802 will close as of 4:30 p.m. on this date, August 30, 2016.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 444 16
Leave
Record
Open for
Certain
Informa-
tion/
CZ 1802**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, that Councilmembers may ask questions of staff or agencies until the close of business on September 30th (all questions should be funneled through Lawrence Lank, Director of Planning and Zoning, so that there is a record); once answers have been received and reported at a County Council meeting, the record will remain open for the public to comment (in writing) on the information requested (only).

Motion Adopted: 4 Yeas, 1 Absent.

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

It was noted that the time period that the public will be given to submit public comments on the information requested will be set at a future Council meeting.

**Grant
Requests**

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

**M 445 16
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$2,000.00 (\$400.00 from each Councilmanic Grant Account) to the Delaware Lions Foundation for humanitarian service projects (for Sussex County projects).

Motion Adopted: 4 Yeas, 1 Absent.

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

M 446 16 Councilmanic Grant **A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$900.00 from Mr. Wilson's Councilmanic Grant Account to the Coverdale Crossroads Community Council for utilities.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 447 16 Go Into Executive Session **At 11:30 a.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to go into Executive Session to discuss matters relating to personnel and land acquisition.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Executive Session **At 11:36 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 personnel and land acquisition. The Executive Session concluded at 12:45 p.m.**

M 448 16 Reconvene Regular Session **At 12:48 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 3 Yeas, 2 Absent.

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

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

M 449 16 Recess **At 12:48 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to recess until 1:30 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 450 16 Reconvene **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to reconvene at 1:35 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

**M 450 16
(continued)**

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

**Public
Hearing/
CZ 1803**

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-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY (AS AN ADDITION TO CHANGE OF ZONE NO. 1393 FOR AMERICANA BAYSIDE) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.313 ACRES, MORE OR LESS” (Change No. 1803) filed on behalf of CMF Bayside, LLC (Tax Map I.D. No. 533-19.00-50.00 (Part of) and 51.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 28, 2016 at which time action was deferred. On August 11, 2016, the Commission recommended that the application be approved, with conditions.

(See the minutes of the Planning and Zoning Commission dated July 28 and August 11, 2016.)

Janelle Cornwell, Planning and Zoning Manager, read a summary of the Commission’s Public Hearing and recommendation of approval.

Ms. Cornwell reported that the Exhibit Booklet and Staff Analysis were previously distributed to Council.

The Council found that James A. Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A., was present on behalf of the Applicant along with representatives of CMF Bayside, LLC; Steve Marsch of George Miles and Buhr, and Doug Melson, the property owner. Mr. Fuqua noted that the Exhibit Book that was submitted is a joint Exhibit Book – for both applications (CZ 1803 and CZ 1804).

Mr. Fuqua advised that the two Public Hearings on this date are two separate applications but are independent of one another. However, both applications involve the same parcel of land. For this reason, Mr. Fuqua stated that he would be including all information in one presentation.

Mr. Fuqua stated that the application is for a MR zoning designation for a 12.2 acre parcel of land fronting on Route 54; that it would be an extension of the existing Americana Bayside RPC; that the parcel of land is contiguous to the existing Americana Bayside RPC on both the southwest and northeast sides; that Carl M. Freeman Associates has been developing residential and commercial real estate in Sussex County since the late 1960s and were the developers of Sea Colony East, Sea Colony West, The

