

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 17, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 17, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	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 450 19
Approve
Agenda**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of September 10, 2019 were approved by consent.

**Public
Comments**

A public comment period was held and the following spoke: Dan Kramer and Paul Reiger.

**DE Goes
Purple**

Peggy Geisler of the Sussex County Health Coalition, gave a presentation on *Delaware Goes Purple*, a substance abuse awareness program.

**M 451 19
Countywide
Youth
Grant**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council provide the Sussex County Health Coalition through the Delaware Community Foundation \$5,000.00 (from Countywide Youth Grants) for the Sussex County substance abuse prevention project.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Adminis-
trator's
Report**

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

1. "Stockings for Soldiers"

Sussex County government is again joining Sussex County Volunteer Delaware 50+ and the State Office of Volunteerism in collecting donated items for deployed servicemen and women who are serving during the holidays. A donation box for "Stockings for Soldiers" has been placed in the County Administrative Offices building and includes a shopping list for deployed men and women, as well as our K9 soldiers. Donations to the County's box will be accepted up to November 12th. The public along with County employees are encouraged to join in and give back to the men and women (and K9s) who serve our country. A list of suggested donation items is attached.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Middle Creek Preserve – Phase 1, Apple Arbor, and Coastal Club – Jimtown Road Regional Pump Station, effective September 9th.

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

**Third
Quarter
Employee
Recognition
Awards**

Mrs. Jennings reported that the County recognizes employees for exceptional public service and that a total of thirty-three (33) employees received recognition for the Third Quarter of 2019. Mrs. Jennings announced that Andrew Jowder of Environmental Services and Megan Ferry of the Finance Department were recognized as the Third Quarter Shining Star recipients.

**Air
Methods
Lease
Renewal**

Eric Littleton, Airport Manager, presented for Council's approval a new Lease Agreement with Air Methods Corporation for Lot A-2 at the Delaware Coastal Airport. In 2016, the Council approved Air Methods Corporation's choice to exercise their final three-year extension. The current lease agreement expires on September 20, 2019. Air Methods is the parent company of LifeNet and operates an air ambulance service, with flight and medical crews on duty 24/7 serving the region from a County-owned 2,500 square foot hangar at the Airport. Mr. Littleton discussed the terms of the Lease Agreement.

**M 452 19
Approve
Hangar/
Ground
Lease
Agreement**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Sussex County Council approves the Hangar/Ground Lease Agreement with Air Methods Corporation for Lot A-2 at the Delaware Coastal Airport, as presented.

**M 452 19
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

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

**M 453 19
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to give \$750.00 from Mr. Vincent's Councilmanic Grant Account to Society of St. Vincent de Paul Council for their community food pantry.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 454 19
Council-
manic
Grant**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, to give \$1,000.00 from Mr. Rieley's Councilmanic Grant Account to the Bethany Beach – Fenwick Island Chamber of Commerce for their Fire & Ice Festival.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 455 19
County-
wide
Youth
Grant**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,000.00 from Countywide Youth Grants to Clothing Our Kids for their Clothe a Child program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 456 19
Council-
manic
Grant**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to give \$750.00 (\$375.00 each from Mr. Rieley's and Mr. Wilson's Councilmanic Grant Accounts) to Sussex Central High School for the FFA's convention/competition expenses.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1882**

A Public Hearing was held regarding the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-2 MEDIUM COMMERCIAL DISTRICT TO A HR-1 HIGH-DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 15.2 ACRES, MORE OR LESS” (Change of Zone No. 1882) filed on behalf of Nassau DE Acquisition Co., LLC (Tax I.D. No. 334-1.00-15.00 and 334-1.00-15.03) (911 Address: None Available).

Mr. Moore reported that this Public Hearing is for the limited purpose of reopening the record and is very limited in scope. He clarified that this is not a hearing to comment on the merits of the case. It is a “housekeeping” matter on procedural issues. Therefore, all public comments will be limited to that procedural issue only. It is solely for the purpose of opening the public record, not the hearing, to clarify the actual date the record is to be closed.

