

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 24, 2013**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 24, 2013, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Vance Phillips</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

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

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 432 13  
Approve  
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to approve the Agenda, as posted.

**Motion Adopted: 5 Yeas.**

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

**Minutes**

The minutes of September 10, 2013 were approved by consent.

**Corre-  
spondence**

Mr. Moore read the following correspondence:

**CHAMBER OF COMMERCE FOR GREATER MILFORD, MILFORD,  
DELAWARE.**

**RE: Card in appreciation of grant.**

**LIVE  
Conference**

Sally Beaumont, Chairperson, Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County, presented information on the Live Conference scheduled for October 9, 2013 from 9:00 a.m. to 4:00 p.m. at the CHEER Community Center in Georgetown, Delaware. For additional information and/or tickets, interested parties can visit the following website: <https://sussexcountyliveconference.eventbrite.com>.

**Adminis-  
trator's  
Report**

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

1. **Sussex County Airport Advisory Committee Meeting**

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

The Sussex County Airport Advisory Committee is scheduled to meet on Wednesday, September 25, at the Sussex County Emergency Operations Center at 6:00 p.m. Included with this report is a copy of the agenda for the meeting.

2. **Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County**

Per the attached Media Release, the Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will be hosting The LIVE Conference: Live Healthy...Live Active...Live at Home from 9:00 a.m. to 4:00 p.m. on Wednesday, October 9, at the CHEER Community Center on Sand Hill Road in Georgetown. The conference will feature a variety of panel discussions focused on the Affordable Care Act, aging at home versus a nursing facility, and how to live a more active, healthier lifestyle. The Sussex County Council and Delaware Division of Services for Aging and Adults with Physical Disabilities are co-sponsoring the event.

3. **Capital Transportation Program Public Hearings**

Public hearings jointly sponsored by the Council on Transportation and the Delaware Department of Transportation (DelDOT) are being held to discuss the State's six-year Capital Transportation Program for Fiscal Years 2015-2020. The Sussex County public hearing will be held on Wednesday, September 25, from 4:00 to 7:00 p.m. at the DelDOT South District Administration Building, 23697 DuPont Boulevard in Georgetown. The hearing will provide an opportunity to review current and suggested transportation projects, as well as capital investments for DART First State public transit. Project information will be displayed, and there will be opportunities for discussion with DelDOT and County representatives. Interested persons are encouraged to attend or submit written comments during the public hearing process.

4. **Project Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheet, Shoal Harbor reached Substantial Completion effective September 19, 2013.

5. **Delaware State Police Activity Report – August 2013**

Per the attached Delaware State Police activity report for August, there were 4,048 total traffic arrests and 2,015 total criminal arrests. Of that 2,015, 945 were felony and 1,070 were misdemeanor criminal arrests. Of the total hours on duty spent, 43 percent were spent on criminal investigations.

6. **Sussex County Annual Property Taxes Due September 30<sup>th</sup>**

On Monday, September 30<sup>th</sup>, the 2013 annual Sussex County property taxes are due. Any citizen who still needs to pay their tax

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

bill may do so on the 30<sup>th</sup> at the County Administrative Building located at 2 The Circle in Georgetown. County staff will be on hand one hour early at 7:30 a.m. and remain one hour late to 5:30 p.m. to accept payments in person. Citizens are reminded to also access the County’s website at [sussexcountyde.gov](http://sussexcountyde.gov) to pay their bills on-line.

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

As an addition to the Administrator’s Report and in regards to the Airport, Mr. Lawson reported that, “as of 6:28 p.m. last night (September 23rd), Runway 4-22 at the Sussex County Airport has been extended to 5,500 feet. Instrument approaches remain unchanged; the run-up area for Runway 4 will remain but the end of Taxiway A that connected Runway 4 has been removed. Taxiway A now extends to the end of the new pavement. The Runway edge light circuits have been replaced and the lights have been converted to LED; the PAPI lights for both ends of the Runway 4-22 are in the original position and are all operational. There is still a little bit of work to be done, some landscaping, seeding and mulching; the old Runway lighting circuits will be removed and the work area needs to be cleaned up. As of now, Runway 4-22 is 5,500 feet and fully functional and at 8:30 this morning, the first PATS Boeing Business Jet took off.”