**Public
Hearing/
PZ 1803
(continued)**

Preserve, Bear Trap Dunes, and Americana Bayside, and several other projects; that the company has a history of responsible quality development and contribution and involvement in the community; that the Americana Bayside MR project was originally approved in 2001 on 887 acres for a maximum of 1,700 residential units and 170,000 square foot of retail/office space – it also contains a golf course, the Freeman stage, and many other recreational and open space amenities; that they are proposing to incorporate approximately 12.25 acres of additional land into the RPC; that it is proposed to be developed as a maximum of 48 residential units and up to 18,000 square feet of office/retail space; that Doug Melson is the owner of the property; that the entire property contains approximately 15 acres and he intends to develop a portion (3 acres) of the site for his use and to sell the remainder of the site (12.18 acres); that the CMF application includes the 12.18 acres being purchased and an adjoining 6,660 square foot strip that is already owned by CMF; that Artesian Water will be providing central water for drinking and fire protection; that the County will be providing central sewer (Fenwick Island Sanitary Sewer District); that the sewer concept plan is approvable upon receipt of the rezoning; that the site is located in the Indian River School District and in the Roxana Volunteer Fire Department service area; that as part of the original Americana Bayside approval, CMF was responsible for extensive roadway and intersection improvements on Route 54 and Route 20 and they have all been constructed at the expense of the Developer in the approximate amount of \$4.5 million; that a shared entrance is proposed to serve both the CMF Bayside and Doug Melson properties with access to Route 54; that the units will also have access to Sand Cove Road; that DelDOT did not require a Traffic Impact Study and has written a Letter of No Objection to the entrance plans; that there are no State or Federal wetlands on the site, except for .121 acres of non-tidal federal wetlands which are part of the Tax Ditch; that there will be a 30 foot access easement for maintenance of the tax ditch along the eastern side of the ditch, which will also serve as a buffer between the tax ditch, the wetlands and the proposed development; that stormwater management facilities will meet regulatory requirements; that they are proposing to construct a two-story building containing a maximum of 18,000 square feet of usable area; that they propose to relocate CMF's management offices and the office of the Freeman Foundation, and also have some possible leasable space; that the 18,000 square foot office space shall be a part of the original calculation in the originally approved 170,000 square foot of retail/office space; that this portion of the site will be developed with a maximum of 48 residential units; that those owners will be members of a HOA and all owners will be entitled to the extensive Americana Bayside recreational amenities; that this application shall be a part of the original calculation in the originally approved 1,700 units; that the application meets the purpose of the Comprehensive Plan and is located in the Environmentally Sensitive Developing Area; that the additional units are a natural extension to the Americana Bayside project; and that they are proposing duplex units; that the project will be subject to a site plan approval; and that the County's staff analysis states that the application is consistent with the Comprehensive Plan.

**Public
Hearing/
CZ 1803
(continued)**

Mr. Fuqua stated that Condition No. 24 in the original approval (Ordinance No. 1433 – Change of Zone No. 1393) provided that the original RPC retail office area would not have direct access to Route 54 because it was internalized in the development and it being served by the main road coming into American Bayside; that the Applicant is requesting that this condition will not apply to this parcel since this parcel fronts on Route 54 and DelDOT has already approved the entrance from Route 54; and that there was a similar project/entrance approval for Change of Zone No. 1731 (CVS/McDonalds).

Mr. Marsch reviewed the boundary of the RPC, the amenities, and the proposal to extend the walkway to the amenities and he stated that Sand Cove Road was rebuilt and relocated as part of the Americana Bayside project, and is a public road.

Mr. Fuqua submitted proposed Findings of Fact and Conditions of Approval for consideration.

There were no public comments and the Public Hearing and public record were closed.

**Public
Hearing/
CZ 1804**

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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.05 ACRES, MORE OR LESS” (Change of Zone No. 1804) filed on behalf of Doug Melson (Tax Map I.D. No. 533-19.00-50.00 (Part of) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 28, 2016 at which time action was deferred. On August 11, 2016, the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated July 28 and August 11, 2016.)

Janelle Cornwell, Planning and Zoning Manager, read a summary of the Commission’s Public Hearing and recommendation of approval.

Ms. Cornwell reported that the Exhibit Booklet and Staff Analysis were previously distributed to Council.

James A. Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A., was present on behalf of the application with Doug Melson, Applicant. He referenced the joint Exhibit Book (submitted for Change of Zone No. 1803 and Change of Zone No. 1804) and he asked that the information submitted into the record for Change of Zone No. 1803 be entered into the record for this application. Mr. Fuqua stated that Mr. Melson purchased the 15 acre

**Public
Hearing/
CZ 1804
(continued)**

parcel with the intent of establishing a new location for a funeral chapel; that he has an agreement to sell 12 acres of the site to CMF Bayside and to retain 3 acres with approximately 550 feet of frontage on Route 54; that they are requesting rezoning of the 3 acre parcel to B-1 Neighborhood Business District, which permits the use; that the Melson Funeral Services business has been in existence since 1934 and is a needed service due to the demographics of the area; that Delaware has grown faster than most states; that one in four residents in Sussex County are over the age of 65 years; that the application meets the purpose of the B-1 Neighborhood Business District; and that the project will be developed along with the development of the CMF Bayside, LLC portion of the property, will share an entrance to Route 54, and will share stormwater management facilities.

The Commission found that Mr. Fuqua submitted suggested proposed Findings of Fact for consideration.

There were no public comments and the Public Hearing and public record were closed.

**M 451 16
Amend
P&Z Com-
mission's
Reasons for
Recommen-
dation of
Approval
(CZ 1803)**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend the Planning and Zoning Commission's reasons (#2) for their recommendation of approval of Change of Zone No. 1803, as follows: "The 48 residential units will be included in and will not exceed the number of units permitted in the existing Americana Bayside MR-RPC approvals."