By way of background, Mr. Moore reported that on July 23, 2019, when the public hearing was concluded, there was a Motion to leave the record open for 15 days for the purpose of allowing Council members to ask questions of staff and agencies. Those questions have been posed and that period of time has now passed. Since the public hearing, there has been some discussion and questions as to what was to be allowed - Were just the questions to be posed during the 15-day period with the answers following or were both questions to be posed and responses received during that 15 day period? Mr. Moore reported that the responses to those questions have been received, but since they were received after the 15 day period and there were questions about the intent of the Motion, Janelle Cornwell, Planning and Zoning Director, was instructed to hold them in her file and not enter them into the record or share with Council until this matter was clarified. He noted that there was also no period set forth in the Motion to allow the public to respond in writing to the responses, as is normal practice.

Mr. Moore noted that this is a large project and has sparked a large amount of public interest and that Council wants to make sure everyone understands the ground rules and that everyone, including the Applicant and the public, has an opportunity to comment in writing after all responses to those questions are received into the record.

Mr. Moore stated that it is his recommendation that the record be reopened with the following conditions:

- 1. Confirm that the 15 day period for questions from Council has passed.**
- 2. The record shall be reopened for the purpose of receipt of those responses from the requested agencies. Those responses shall be immediately shared with Council and the public.**

**Public
Hearing/
CZ 1882
(continued)**

3. **The record shall remain open until 4:30 p.m. on Monday, September 23, 2019, so the public, including the Applicant, may respond in writing only, either by letter or email, to the Director of Planning and Zoning. The Director will then be on the agenda on September 24, 2019 to report the receipt of written communications and to confirm that the record is officially closed.**

Public comments were heard.

George Dellinger asked for clarification on when comments are due and if the hearing reopens on September 24th.

Mr. Moore responded to Mr. Dellinger stating that the hearing is reopened on this date to make sure that the answers that have come in can go into the record and so they can be made public; after today, the public and the Applicant will have until Monday, September 24th, at 4:30 p.m. to respond in writing; and the record will be closed. No action will be taken on September 24, 2019.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 457 19
Reopen
Public
Hearing on
CZ 1882
with
Conditions**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, (regarding the Proposed Ordinance entitled) "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-2 MEDIUM COMMERCIAL DISTRICT TO A HR-1 HIGH-DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 15.2 ACRES, MORE OR LESS" (Change of Zone No. 1882) filed on behalf of Nassau DE Acquisition Co., LLC, with the following conditions:

1. **It is confirmed that the 15-day period for questions from Council has passed.**
2. **The record shall be reopened for the purpose of receipt of those responses from the requested agencies. Those responses shall be immediately shared with Council and the public.**
3. **The record shall remain open until 4:30 p.m. on Monday, September 23, 2019 so that the public, including the Applicant, may respond to those responses in writing only either by letter or email, to the Director of Planning and Zoning. The Director will then be on the agenda on September 24, 2019 to report the receipt of written communications and to confirm that the record is officially closed.**

Motion Adopted: 5 Yeas.

**M 457 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Ms. Cornwell reported that all of the responses have been provided. The responses were handed out to the Council members and are now available to the public.

**2021-2026
CTP
Request**

Janelle Cornwell, Planning and Zoning Director, advised that the County annually submits a report to DelDOT for consideration of transportation projects throughout the County. The County asks the public to provide comments regarding public transportation improvements to assist DelDOT for the Capital Transportation Program (CTP). Ms. Cornwell noted that the public comment period has been open for several weeks and four (4) emails were received; no new ideas were proposed. A draft Sussex County Report has been provided for the 2021- 2026 CTP Request. DelDOT will hold a Public Hearing on September 25, 2019 at their South Complex; more information is available on the DelDOT website. DelDOT will be presenting information on how the County's requests are received and where projects are in the current and proposed CTP. Ms. Cornwell noted that the County's draft CTP request was included in the Council packet for this meeting. All of the comments that were received from the public during the public comment process will be provided to DelDOT.