**SCRWF/  
Pump  
Station  
No. 30  
Regional  
Forcemain  
Project**

Michael Izzo, County Engineer, presented information on the Pump Station No. 30 Upgrade. The County had a contract with Bunting & Murray to extend a new Force Main from Pump Station 30 to the South Coastal Regional Wastewater Facility. The County previously granted Substantial Completion for this project; however, the County still needed to process final payment requisitions and process the final Balancing Change Order. That Change Order is a credit to the County in the amount of \$50,311.68 and adds 14 days of contract time.

**M 433 13  
Approve  
Balancing  
Change  
Order/  
SCRWF/  
Pump  
Station  
No. 30  
Regional  
Forcemain  
Project**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Consulting Engineers and the Sussex County Engineering Department, that the Sussex County Council approves the Final Balancing Change Order for Sussex County Project No. 10-03, entitled “South Coastal Regional Wastewater Facilities” (SCRWF) Pump Station No. 30 Regional Force Main” with Bunting & Murray Construction Corporation in the credit amount of \$50,311.68, thereby decreasing the contract amount from \$3,595,651.00 to \$3,545,339.32 and extending the Contract term by 14 days.

**Motion Adopted: 5 Yeas.**

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

**Marina  
at Pepper  
Creek/  
Oversizing  
Agreement**

**John Ashman, Director of Utility Planning, presented for the Council's consideration an Oversizing Agreement between Sussex County and HKSIV, LLC for credits for oversizing of regional infrastructure for a project known as the Marina at Pepper Creek in the Dagsboro Frankford Sanitary Sewer District. Mr. Ashman reported that the Engineering Department has been working with the developers on this project to reach an Oversizing Agreement for regional infrastructure that they will be required to install as part of their project. Since the extent of the oversizing exceeds the amount of transmission charges that the County can give credit for, the Engineering Department is willing to waive the review and inspection fees for the pumping station and force main, on-site inspection fees will be applied toward the oversizing credit to provide an early cost benefit, and the Department allowed for the delay of the installation of the generator for the pump station to a later phase of their project. The Developers have agreed and executed the Agreement and the estimated oversizing totals \$441,430; the final number will be established once construction costs receipts are submitted as agreed upon by the County's Oversizing Committee. Approximately \$277,589 will come in the way of transmission system connection charges for the remaining 131 lots in the marina, \$43,000 in sewer inspection fees and any balance remaining will be made available in the form of a transmission oversizing credit for the neighboring project that is also owned by the developers.**

**M 434 13  
Execute  
Marina  
at Pepper  
Creek  
Oversizing  
Agreement**

**A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council President is authorized to execute the Marina at Pepper Creek Oversizing Agreement between Sussex County and HKSIV, LLC as presented on September 24, 2013.**

**Motion Adopted: 5 Yeas.**

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

**EOC  
Supple-  
mental  
Cooling  
System/  
Geothermal  
Presen-  
tation**

**Steve Hudson, Director of Technical Engineering, and Jay Egg of Egg Geothermal presented a geothermal upgrade report regarding measures taken to correct the geothermal HVAC problems at the Sussex County Emergency Operations Center. Mr. Egg discussed the emergency measures taken (cooling tower) and the current operation of the system: pump to re-injection well system, closed loop well system, cooling tower (emergency backup), or any combination of the three.**

**Jack DiEnna, Executive Director of the Geothermal National and International Initiative, congratulated the County on this project. He stated that they have about 2 million geothermal applications from throughout the United States; however, those applications are mostly concentrated on the east coast.**

