

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 21, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 21, 2021, at 12:30 p.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 426 21
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of September 14, 2021 were approved by consent.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from the Bethany Beach Volunteer Fire Company, Inc., the Resilient and Sustainable Communities League (Partnership for the Delaware Estuary), and Delaware Botanic Gardens in appreciation of grants.

**Public
Comments**

Public comments were heard and the following spoke:

Anna Biggs expressed concerns about proposed development on Mulberry Knoll Road.

Judy Vaughn Parker commented on safety concerns on Fred Hudson Road.

Dave Chernuta, Nan Zamorski, Ed Waysz, and Dave Breen expressed concerns about and commented on “uncontrolled development” in the County.

Judy Rose Seibert spoke in support of open space and the proposed buffer ordinance.

**Public
Comments
(continued)**

Keith Steck presented several recommendations to Council including a request for an administrative mechanism to request corrections to Minutes and Findings, etc., and for the creation of a working group for a comprehensive review of ordinances and to consider implementing impact fees.

There were no additional public comments.

**Update/
Buffers,
Wetlands,
Drainage**

At the request of the Council President, Mr. Lawson provided an update on the topic of the 2019-2020 buffers and wetlands initiative. He noted that the term *drainage* has been added to his presentation on this date as the topics of discussion began with buffers and wetlands, and it became apparent that drainage should be a part of the initiative. Mr. Lawson reported on the work produced by the Wetlands & Buffers Working Group, which met in 2019 and 2020; the efforts of the Working Group resulted in a working document.

Mr. Lawson reported that a lot of the endorsed and approved Comprehensive Plan references the buffers and wetlands initiative. He noted that one of the reasons it was decided to go through the initiative is because it became apparent that the County Code needs updating; the terms and definitions need updating and some of the interpretation that became practice also needs adjusting.

Mr. Lawson reviewed what is included in the recommendation: resources subject to the ordinance, definitions for those resources (ephemeral streams, intermittent streams, wetlands resource buffer, etc.), and a list of permitted activities in a buffer, i.e. what could be permitted in a buffer zone.

Following the meetings of the Working Group and the submittal of the recommendations, County staff reviewed the recommendations and developed a working draft related to “certain drainage features, wetland and water resources and the buffers thereto”. In March 2020, it was determined to bring the recommendations to Council; however, that is when the Covid-19 pandemic hit.

Mr. Lawson noted that this initiative is to provide recommendations for how the County applies wetlands and buffer protections. He further noted that what is critically important in this initiative is that it will only impact new development and it will not impact anything outside of residential development; it will have no impact on any property that remains in agriculture.

Mr. Lawson concluded by stating that the next step would be the drafting of an ordinance for discussion; all Councilmembers agreed to move forward with the drafting of the ordinance.

Administrator's Report

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

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for August 2021 is attached listing the number of violent crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 189 troopers assigned to Sussex County for the month of August.

2. Reassessment Town Hall Meetings

In conjunction with Tyler Technologies, the County will host 5 town hall meetings to provide an overview of the reassessment process. The public meetings are scheduled for:

- Thursday, September 23rd from 2 to 4 p.m. at Milton Fire Department
- Thursday, September 23rd from 6 to 8 p.m. at Delaware Technical Community College – Owens Campus – Carter Partnership Center
- Monday, September 27th from 6 to 8 p.m. at the Delaware National Guard – Bethany Beach Training Site
- Wednesday, September 29th from 6 to 8 p.m. at the Millsboro Town Center, and
- Thursday, September 30th from 6 to 8 p.m. at Seaford Volunteer Fire Department.

In addition to the in-person sessions, one virtual session featuring the same presentation will be conducted on Monday, September 27th from 2 to 4 p.m. Anyone interested in viewing the virtual session please visit the County website at www.sussexcountyde.gov for more information.

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

Agricultural Farm Leases/ Bid Results and Recommendation

Hans Medlarz, County Engineer, presented the bid results for the agricultural farm leases for Bunting Farm and the Georgetown parcels. He reported that, following a review of the one bid received, the Engineering Department recommends the award of the five (5) year agricultural lease for the Bunting Farm to Magee Farms for a net annual fee of \$4,500.00. Mr. Medlarz stated that, with no bids received for the Georgetown parcels, the Engineering Department recommends engaging Sussex Conservation District for the establishment of a meadow at the Georgetown parcel.