**Owl's Nest
Pavement
Improve-
ments
Project/
Recom-
mendation
to Award**

Hans Medlarz, County Engineer, reported the bid results for Project T20-01, Owl's Nest Chapter 96 Sussex Community Improvements. Four bids were received; the low bidder was Jerry's Inc. in the amount of \$87,653.65. However, this exceeded the estimate and the based assessment. The Owl's Nest Homeowners Association (HOA) proposed and has maintained interest in contributing funds to the project to reduce the future assessment rate to the 17 lot owners within the subdivision. The referenced preliminary project estimate included a \$5,000 HOA contribution to the project. Based on the bid results, the HOA intends to increase their project contribution to \$20,000. The contribution amount will offset the cost difference between the assessment roll utilized in the project election, keeping the assessment at the rate approved and the rate at the time of the referendum.

**M 458 19
Award
Contract/
Owl's Nest
Pavement
Improve-
ment
Project**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract T20-01, Owl's Nest Paving Improvements, a Chapter 96 Sussex Community Improvement Program Project, be awarded to Jerry's Inc. of Milford, Delaware, at the total bid amount of \$87,653.65, contingent upon receipt of partial project funding by the Owl's Nest Homeowners Association.

Motion Adopted: 5 Yeas.

**M 458 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**City of
Seaford/
Approval of
Addendum
No. 1 to
Wastewater
Service
Agreement**

Hans Medlarz, County Engineer, presented Addendum No. 1 to the Wastewater Service Agreement between the City of Seaford and Sussex County. In accordance with the establishment of the Western Sussex Area of the Sussex County Unified Sanitary Sewer District, the City of Seaford will provide wastewater services for the Blades and Western Sussex Area under a municipal service agreement (last modified in May 2018). Under said agreement, the Engineering Department works continuously with the City on capacity and operational efficiency opportunities. Mr. Medlarz reported that two such opportunities have arisen; one is an inflow reduction project and the other is a jointly funded fiber communication extension to the northern pump station in exchange of eliminating the County's partial operations and maintenance exposure associated with that station. The Engineering Department is requesting approval for Addendum No. 1 to the Wastewater Service Agreement to jointly fund opportunities on a flow-based cost split not to exceed \$100,000.

**M 459 19
Approve
Addendum
No. 1 to
Wastewater
Service
Agreement/
City of
Seaford**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Addendum No. 1 to the Wastewater Service Agreement between Sussex County and the City of Seaford, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Authori-
zation to
initiate
Close Out
Proceedings/
Inactive and
Incomplete
Subdivisions**

Hans Medlarz, County Engineer, reported on subdivisions that have been relatively inactive or remain incomplete for various reasons. Some have been inactive for a considerable amount of time or have incomplete improvements such as sidewalks, final street pavement and unresolved drainage issues; a small number have potential public safety concerns due to compromised infrastructure. Using years of inactivity, high percentage of construction completion, as well as percentage of lots sold as a guide, the Engineering Department assembled a list of potential developments targeted for notification. The Department is asking for Council's approval to officially notify the owners of the developments as follows:

- Listed developments with potential safety concerns be provided notification to rectify concerns within ninety (90) days or be subject to redemption of the performance security upon separate approval by Council.**
- Listed developments with incomplete infrastructure and/or unresolved construction or drainage issues, be notified and**

**Authori-
zation to
initiate
Close Out
Proceedings/
Inactive and
Incomplete
Subdivisions
(continued)**

provided one hundred and eighty (180) days to rectify the issues or be subject to withholding of building permits.

- **Listed developments with a large percentage of units sold and the developer with little or no remaining holdings, be notified and provided 180 days to rectify the issues or be subject to redemption of the performance security upon separate approval by Council.**

It was noted that a list of potential developments for close out proceedings was previously provided to Council members in the packets for this meeting.

It was also noted that, in 2017, the County Council adopted Ordinance No. 2489 addressing the particulars of how subdivisions were to be closed out; however, this Ordinance did not apply to past subdivisions (prior to the effective date of the Ordinance).