**Mr. Hudson recognized David Wootten for his assistance with this project.**

**M 435 13  
Grant  
Substantial  
Completion  
& Approve  
Balancing  
Change  
Order/  
EOC  
Supple-  
mental  
Cooling  
System**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department that Substantial Completion be granted to Gillis Gilkerson, Inc. of Salisbury, Maryland for Sussex County Project 12-03, Emergency Operations Supplemental Cooling System and that a Balancing Change Order (Change Order No. 2) be approved for \$717.71, which increases the contract amount total to \$479,906.55 and increases the contract time by two days.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
Blades  
Sanitary  
Sewer  
District/  
Concord  
Road  
Annexation**

**A Public Hearing was held to consider extending the boundary of the Blades Sanitary Sewer District (BLSSD) to include the lands of 37 parcels located west of State Route 13, east of the Town of Blades, contiguous to the BLSSD, lying and being in Broad Creek Hundred, Sussex County, Delaware; the expansion will consist of +/- 55.5 acres. The parcels are located primarily along County Road 20 (Concord Road) and are contiguous to the existing district. The primary reason for this request is that the Town of Blades has identified the area along Concord Road for consideration of annexation into the town. They are proposing to annex the area into the town and to provide water service to this area. They have requested that the County consider a concurrent project that would provide sewer service as well.**

**A Public Meeting was held in conjunction with the Town on August 8th; the meeting was well attended and only one person in attendance spoke in opposition to the proposal. It was later determined that that person's property was already included in the sewer district.**

**Rates proposed for the project are as follows: estimated service charge of \$289.82 per EDU, a front foot assessment of \$4.24 per front foot; a one-time permit fee of \$100.00, and a system connection charge of \$0 or \$3,322.00 (for existing homes, the system connection charge will be included in the project financing; new homes constructed after the August 9, 2013 Public Meeting would pay the \$3,322.00.**

**In response to questions, Mr. Ashman and Michael Izzo, County Engineer, explained that there is available capacity at the City of Seaford's treatment plant. Mr. Izzo explained that, currently, the City's plant is only at 50 percent of capacity. Mr. Izzo noted that one thing that could affect this is the TMDLs in the Chesapeake Bay and Seaford's ability to continue to discharge into the Nanticoke River.**

**Public  
Hearing/  
Blades  
Sanitary  
Sewer  
District/  
Concord  
Road  
Annexation  
(continued)**

**Mr. Cole stated that municipal wastewater systems give towns an advantage when they want to grow as they have something to offer.**

**Mr. Wilson expressed concern about municipal systems maxing out.**

**Public comments were heard.**

**Robert Atkinson, member of the Blades Town Council and the Water Commission, spoke in support of the extension and stated that the Nanticoke River is a tributary of the Chesapeake Bay and it is part of the Chesapeake Bay Watershed and that they have seen new restrictions on land use and new requirements for the landowners throughout the watershed area. The extension of the sewer system along Concord Road will offer property owners a viable alternative and some protection against future regulation that could affect the land along the Nanticoke River.**

**The Public Hearing was closed.**

**M 436 13  
Adopt  
R 013 13**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Resolution No. R 013 13 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE BLADES SANITARY SEWER DISTRICT (BLSSD) TO INCLUDE PARCELS OF LAND WEST OF SUSSEX HIGHWAY, EAST OF THE TOWN OF BLADES, CONTIGUOUS TO THE BLSSD, LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, DELAWARE”.**

**Motion Adopted: 5 Yeas.**

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

**Mr. Phillips expressed concern that this water is going into the Nanticoke River.**

**Old  
Business/  
C/Z  
No. 1732**

**Under Old Business, the Council considered Change of Zone No. 1732 filed on behalf of Herola Family, LLC and Artisan’s Bank.**

**The Planning and Zoning Commission held a Public Hearing on this application on August 8, 2013 at which time action was deferred. On August 22, 2013, the Commission recommended approval. The County Council held a Public Hearing on this application on August 20, 2013 at which time action was deferred and the record was left open for the submission of a letter from the Applicant. Lawrence Lank, Director of Planning and Zoning, advised that the letter requested was to respond in reference to the construction of and the approval of the relief route for the interconnection from Route 24 to Old Landing Road at the intersection with Airport Road.**