M 427 21 Award Ag Farm Lease

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the award of the Bunting Agricultural

M 427 21 (continued) **Farm Lease to Magee Farms for a net annual fee of \$4,500.00 for a five (5) year lease.**

Motion Adopted: 5 Yeas.

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

Warrington Road Annexation Update **John Ashman, Director of Utility Planning & Design, presented an update on the proposal to extend the boundary of the Sussex County Unified Sanitary Sewer District, West Rehoboth Area, to include four parcels of land on the south side of Warrington Road in Rehoboth Beach. A Public Hearing was held on the proposed expansion on July 27, 2021 at which time a property owner expressed concerns with the Engineering Department’s proposal for a mechanical pressure system instead of the gravity fed system. At the conclusion of the Public Hearing, the Council left the record open for a report from Council on the possibility of obtaining the necessary easements. The Engineering Department responded to the stated concern and noted that in order to look at a gravity connection versus the grinder pump connections, an easement would be needed across a piece of the buffers/common areas of Redden Ridge. The Department has sent all the information to the Homeowners Association (HOA) and following a response, additional information was provided. Thereafter, the HOA Board of Directors held a meeting and the Department is awaiting a response. Mr. Ashman stated that the existing easement is still an option along Warrington Road, so the Department can proceed; however, this is the grinder pump option.**

Proposal to Establish Slaughter Beach Area of the SCUSSD **Hans Medlarz, County Engineer, reported that the Engineering Department has participated in several meetings with the Town of Slaughter Beach pertaining to the possibility of the County providing sewer service to the Town. Mr. Medlarz recognized the Mayor and Vice Mayor of the Town of Slaughter Beach who were in attendance. Mr. Medlarz noted that the municipal boundary of the Town coincides 100 percent with the proposed sewer district area. On August 9, 2021, the Town passed Ordinance 2021-05 authorizing Sussex County to provide sewer services within the municipal boundaries of the Town of Slaughter Beach. Mr. Medlarz reported that the Engineering Department has reviewed the Town’s Ordinance and the request and finds the proposal acceptable. Mr. Medlarz noted that the Engineering Department will not recommend acceptance by Sussex County Council of any funding package exceeding an annual sewer assessment of \$1,200.00 per property unless agreed to by the Mayor and Council. It was noted that the overall project completion timeline could be up to five (5) years.**

M 428 21 Adopt R 023 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to Adopt Resolution No. R 023 21 entitled “A RESOLUTION TO ESTABLISH THE SLAUGHTER BEACH AREA OF THE SUSSEX COUNTY UNIFIED**

M 428 21 **SANITARY SEWER DISTRICT UNDER THE PROVISIONS OF TITLE 9**
Adopt **OF THE DELAWARE CODE".**

R 023 21
(continued)

Motion Adopted: 5 Yeas.

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

Rules

Mr. Moore read the rules of procedure for public hearings.

Public
Hearing/
Proposed
Ordinance/
Lot Area/
Density
Calculation

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XX BY AMENDING SECTION 115-156 TO CLARIFY THAT THE LOT AREA WITHIN TABLES II AND III REFERS TO THE LOT AREA WITHIN EACH PARTICULAR ZONING DISTRICT".

Jamie Whitehouse, Planning and Zoning Director, reported that the Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on August 26, 2021 at which time the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated August 26, 2021.)

Mr. Whitehouse reported that no comments were received in support of or in opposition to the Proposed Ordinance.

Vince Robertson, Assistant County Attorney, presented the Proposed Ordinance that addresses a question in the Sussex County Code regarding how multi-family density is calculated.

There were no public comments.

The Public Hearing and public record were closed.

M 429 21
Adopt
Ordinance
No. 2802

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2802 entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XX BY AMENDING SECTION 115-156 TO CLARIFY THAT THE LOT AREA WITHIN TABLES II AND III REFERS TO THE LOT AREA WITHIN EACH PARTICULAR ZONING DISTRICT".

Motion Adopted: 5 Yeas.