**M 460 19
Establish
Timeline
for Project
Close-Outs/
Inactive and
Incomplete
Subdivisions**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Council authorizes official notification to the entitles identified, establishing a timeline for the associated project close-out.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Proposed
Lochwood
Expansion
of the
SCUSSD**

John Ashman, Director of Utility Planning, presented the public hearing results for the Proposed Lochwood Expansion of the Sussex County Unified Sanitary Sewer District. The results of the public hearing were 41 percent in favor and 28 percent opposed (of 155 lots); this represents 70 percent of the lots responding.

**M 461 19
Adopt
R 018 19**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Resolution No. R 018 19 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) ANGOLA NECK AREA, TO INCLUDE THE LOCHWOOD SUBDIVISION 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. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Chapel
Branch
Area
of the
SCUSSD**

John Ashman, Director of Utility Planning, presented the public hearing results on a revised assessment method for the Chapel Branch Area of the Sussex County Unified Sanitary Sewer District. The Chapel Green Homeowners Association contacted the County requesting annual billing using the EDU formula, not the quarterly frontage formula as previously approved by referendum. The revised method would change the assessment to a uniform \$680.00 per EDU.

Mr. Ashman asked for Council's approval to hold a second referendum for the Chapel Branch Area which would revise the assessment, as requested.

**M 462 19
Approve
Holding
Referendum
on Revised
Assessment
Method/
Chapel
Branch
Area of
the SCUSSD**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves holding a referendum on a revised assessment method for the Chapel Branch Area of the Sussex County Unified Sanitary Sewer District, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Use of
Existing
Infra-
structure
Agreement/
Fox Haven/
Savage
Farm LLC**

John Ashman, Director of Utility Planning, presented for consideration a Use of Existing Infrastructure Agreement with Savage Farm, LLC for the Fox Haven II project in the Johnson's Corner Area. Under the proposed arrangement, the Fox Haven II project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure, Savage Farm, LLC will contribute \$57,453.00 for the financial catch-up contribution of the existing infrastructure to service 98 additional EDUs. System connection charges in place at the time of building permit request will still apply.

**M 463 19
Approve
Use of
Existing
Infra-
structure
Agreement/
Savage
Farm LLC/
Fox Haven**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Savage Farm, LLC for capacity allocation in the Regional Transmission System, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Introduction
of Proposed
Ordinances**

Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (216

**Introduction
of Proposed
Ordinances
(continued)**

UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.793 ACRES, MORE OR LESS” (Conditional Use No. 2199) filed on behalf of OA-Rehoboth, LLC (Tax I.D. No. 334-12.00-127.01 and 127.10) (911 Address: Not Available).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE AND LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.227 ACRES, MORE OR LESS” (Conditional Use No. 2203) filed on behalf of Christopher Booth (Tax I.D. No. 433-7.00-13.01) (911 Address: 30725 Omar Road, Frankford).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HOME REMODELING AND REPAIR SERVICES, STORAGE REPAIR AND MAINTENANCE, LIGHT BUILDING MATERIAL AND STORAGE, AND GENERAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.93 ACRES, MORE OR LESS” (Conditional Use No. 2204) filed on behalf of Quality Care Homes c/o Kenneth Dominic Alton Drummond (Tax I.D. No. 234-5.00-46.04 (portion of) (911 Address: 20366 Hopkins Road, Lewes).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.1 ACRES, MORE OR LESS” (Change of Zone No. 1900) filed on behalf of Michael P. Justice, Trustee (Tax I.D. No. 134-16.00-51.00) (911 Address: Not Available).

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 15 ACRES, MORE OR LESS” (Change of Zone No. 1902) filed on behalf of John C. Stamato c/o Ribera Development, LLC (Tax I.D. No. 135-16.00-23.00 (portion of) (911 Address: Not Available).

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF

Introduction of Proposed Ordinances (continued) **SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 17.25 ACRES, MORE OR LESS” (Change Of Zone No. 1903) filed on behalf of W. Wayne Baker (Tax I.D. No. 133-6.00-43.00) (911 Address: Not Available).**

Council Members’ Comments **Council Members’ Comments**

Mr. Rieley commented that this is Constitution Day and that a reading of the Constitution is scheduled on The Circle in Georgetown at 4:00 p.m.