**Old  
Business/  
C/Z  
No. 1732  
(continued)**

**Mr. Lank reported that a letter dated August 23, 2013 was received from James Fuqua, Attorney for the applicant. The letter stated “Please allow this letter to confirm for the record representations I made on behalf of the Applicants in the above matter at the public hearing before the Sussex County Council on August 20, 2013. As explained in the letter of T. William Brockenbrough, Jr. of DelDOT, dated October 1, 2012, a new road connecting Route 24 and Old Landing Road has been proposed and approved by DelDOT. The Applicants represent and proffer that any development of the Herola Site, for which CR-1 rezoning is being requested, will include construction of the Route 24/Old Landing Road connection road and will comply with the following: A) Any future site plans submitted for review by the Sussex County Planning and Zoning Commission will include and indicate the location of the connection road, B) The property owner, its successors or assigns will dedicate appropriate easements to DelDOT for the physical location of the connection road, C) The property owner, its successors and assigns will construct the connection road to DelDOT standards and with DelDOT approval, D) Upon completion, the property owner, its successors or assigns will transfer the connection road to DelDOT for use by the public and, E) The property owner, its successor or assigns shall cooperate and coordinate with the adjacent property owner, J.C. Townsend, Jr. and Co., to insure completion of the connection road. The representations are intended to be binding on the property owner, its successors or assigns and shall not be amended or modified without the approval and consent of the Sussex County Council and DelDOT.”**

**Mr. Cole questioned if the letter, in its entirety, would be referenced in the Findings. Mr. Moore stated that, yes; it can be incorporated in the Findings.**

**In response to questions raised by Mrs. Deaver, Mr. Lank stated that one of the Findings of the Planning and Zoning Commission was that any proposed use of the property will be subject to site plan approval.**

**M 437 13  
Adopt  
Ordinance  
No. 2318  
(C/Z  
No. 1732)**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2318 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.4219 ACRES, MORE OR LESS” (Change of Zone No. 1732) filed on behalf of Herola Family, LLC and Artisan’s Bank.**

**Motion Adopted: 5 Yeas.**

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

**Findings  
of Fact/  
Ordinance  
No. 2318/  
C/Z  
No. 1732**

**The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:**

- 1. Based on the record, the site is located in a County operated and maintained sanitary sewer district; the parcel is capable of being annexed into the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; and conformity to the West Rehoboth Expansion Area Capacity Evaluation and the North Coastal Area Planning Study will be required.**
- 2. The land is appropriate for CR-1 zoning because the property is located, according to the Strategies for State Policies and Spending documents, in an Investment Level 2; that Investment Level 2 reflects areas where growth is anticipated by local, County, and State plans in the near term future; that State investments will support growth in these areas; and that the Office of State Planning and Coordination has no objection to the proposed rezoning of this project in accordance with the relevant County Codes and Ordinances.**
- 3. The project is located in the Environmentally Sensitive Developing District according to the Sussex County Comprehensive Plan.**
- 4. The site is located in an area where a general mixture of commercial and service activities currently exist including the Rehoboth Mall, Beebe Medical Center, Delaware Eye Institute and numerous other commercial and service businesses on Route 24, Route One, and Old Landing Road; that the site adjoins other lands zoned commercial on the south, east and north and the Beebe Medical Center, a conditional use, on the west; that other commercially zoned land is located in the immediate area; and that this rezoning will be consistent with the surrounding zoning.**
- 5. Based on the record, the Applicant and adjacent property owner worked with DelDOT on a study of the impact of the development of their properties referred to as the Old Landing Road Traffic Study; that, as part of DelDOT's ongoing plans to create a relief route from Route 24 to Airport Road, the Applicant has agreed to provide lands for the construction of the route, and the development of this site will incorporate this new road; that DelDOT is satisfied that the affected intersections will operate at an acceptable level; and the letter from James Fuqua of Fuqua, Yori and Willard, dated August 23, 2013, is incorporated by reference.**
- 6. This property will be served by central water and by County sewer as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**
- 7. The proposed CR-1 zoning classification is consistent with the purposes of the Sussex County Zoning Ordinance and the Comprehensive Land Use Plan by promoting the orderly growth, convenience, order, prosperity and welfare of the County; that it will encourage commercial activity where substantial commercial activity exists and continues to grow; that the site is located near**