Motion Adopted: 3 Yeas, 1 Abstention, 1 Absent.

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

**M 452 16
Adopt
Ordinance
No. 2460/
CZ 1803**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Ordinance No. 2460 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY (AS AN ADDITION TO CHANGE OF ZONE NO. 1393 FOR AMERICANA BAYSIDE) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.313 ACRES, MORE OR LESS" (Change No. 1803) filed on behalf of CMF Bayside, LLC, for the following reasons given by the Planning and Zoning Commission, as amended, and with Conditions 7a through 7p:

- 1) The site is adjacent to portions of the existing Americana Bayside MR-RPC development. It will be an extension of the existing development.
- 2) The 48 residential units will be included in and will not exceed the number of units permitted in the existing Americana Bayside MR-RPC approvals.

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(continued)**

- 3) **The proposed development will have sewer service provided by Sussex County and water provided by Tidewater Utilities.**
- 4) **The proposed rezoning to a MR-RPC is in compliance with the goals and objectives of the Sussex County Comprehensive Land Use Plan. The Plan also recognizes that a range of housing types are appropriate in the Environmentally Sensitive Developing Area where this project is located, including multi-family and townhouse units. The proposed retail and office use is also appropriate in this area according to the Comprehensive Plan.**
- 5) **The proposed development will not adversely impact neighboring properties, traffic or the environment.**
- 6) **The development will be an extension of the existing Bayside development, and residents will be members of the Americana Bayside Homeowners Association entitling them to use the development's existing recreational amenities and requiring them to pay the required dues and assessments within the development.**
- 7) **This recommendation is subject to the following conditions:**
 - a. **The maximum number of residential dwelling units shall be 48 on this land incorporated into the existing MR-RPC.**
 - b. **The retail/office portion of the lands incorporated into the existing MR-RPC shall not exceed 18,000 square feet of retail/office space.**
 - c. **The 48 units and 18,000 square feet of office space approved as part of this extension of the MR-RPC shall be part of the uses approved in Conditions #1 and #3 of Change of Zone No. 1393 and shall not be in addition to these conditions previously imposed on the Americana Bayside MR-RPC project.**
 - d. **Conditions #24 of Change of Zone No. 1393 (requiring access to Route 54) shall not be applicable to the retail/office space as part of this application.**
 - e. **The development shall be served as part of the Sussex County Sanitary Sewer District.**
 - f. **The developer shall comply with all requirements and specifications of the County Engineering Department.**
 - g. **The RPC shall be served by central water.**
 - h. **Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner consistent with Best Management Practices.**
 - i. **The Final Site Plan for each phase of the development shall contain the approval of the Sussex Conservation District.**
 - j. **The project shall be incorporated as part of the existing Americana Bayside MR-RPC (Change of Zone No. 1393) and shall be subject to, and benefited by, the conditions imposed upon that development, except as modified herein.**
 - k. **All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's determinations.**
 - l. **The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.**

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- m. The residential units in this development shall be part of the Americana Bayside Homeowners Association responsible for the maintenance of streets, roadways, buffers, stormwater management areas and community areas.
- n. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Department.
- o. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation to be included in those areas.
- p. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 453 16
Adopt
Ordinance
No. 2461/
CZ 1804**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Ordinance No. 2461 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.05 ACRES, MORE OR LESS" (Change of Zone No. 1804) filed on behalf of Doug Melson for the reasons given by the Planning and Zoning Commission, as follows:

- 1) The site is appropriate for the change in zone to B-1 (Neighborhood Business), given its location on Route 54, which is a major roadway in Sussex County.
- 2) The permitted B-1 uses are appropriate and will benefit the nearby residents of the neighborhood. The Applicant's business is Melson Funeral Services, and he has stated on the record that he intends to operate a new funeral chapel on the property to provide services to the residents and growing residential communities located in the Route 54 area.
- 3) The change in zone will not adversely affect neighboring and adjacent properties or the community.
- 4) The project will be served by central water and will be served by County sewer.
- 5) The site is located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. B-1 (Neighborhood Business) zoning is an appropriate zoning classification in this area according to our Plan.
- 6) The Final Site Plan for any proposed use of the property will be subject to the review and approval of the Commission.

Motion Adopted: 4 Yeas, 1 Absent.

**M 453 16
(continued)**

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

**M 454 16
Adjourn**

**A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to adjourn at
2:45 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Yea;
 Mr. Arlett, Yea; Mr. Wilson, 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.}