M 464 19 Go Into Executive Session **At 11:18 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending litigation and personnel.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Executive Session **At 11:22 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 and personnel. The Executive Session concluded at 12:24 p.m.**

M 465 19 Reconvene Regular Session **At 12:26 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 3 Yeas, 2 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Absent;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

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

M 466 19 Recess **At 12:26 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to recess until 1:30 p.m.**

Motion Adopted: 3 Yeas, 2 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Absent;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 467 19 **At 1:33 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson,**
Reconvene **to reconvene.**

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

Rules **Mr. Moore read the rules of procedure for zoning hearings.**

Legal **Mr. Moore stated that he has a potential conflict with the first Public**
Counsel **Hearing (Conditional Use No. 2182) and that Vince Robertson, Assistant**
 County Attorney, would take his place for this hearing.

Mr. Moore left the meeting.

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
CU 2182 **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL**
 AUTOMOTIVE REPAIR AND DEALER TO BE LOCATED ON A
 CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN
 HUNDRED, SUSSEX COUNTY, CONTAINING 2.87 ACRES, MORE OR
 LESS” (Conditional Use No. 2182) filed on behalf of Samuel G. Thomas
 (Tax I.D. No. 135-20.00-159.01) (911 Address: 23371 Springfield Road,
 Georgetown).

The Planning and Zoning Commission held a Public Hearing on this
application on August 8, 2019 at which time action was deferred. On
August 22, 2019, the Commission recommended approval with the following
conditions:

- A. The use shall be limited to the repair of cars that the Applicant intends to sell and the sales of those cars. There shall be no more than four (4) cars for sale or under repair on the property at any time.**
- B. One unlighted sign, not to exceed 32 square feet per side, shall be permitted.**
- C. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.**
- D. Any dumpsters shall be located behind the garage and they shall be screened from view of neighbors. The dumpster location shall be shown on the Final Site Plan.**
- E. All repairs shall be performed indoors. No automobile parts shall be stored outside.**
- F. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.**
- G. There shall not be any parking in the front yard setback.**
- H. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these**

**Public
Hearing/
CU 2182
(continued)**

designated areas.

- I. As stated by the Applicant, the property shall retain its residential appearance.**
- J. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with all State and Federal requirements for the disposal of these fluids.**
- K. The site shall be subject to all DelDOT entrance and roadway requirements.**
- L. The hours of operation shall be 9:00 a.m. through 7:00 p.m., Monday through Friday, and 9:00 a.m. until Noon on Saturdays. There shall not be any Sunday hours.**
- M. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated August 8 and 22, 2019.)

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

The Council found that Samuel Thomas was present on behalf of his application. He stated that he purchases imported cars from Japan; that he only purchases six to ten cars per year to restore; that once the cars are restored, they are sold online or at auctions; that it is a very specific market; that he does not have a dealer lot; that he operates out of a 864 sq. ft. shop; that he does not have any employees; and that he does not need a 32 sq. ft. sign, only a smaller sign on his building.

There were no public comments.

The Public Hearing and public record were closed.

**M 468 19
Amend
Condition**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition B to read as follows: "One unlighted sign, not to exceed 16 square feet per side, shall be permitted."

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Nay; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 469 19
Adopt
Ordinance
No. 2679/
CU 2182**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to Adopt Ordinance No. 2679 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL AUTOMOTIVE REPAIR AND DEALER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX

**M 469 19
Adopt
Ordinance
No. 2679/
CU 2182
(continued)**

COUNTY, CONTAINING 2.87 ACRES, MORE OR LESS” (Conditional Use No. 2182) filed on behalf of Samuel G. Thomas, with the following conditions:

- A. The use shall be limited to the repair of cars that the Applicant intends to sell and the sales of those cars. There shall be no more than four (4) cars for sale or under repair on the property at any time.**
- B. One unlighted sign, not to exceed 16 square feet per side, shall be permitted.**
- C. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.**
- D. Any dumpsters shall be located behind the garage and they shall be screened from view of neighbors. The dumpster location shall be shown on the Final Site Plan.**
- E. All repairs shall be performed indoors. No automobile parts shall be stored outside.**
- F. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.**
- G. There shall not be any parking in the front yard setback.**
- H. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these designated areas.**
- I. As stated by the Applicant, the property shall retain its residential appearance.**
- J. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with all State and Federal requirements for the disposal of these fluids.**
- K. The site shall be subject to all DelDOT entrance and roadway requirements.**
- L. The hours of operation shall be 9:00 a.m. through 7:00 p.m., Monday through Friday, and 9:00 a.m. until Noon on Saturdays. There shall not be any Sunday hours.**
- M. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Legal
Counsel**

Mr. Moore rejoined the meeting.

Mr. Robertson left the meeting.

**Public
Hearing/
CZ 1889
(continued)**

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 C-3 HEAVY COMMERCIAL DISTRICT) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.771 ACRES, MORE OR LESS” (Change of Zone No. 1889) filed on behalf of Air Fish Automotive (Tax I.D. No. 332-1.00-72.00 (portion of) (911 Address: 11125 National Boulevard, Laurel).

The Planning and Zoning Commission held a Public Hearing on this application on August 8, 2019 at which time action was deferred. On August 22, 2019, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated August 8 and 22, 2019.)

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

The Council found that Tim Willard, Attorney, was present with the Applicants, Brent James and William James. Mr. Willard provided a history of the property and advised that the Applicants are seeking a change of zone for approximately 5 acres of the front portion of the property; that the Applicants operate Air Fish Automotive; that they mainly work on diesels on trucks; that they have improved the building on the property; that the property is across the highway from a large Commercial CR-1 property and an Industrial HI-1 property; that C3 zoning allows for automotive related services; and that the Change of Zone is consistent with the Comprehensive Plan and the Zoning Code.

There were no public comments.

The Public Hearing and public record were closed.

**M 470 19
Adopt
Ordinance
No. 2680/
CZ 1889**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to Adopt Ordinance No. 2680 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.771 ACRES, MORE OR LESS” (Change of Zone No. 1889) filed on behalf of Air Fish Automotive.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2176**

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 CONVENIENCE STORE WITH FUELING STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.51 ACRES, MORE OR LESS” (Conditional Use No. 2176) filed on behalf of KH Sussex, LLC (Tax I.D. No. 234-11.00-56.02 (portion of), 56.03, 56.06, and 56.09) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on August 8, 2019 at which time action was deferred. On August 22, 2019, the Commission recommended approval with the following conditions:

- A. The Applicant shall comply with all entrance, intersection and roadway improvements, required by DelDOT.**
- B. Fuel and petroleum products shall be stored and dispensed as required by the all State and Federal requirements.**
- C. All security lighting shall be fully shielded so that it does not shine on neighboring properties or roadways.**
- D. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- E. The Developer shall comply with all stormwater management requirements and the Final Site Plan shall contain the approval of the Sussex Conservation District.**
- F. The site may have the signage permitted in the C-3 District.**
- G. The site shall be developed in conjunction with the DelDOT improvements to the Route 24 and Angola Road intersection. The use shall not be open to the public until those intersection improvements have been substantially completed.**
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated August 8 and 22, 2019.)

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

Ms. Cornwell reported that 13 letters/emails were received in support of the application; that 135 letters/emails were received in opposition to the application; and that a petition in opposition to the application has been made a part of the record.

Ms. Cornwell noted that an updated letter from DelDOT in regards to the Traffic Impact Study has been received. Copies of the letter were distributed to Council members. Ms. Cornwell noted that representatives of DelDOT were in attendance.

**Public
Hearing/
CU 2176
(continued)**

The Council found that Dennis Schrader, Attorney, was present with Kirk Salvo, Principal of KH Sussex, LLC; Chris Dukes and Mike Riemann with Becker Morgan Group, and Jim Barringer, project coordinator with the potential 7 Eleven developer of this site.