**Findings  
of Fact/  
Ordinance  
No. 2318/  
C/Z  
No. 1732  
(continued)**

**the intersection of two major thoroughfares, Route One and Route 24; that the CR-1 zoning classification is in character with the surrounding area and is consistent with the trends of development in this area of the Route One corridor; that Route One is designated as a major arterial roadway under the County Code; and, that as a result of the surrounding uses and zoning classifications, this Change of Zone application is an infill rezoning and CR-1 is the appropriate zoning classification.**

- 8. Any proposed use on the property will be subject to site plan review by the Sussex County Planning and Zoning Commission.**

**Mrs. Deaver stated that she is aware of the concerns about where the road is going to go; however, she noted that the placement of the road is not a County matter, it is up to DelDOT.**

**Grant  
Requests**

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

**M 438 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Delaware Police Chiefs' Council for conference expenses.**

**Motion Adopted: 5 Yeas.**

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

**M 439 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,500.00 (\$500.00 from Mr. Cole's, \$500.00 from Mrs. Deaver's, \$200.00 from Mr. Phillips' and \$300.00 from Mr. Vincent's Councilmanic Grant Accounts) to Epworth United Methodist Church (Rehoboth Beach) for a skate board park project for public use.**

**Motion Adopted: 5 Yeas.**

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

**M 440 13  
Council-  
manic  
Grant**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$1,000.00 (\$500.00 each from Mrs. Deaver's and Mr. Wilson's Councilmanic Grant Accounts) to Delmarva Clergy United in Social Action Foundation for project expenses.**

**Motion Adopted: 5 Yeas.**

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

**M 441 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 from Mr. Phillips' Councilmanic Grant Account to the Northeast Rally Club for Great Race expenses.**

**Motion Adopted: 5 Yeas.**

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

**M 442 13  
Council-  
manic  
Grant**

**A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00 (\$250.00 each from Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts) to Coastal Concerts for program expenses.**

**Motion Adopted: 5 Yeas.**

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

**M 443 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$2,000.00 (\$1,500.00 from Mr. Cole's Councilmanic Grant Account and \$500.00 from Mrs. Deaver's Councilmanic Grant Account) to the Delaware Celebration of Jazz for Rehoboth Beach Jazz Festival expenses.**

**Motion Adopted: 5 Yeas.**

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

**Additional  
Business**

**Under Additional Business, Paul Rieger of Deer Forest in Georgetown read a statement prepared by himself and his neighbors referencing their concerns and complaints about a neighbor that has pigs, pig septic tanks, ducks, sheep, goats, a tom turkey, hens, a chicken coup, tractor trailer storage areas, and 30+ tractor tires; in addition he slaughters pigs on the property and he has a gated fence that does not allow the Zoning Department to come on his property for an inspection. Mr. Rieger stated that the property consists of 4 acres and is located in a deed restricted development. The deed restrictions state that the property owner cannot have the swine - the County says he can have eight and DNREC says he can have up to 8,000 pounds. Mr. Lawson stated that the County is aware of this situation and is investigating the complaint. Mr. Moore noted that the County does not enforce deed restrictions. Mr. Wilson stated that he has already had the Department of Agriculture and DNREC at the site.**

**Under Additional Business, Mrs. Deaver asked if the Council can discuss, at a future meeting, the permitted uses in a CR-1 District.**

**Additional Business (continued)** Under **Additional Business**, Mr. Cole questioned if an extension of sewer service can be tied to annexation to a municipality, if feasible. He stated that his concern is that municipalities need to grow and build a tax base.

**M 444 13 Go Into Executive Session** At 11:45 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and land acquisition.