**M 429 21
(continued)**

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

**Public
Hearing/
CZ 1945
CU 2292**

A combined Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Change of Zone No. 1945) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Conditional Use No. 2292) filed on behalf of Gulfstream Development, LLC (Tax I.D. No. 533-19.00-56.05) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on these applications on August 26, 2021 at which action was deferred. On September 9, 2021, the Commission recommended approval of the Change of Zone and the Conditional Use, with the following conditions:

- a. The maximum number of residential units shall be 32.**
- b. All entrances, intersection, roadway, and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- c. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- d. The project shall be served by central water to provide drinking water and fire protection.**
- e. Interior street design shall meet or exceed the Sussex County street design requirements.**
- f. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- g. The Applicant shall submit as part of the Final Site Plan, a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all “Limits of Disturbance” within the site. These “Limits of Disturbance” shall be clearly marked on the site itself.**
- h. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in**

**Public
Hearing/
CZ 1945
CU 2292
(continued)**

- English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50th building permit within the combined projects.**
 - k. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
 - l. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - m. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - n. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.**
 - o. 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 26 and September 9, 2021.)

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

Mr. Whitehouse noted that sixteen (16) letters of support have been received.

The Council found that Davit Hutt, Esq., was present on behalf of the Applicant along with Bob Harris, Principal of Gulfstream Development, LLC, and Steve Engel, a registered landscape designer with Vista Design, Inc.

Mr. Hutt stated that Gulfstream Development, LLC is the contract purchaser of the property; that the project site is a 8.33 acre parcel located on Sand Cove Road, a short distance from the intersection of Sand Cove Road and Lighthouse Road (Route 54); that the applications are for a change of zone and for 32 duplex/multi-family units on the property (to be known as Bay Knolls); that the gross density would be 3.84 units/acre which is consistent with the density of other projects in the area; that the Council previously considered an application on the adjacent property for a change of zone from AR-1 to MR and for the approval of 52 duplex/multi-family units on 13.3 acres (Ordinance Nos. 2700 and 2701); that after the Bay Knoll's application was approved in January 2020, Gulfstream Development,

**Public
Hearing/
CZ 1945
CU 2292
(continued)**

LLC purchased the 13.3 acre parcel and also placed the current Application's 8.33 acres under contract; that the Applicant requests approval to continue the theme of the 13.3 acre project, to the 8.33 acre site, resulting in a superior project; that the application site is currently unimproved and used for agricultural purposes; that the parcel is within the Coastal Area according to the Comprehensive Plan; that a single entrance for the combined project (formerly Bay Knolls / Fenwick Commons, LLC project) and the present application) is planned on Sand Cove Road and is to be aligned with the entrance to the Heron's Ridge at Bayside community to create a four-way intersection; that the stormwater management system for the site will include Best Management Practices; that Bay Knolls will be served by public water and sewer; that the street system will be designed and constructed to Sussex County standards and will remain private with maintenance provided by the Homeowner's Association; that the 2020 Delaware Strategies for State Policies and Spending identifies the area as being located in Investment Level 3; that 3.59 acres of open space will be maintained; that five (5) foot sidewalks on both sides of the street will be provided to include a pedestrian connection internally and with the other side of the community; that DelDOT did not require a Traffic Impact Study; that the proposed project, when combined with the approval for Bay Knolls (Ordinance No. 2701 – formerly Fenwick Commons, LLC), will create a superior project as compared to two separate projects; that this application will add on-site amenities, including a pool and community center, to the existing approval for Bay Knolls; that the project is consistent with the character and trend of development in the area and, in particular, with adjacent neighboring projects; and that the proposed project meets the purpose of the Zoning Code and the Comprehensive Plan.

There were no public comments.

The Public Hearing and public record were closed.

**M 430 21
Adopt
Ordinance
No. 2803/
CZ 1945**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2803 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS" (Change of Zone No. 1945) filed on behalf of Gulfstream Development, LLC.

Motion Adopted: 5 Yeas.

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

**M 431 21
Adopt
Ordinance
No. 2804/
CU 2292**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2804 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Conditional Use No. 2292) filed on behalf of Gulfstream Development, LLC, with the following conditions:

- a. The maximum number of residential units shall be 32.**
- b. All entrances, intersection, roadway, and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- c. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- d. The project shall be served by central water to provide drinking water and fire protection.**
- e. Interior street design shall meet or exceed the Sussex County street design requirements.**
- f. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- g. The Applicant shall submit as part of the Final Site Plan, a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all “Limits of Disturbance” within the site. These “Limits of Disturbance” shall be clearly marked on the site itself.**
- h. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50th building permit within the combined projects.**
- k. The Applicant shall form a homeowners’ or condominium association for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**

**M 431 21
Adopt
Ordinance
No. 2804/
CU 2292
(continued)**

- l. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- m. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- n. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.**
- o. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**M 432 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 2:39 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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