Mr. Schrader stated that this application previously came before Council as a Change of Zone application and as a result of the vote that took place, the application was denied and it was recommended that the Applicant come back with a Conditional Use. Mr. Schrader referenced procedural issues they encountered due to the implementation of the new Comprehensive Plan and the new commercial zoning ordinance.

Mr. Schrader reported that the purpose of this application is to allow for a 24-hour 7 Eleven convenience store with fueling stations; that the current zoning of the property is AR-1 Agricultural Single-Family District but it is subject to a number of Conditional Uses; that there is currently a marine storage and services business on the site as well as construction services, and grass mowing and power washing businesses; that the site is located in the Coastal Growth Area according to the 2018 Comprehensive Plan where commercial and convenience uses are appropriate; that the site is located in Investment Level 3 according to the Strategies for State Policies and Spending; that the project will be served by Tidewater Utilities; that wastewater service will be provided by Sussex County; and that there are no delineated wetlands on the site.

Mr. Riemann clarified what parcels are included in the application; reviewed a conceptual site plan, and reviewed the reasons that the site was selected. Mr. Riemann discussed proposed stormwater management, the topography of the site, landscaping and screening, non-disturbance of the wetlands, and noted that the property is not located in a wellhead protection zone, will provide dedicated frontage to DelDOT, and will provide a multi-use easement on both roadways,

Mr. Riemann provided a traffic summary which included the Traffic Impact Study (TIS) which analyzed the impacts the proposed project would have on Route 24 and Angola Road, and DelDOT's improvement plan for the intersection of Route 24 and Angola Road.

Mr. Barringer discussed the proposed fuel facilities and how they will be built with secondary confinement for safety purposes; safety measures will include spill kits, emergency shut-offs and alarms. He discussed the monitoring of the facilities and compliance with State requirements.

Mr. Dukes discussed the scoping meeting with DelDOT, the traffic study including peak traffic and traffic volumes, intersection improvements, a proposed concrete median in the middle of Route 24; and DelDOT's proposed improvements which will coincide with the development of this project, if approved. Mr. Dukes stated that they have submitted a Preliminary TIS to DelDOT.

**Public
Hearing/
CU 2176
(continued)**

Mr. Riemann referenced the follow-up letter issued by DeIDOT regarding the inclusion of specific developments as an amendment to the Traffic Impact Study. He noted that their original study included several committed developments that will add traffic to the network by 2022; but for many, the buildout horizon extends years beyond 2022. He stated that it is their understanding that when this project is complete, the delay at the intersection of Route 24, Angola Road, and Robinsonville Road will be similar to what was originally reported and the recommendations consistent with the original letter dated July 25, 2019.

Mr. Salvo commented on the selection of the property for this proposed project.

Mr. Schrader concluded by stating that the application complies with the Zoning Code. Mr. Schrader referenced and commented on concerns previously expressed by the opposition at the Planning and Zoning Commission, i.e. traffic, stormwater management and run-off into creeks and wetlands, underground storage tanks leaking and resulting contamination, and the lack of a need for the project. Mr. Schrader reminded Council that this application is about land use and that the opposition has generalized concerns which they should support with specific evidence about the threat to the area by the project.

Mark Coté with DeIDOT's Division of Planning was in attendance with other representatives of DeIDOT to respond to questions raised by Council. Council members and Mr. Coté discussed developments not included when the transportation study was done, additional needed improvements beyond DeIDOT's planned safety improvement project at the intersection, the long-term assessment if all the proposed developments come to fruition, modifications that will be necessary at the intersection, four lanes on Route 24 which addresses the whole corridor, more specifically than just this intersection, DeIDOT's determination that the improvements slated for this intersection will be sufficient even considering the developments omitted from the study, the proposed improvements to the intersection for capacity and safety reasons, improvements taking place regardless whether or not the proposed project is approved, the distance between the intersection and the entrance to the project on Route 24, the right-in and right-out onto Route 24 limiting the ability to go west on Route 24, the length of roadway that will be improved on Angola Road, and concern about the resident that lives on Route 24 who will be impacted by the proposed concrete median.