**Motion Adopted:** 5 Yeas.

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

**Executive Session** At 11:49 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing matters relating to pending/potential litigation and land acquisition. The Executive Session concluded at 12:04 p.m.

**M 445 13 Reconvene Regular Session** At 12:04 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.

**Motion Adopted:** 5 Yeas.

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

**M 446 13 Pursue Possible Purchase of Certain Real Estate** A Motion was made by Mr. Cole, seconded by Mr. Wilson, to authorize the County Administrator to pursue the possible purchase of certain real estate and to execute and explore the possible execution of a contract to pursue and satisfy contingencies, perform due diligence and any other acts necessary to consummate closing on the potential real estate purchase.

**Motion Adopted:** 5 Yeas.

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

**M 447 13 Recess** At 12:05 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess until 1:30 p.m.

**Motion Adopted:** 5 Yeas.

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

**M 448 13  
Reconvene**

**At 1:31 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene the meeting.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/U  
No. 1968**

**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 MICRO-DISTILLERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.06 ACRES, MORE OR LESS” (Conditional Use No. 1968) filed on behalf of Ray Baker.**

**The Planning and Zoning Commission held a Public Hearing on this application on September 12, 2013 at which time the Commission deferred action.**

**See the minutes of the Planning and Zoning Commission dated September 12, 2013.**

**Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.**

**The Council found that Ray Baker was present. He stated that his mission is to capitalize on newly enacted Delaware Laws aimed at the micro-distillery market; that recently, it was enacted to allow micro-distilleries which have a ceiling of 750,000 gallons; that the capacity he is proposing is nowhere near that; that he will be using select grains and fruits from Sussex County growers as the primary ingredients for the products; that he wants to create a responsible and respectable product line that is crafted for the mature connoisseur of hand crafted spirits; that Plant #1 will house all aspects of the five year business model, i.e. manufacturing, finishing, barrel aging, packaging, and shipping; that while the new laws allow for the public to visit the facility for tastings, the manufacturing facility does not accommodate taking advantage of this option for public tastings; that Plant #1 will concentrate only on creating a flagship brand and is expected to take two (2) years; that no new road construction is required for entrances; that increased UPS deliveries are expected to increase by about two (2) per week; that ingredient deliveries will be by standard passenger trucks; that start-up materials will be purchased from local suppliers in 50 pound sacks where possible; that grains will be purchased directly from farmers when possible; that season permitting, fruits will be purchased directly from local orchards; that for waste management, waste streams of grains will be sold as livestock supplements directly to local livestock farmers; that there is no intent to press fruits and there will be no fruit pulp waste, which will reduce**

**Public  
Hearing/  
C/U  
No. 1968  
(continued)**

the waste generation and disposal costs; that processed cooling water will be collected in a dedicated closed loop recirculating system; that processed waste water will be collected and treated off-site by a third party; that the third party has not yet been identified; that in order for a third party to access the waste stream, a representative sample must be supplied for testing; that until all licenses are obtained and permission to operate has been granted, representative samples cannot be generated; that the distilling process will use an immersion heater to heat the product up to vaporization temperatures; that distillation columns have 3/8" atmospheric vents which will vent vapors from the room; that current projections are that the distillery will generate over \$203,000.00 in new tax revenue; that his proposal will utilize four (4) 26-gallon stills; that the product line he is looking to do are whiskey, bourbon, and straight bourbon; that the business is not currently operational; that no new structures are planned; that no new entrances are proposed and there are no issues for DelDOT to consider; and that no expanded wastewater facilities are needed.

Mr. Cole questioned if there are any deed restrictions on the parcel. The Applicant responded that he did not know of any deed restrictions but that he will have to look into it.

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

Mr. Baker was directed to send a copy of his deed to Mr. Moore.

The record of the Public Hearing was left open for the purpose of checking the deed for restrictions.