Public comments were heard.

Lee Thompson spoke in support of the application. He stated that his reasons of support are due to the convenience it will provide to area residents; that DeIDOT's proposed improvements will be a benefit to the area; and that it is a popular area that is growing, like it or not.

**Public
Hearing/
CU 2176
(continued)**

The following people spoke in opposition to the application: Rich Borasso (representing Sussex Alliance for Responsible Growth - SARG), Michael Dorsey, Gail Quenneville, Barbara Wittin, Dennis Quenneville, Jens Wegscheider, Sharon Downs, Steve Abdalla, Robert Frost, Jerry Sideman, Peter Treiber, Richard Downes, Ivy Benson (read a letter into the record from another resident, Judith Kane), Rosemary Mirocco, Marcia Williams, Mike Donohue, Gretchen Klein, Richard Raynic, Eul Lee, and Jim Rodgers. They stated that a large number of people oppose the application; that the proposed project in this residential area is not an appropriate location; that it may be a convenience to the area but it would come at a cost; that drinking water would be negatively impacted; that an application proposing gas tanks should not be a Conditional Use as it cannot be retrofitted if the business fails; that there has been no needs assessment; that there will be contamination from the gasoline; that runoff needs to be addressed as the application site is right on top of an aquifer; that there is no public need as there are many gas stations and convenience stores in the area; that the proposed use is not essential and it is very risky; that no other gas stations have been approved on a Conditional Use basis; that other uses would be more appropriate; that there would be chaos on the roads during the two-year construction phase; that all the details of the project and road improvements need to be worked out; that there is already too much traffic in the area and the proposed Beebe Surgery Center will add more; that the proposed concrete barrier on Route 24 will result in drivers making illegal U-turns, which will be dangerous; that the 7 Eleven store will operate 24 hours a day; that there are crime issues that accompany this type of business especially in a residential area; that first responders will have a difficult time responding; that there will be increased accidents; that part of the application site overlaps the wellhead protection area; that the proposed project will devalue other commercial properties and will devalue the AR protection zone; that there will be increased noise in the area from vendor trucks, fuel trucks, etc., that the diesel fueling area will be in the back of the site and they question who will monitor that; that there are many safety concerns; that there could be massive fuel spills and the shut-offs may not always work; that fuel spills will result in environmental pollution; that the proposed project will make any improvements to the intersection obsolete; that there has been no wetland delineation and the wetlands need to be protected; that an environmental impact study is needed; that there are approximately 600 homes approved for construction along Angola Road that have not been built yet; that school bus transportation is a concern; that the entrance/exit to the project site is pushed towards Sarah Run; and that the proposed placement of the diesel pump is near the wetlands. Two similar cases (one in Kent County and one in New Castle County) were referenced.

Rich Borasso (representing SARG) commented on the learnings resulting from the 2017 Henlopen TID Study and how those learnings can be applied to the public hearing on this application. Mr. Borasso submitted information on the Study into the record. Mr. Borasso also referenced the County's 1988 MOU with DelDOT, stating that it needs to be "dusted off".

**Public
Hearing
(continued)**

There were no additional public comments.

The Public Hearing was closed.

**M 471 19
Defer
Action on
CU 2176**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to defer action on Conditional Use No. 2176 filed on behalf of KH Sussex, LLC and to leave the record open for 15 days for any Council member to ask questions of State agencies or staff; thereafter, the record will remain open for a period of 30 days for the purpose of receiving responses to those questions; once responses have been received, the Planning and Zoning Director will report to Council on the responses received and the responses will be made available to the Council members and to the public; thereafter, for a period of 5 days, the record will remain open for the public and the Applicant to comment in writing on the responses received; thereafter, the Planning and Zoning Director will report to the Council on those responses received and the record will be closed.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 472 19
Adjourn**

At 4:45 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, 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.}