**M 449 13  
Defer  
Action  
on C/U  
No. 1968**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1968 filed on behalf of Ray Baker and to leave the record open for the purpose of checking the deed for restrictions.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/Z  
No. 1733**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.29 ACRE, MORE OR LESS" (Change of Zone No. 1733) filed on behalf of Rehoboth Appraisal Group, LLC d/b/a First State Appraisal, Inc.

**Public  
Hearing/  
C/Z  
No. 1733  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on September 12, 2013 at which time the Commission recommended that the application be approved.**

**See the minutes of the Planning and Zoning Commission dated September 12, 2013.**

**Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.**

**Mr. Lank distributed an Exhibit Booklet that was previously provided by the Applicant.**

**The Council found that Stephen White was present on behalf of the Rehoboth Appraisal Group, LLC with Heidi Gilmore, Esquire, of Tunnell and Raysor, P.A. and Mark Davidson, of Pennoni Associates, Inc. They stated in their presentation and in response to questions that they are requesting a rezoning from GR General Residential to B-1 Neighborhood Business; that the building on the site was approved for offices as a conditional use in 2004; that conditional uses are difficult to finance since the economic environment has changed; that a change of zoning is preferred; that the size of the parcel is limiting and therefore many of the uses permitted in the B-1 zoning would not apply; that there were no objections from DelDOT; that they have no intent to change the use; that the site plan will remain the same; that the use is in harmony with the neighborhood; that the predominant use of properties along Hebron Road and Route One is commercial and/or business use; that the site is located at the entrance to the West Rehoboth community; that the building was designed and built to appear as a residential use; that all infrastructure exists; that the site is a desirable location for professional uses; that the use is consistent with the trend of development taking place in the area; that the site is too small to impact the area; that retail, business, and commercial uses exist throughout the area; that the site is located in an Investment Level 1 Area according to the State Strategies for Policies and Spending; that the site is located in the Environmentally Sensitive Developing District Overlay Zone according to the County's Comprehensive Land Use Plan; that C-1 General Commercial or CR-1 Commercial Residential zoning would be out of character with the existing use and community; that the proposed rezoning will be consistent with the Comprehensive Land Use Plan and the Zoning Ordinance; that First State Appraisal, Inc. utilizes the first floor of the building and an Architect rents the second floor; that they have no intent to change the uses or expand the business on site; and that the primary reason for applying is financial purposes.**

**Mr. Cole expressed concern about the uses permitted in the B-1 District, which could include a gun shop/any retail shop. He noted that a Conditional Use is a better transition into the West Rehoboth community. Mr. Cole also stated that the Applicant did not show a need to change the zoning. He also commented on the preservation of West Rehoboth and he**

**Public  
Hearing/  
C/Z**

**No. 1733  
(continued)**

stated that the use of the property could change thereby changing its impact as well as setting a precedent.

Mrs. Gilmore stated that B-1 zoning would enable the Applicant to be fully supportive and enable them to acquire financing, if needed. She noted that the Applicant previously tried to obtain bank financing and was unable to since banks do not like conditional uses.

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

**M 450 13  
Adopt  
Ordinance  
No. 2319  
(C/Z  
No. 1733)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2319 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.29 ACRE, MORE OR LESS” (Change of Zone No. 1733) filed on behalf of Rehoboth Appraisal Group, LLC d/b/a First State Appraisal, Inc.

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**Public  
Hearing/  
C/Z  
No. 1734**

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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 9.33 ACRES, MORE OR LESS” (Change of Zone No. 1734) filed on behalf of American Legion Post #28.

The Planning and Zoning Commission held a Public Hearing on this application on September 12, 2013 at which time the Commission recommended that the application be approved.

See the minutes of the Planning and Zoning Commission dated September 12, 2013.

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

The Council found that Michael Cotton, Professional Engineer with Cotton Engineering, LLC, was present on behalf of the American Legion Post #28. He gave a background on the American Legion and he stated that the purpose of this request is to increase the value of this parcel; that the Post

**Public  
Hearing/  
C/Z  
No. 1734  
(continued)**

survives and thrives on their financial resources; that, last year, they did refinance their facility; that the parcel in question is 9.3 acres and is out in front; that if the parcel had been zoned commercial, they would have been able to obtain a higher value for their loan and a better financing rate; that the Legion owns three (3) properties; that one property is improved with the Legion Post buildings; that one property is improved with the parking lot; and this site is improved with a pavilion building and storage buildings; that the property is grassed and has been used for carnivals, car shows, circuses, picnics, and other functions for fund raising for veteran charities; that they are requesting rezoning to CR-1 Commercial Residential for future use of the site; that this rezoning will put them one step ahead in the financial process; that the site is located in a Level 2 Expansion Area; that when this parcel was allocated EDUs for public sewer service, it was allocated 38 EDUs, which limits what they can do with this parcel; that at this time, there are no future plans to develop this parcel; that the rezoning will make it more valuable, potentially, to types of projects that could go there; that an easement exists on the westerly property line for utilities; that central water is provided by Tidewater Utilities; that the site is adjacent to other commercial and business uses; that within two (2) miles of the site there are many commercial and business uses, i.e. retail, offices, a museum, churches, storage facilities, restaurants, etc.; that there should be no impact on residential properties in the area or roadways; that DelDOT is doing a design study for the area and may limit access to the site from Legion Road; and that this property has approximately 286 feet of frontage along Legion Road.

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

**M 451 13  
Adopt  
Ordinance  
No. 2320  
(C/Z  
No. 1734)**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2320 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 9.33 ACRES, MORE OR LESS” (Change of Zone No. 1734) filed on behalf of American Legion Post #28.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/Z  
No. 1735**

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 AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX



**Public  
Hearing/  
C/Z**

**No. 1735  
(continued)**

**COUNTY, CONTAINING 2.47 ACRES, MORE OR LESS” (Change of Zone No. 1735) filed on behalf of Holt’s Dispensary, Inc.**

**The Planning and Zoning Commission held a Public Hearing on this application on September 12, 2013 at which time the Commission recommended that the application be approved.**

**See the minutes of the Planning and Zoning Commission dated September 12, 2013.**

**Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.**

**The Council found that Kimberly Billings, Vice President, Secretary, and Treasurer for Holt’s Dispensary, Inc., was present. She stated that the property contains 2.47 acres; that the use has been a family owned business for many years (since the 1950s); that they are trying to get conforming zoning for the entire parcel for the existing use on the property; that approximately half of the property is zoned for agriculture and half of the property is commercially zoned; and that there are many commercial/business uses in the area.**

**Public comments were heard.**

**Carl Gootee, a resident of Holt’s Acres, spoke and he stated that he is not totally opposed to the proposed Change of Zone; however, he is in opposition of setting a precedent. He stated that there is a 500 foot commercial boundary near the front of his property; that his property is 600 feet off of the road; that he has a 100 foot buffer due to the location of his property line; that there is no purpose for rezoning the property; and that he continues to press the point that the 500 feet is very important.**

**Mr. Cole noted that the property has had Holt’s Dispensary on it for a long history and that if the rezoning is approved, it will not be any further back than the 500 feet; and that if the Council approves the application, it would not be setting a precedent of violating the 500 foot buffer for commercial.**

**Mr. Lank advised the Council that when the zoning map was adopted and effective in 1971, there were no property maps; that the zonings created were sometimes dimensional; that at this location, the lines drawn were 500 feet north and parallel to Route 26; and that this property was split by the westerly boundary of the commercial zoning established.**

**There were no additional public comments and the Public Hearing was closed.**

**M 452 13**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2321 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN**

**M 452 13**  
**Adopt**  
**Ordinance**  
**No. 2321/**  
**C/Z**  
**No. 1735**  
**(continued)**

**AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.47 ACRES, MORE OR LESS” (Change of Zone No. 1735) filed on behalf of Holt’s Dispensary, Inc.**

**Motion Adopted: 5 Yeas.**

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

**M 453 13**  
**Adjourn**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to adjourn at 2:54 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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