

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 1, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 1, 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 486 19
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, 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 24, 2019 were approved by consent.

**Public
Comments**

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

**Sussex
Central FFA
Parlia-
mentarian
Procedure
Team**

Members of the Sussex Central FFA Parliamentary Procedure Team conducted a mock meeting using Roberts Rules of Order. The team will be competing in a national competition at the National FFA Convention; the team recently placed 4th in a regional competition. The Team's advisor explained that, at the national competition, the team must successfully demonstrate an official business meeting using Roberts Rules of Order.

**UD
Carvel
Research
and
Education
Center**

Mark Isaacs, Director, University of Delaware Carvel Research and Education Center, thanked Council for its continued support of all the programs at the Carvel Research and Education Center. Dr. Isaacs gave an overview of how the County's funding is used by the Center in Sussex County: Extension Programs, Family Consumer Sciences, Production Agriculture Programs, Lasher Lab Poultry Research, Crop Programs, and Safety Programs, as well as the Internship Program. Dr. Isaacs thanked the

**UD
(continued)**

Council for its continued financial support and noted that all funds are used in Sussex County to support the agricultural community.

**DelDOT
MOU
Update**

Vince Robertson, Assistant County Attorney; Janelle Cornwell, Planning and Zoning Director; and Mark Coté of DelDOT were present to discuss the Sussex County – DelDOT Memorandum of Understanding (MOU) for land development coordination.

Mr. Lawson reported that County staff is working with DelDOT staff to update the current MOU which has been in place since 1988; and that it was agreed that County staff would initially draft an updated MOU and subsequently share with DelDOT. In June 2019, County staff sent the initial draft to DelDOT for their comments. In September, DelDOT staff returned their comments to the County.

The draft of the updated MOU was presented and changes to the document were highlighted. The current MOU only addresses rezonings; it does not address Conditional Uses, Subdivisions, or RPCs. This has been corrected in the draft MOU. The updated MOU promotes master planning whenever possible, including the installation of interconnectivity or additional roadways. The updated MOU provides better definitions, especially to DelDOT’s transportation terms. The updated MOU does a better job of clarifying the TIS, TOA, and “Fee in Lieu” Process. The TIS process will take into account the 6-year CTP. The “Fee in Lieu” process can occur where there are existing recent traffic studies of an area in question. In that case, a “Fee in Lieu” of a TIS can be paid, but this does not affect payments that a Developer will have to pay for roadway improvements. The updated MOU recognizes that DelDOT is in the best position to suggest conditions of approval related to traffic and roadways; therefore, the updated MOU states that DelDOT shall suggest any conditions that the County can then impose as part of a land use approval. DelDOT may also suggest phasing of a development to coincide with area roadway improvements; this phasing can then be incorporated into the County land use approval. The MOU also states that a Level of Service of “D” shall be maintained wherever possible. If the LOS is not maintained, there must be sufficient reasons given why a developer should not be required to take steps to maintain the LOS, and those reasons must be stated as part of the County’s land use decision. The updated MOU addresses all rezonings, plus commercial site plans. It directs DelDOT to provide as much information as possible on a rezoning, recognizing that through the Zoning Code, often multiple permitted uses can occur on a property. It allows a developer to obtain a TIS, TOA or “Fee-in-Lieu” as part of a rezoning if a developer has a specific use in mind. Sussex County can require another TIS, TOA, or “Fee-in-Lieu” if the use changes through a different site plan review. It also confirms that Sussex County can withhold site plan approvals until DelDOT has approved all necessary roadway improvements. The updated MOU confirms that Sussex County is entitled to participate in the negotiations between DelDOT and a developer, and that any agreements between DelDOT and a developer cannot be modified without consultation with

**DelDOT
MOU
Update
(continued)**

Sussex County.

Council members discussed and raised questions and concerns regarding the draft MOU.

Mr. Lawson reported that efforts will continue to finalize the document and to seek approval from Council and DelDOT. Once Council and DelDOT are comfortable with the final document, the MOU will be taken to public hearing before the Planning and Zoning Commission and the Sussex County Council.

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Lewes Crossing – Phase 8 (Plan Approval and Construction Record) and The Estuary – Phase 2-2A (Construction Record) received Substantial Completion effective September 24th and September 25th, respectively.

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

**Considera-
tion of
Georgetown
Fiber Ring
Acquisition**

Dwayne Kilgo, Information Technology Director, referenced that, in August 2015, Sussex County partnered with Broad Valley for the installation of 144 strands of fiber to host services such as high-speed broadband internet and enterprise private network services. The fiber ring allowed the County to connect its Georgetown facilities and IT infrastructure on six (6) dedicated strands of single mode dark fiber, which provides seamless, speed-of-light connectivity and redundancy that previous solutions could not provide. The existing contract with Broad Valley is a five-year agreement and this is the last year of the agreement; the next 5-year renewal would cost the County \$510,000 for the 12 strands. He reported that, in September 2019, Sussex County framed an agreement of terms to acquire the Georgetown Fiber Ring. This agreement would allow Sussex County exclusive ownership and control with the ability to market and solicit other broadband service providers in the future. This would serve as a potential income stream for the County and would represent another step and public offering in the County's larger broadband expansion initiative. Per the proposed agreement, the County would pay Broad Valley Micro Fiber Networks Inc. \$510,000 for the acquisition. The County currently leases six (6) strands of fiber for \$8,500 per month. By acquiring this infrastructure, the County would shift from a lease arrangement to an owned-and-operated model, giving the County full system and financial control, and represents an annual savings of \$102,000 within five (5) years. In accordance with the proposed agreement, Broad Valley would sell all 144 fibers with ancillary equipment to Sussex County for \$510,000; Broad Valley would pay \$5,200 per month or continue to service the fiber for free to access six (6) fiber strands.

M 487 19
Authorize Agreement/ Purchase of Georgetown Fiber Ring/ Broad Valley Micro Fiber Networks

A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the Sussex County Council authorizes the Information Technology Director to enter into an Agreement with Broad Valley Micro Fiber Networks Inc. to purchase the Georgetown Fiber Ring for a cost not to exceed \$510,000.

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

Airport Leases

Jim Hickin, Airport Manager, presented Airport leases for the Council's consideration.

Airport Lease Amendment/ Georgetown Air Services

Mr. Hickin presented a Second Amendment to the Lease Agreement with Georgetown Air Services. On May 21, 2019, Council approved a Memorandum of Understanding (MOU) with Georgetown Air Services, LLC as well as the release of a Request for Proposals (RFP) for the ground lease and hangar development on Lot A3-2 (Old Terminal Building lot). A RFP was advertised soliciting competitive redevelopment proposals with emphasis on the overall long-term benefit to Delaware Coastal Airport. The RFP was released May 21, 2019 and a single proposal was received. The sole respondent was Schell Brothers LLC. Under the terms of the approved MOU, the Engineering Department is seeking Council's approval of the Second Amendment to Georgetown Air Services 2016 lease. The amendment releases Lot A3-2 from the leased premises. It also establishes a rental rate of \$0.02 per gallon of fuel sold by Georgetown Air Services and aligns the lease term with Georgetown Air Services' lease of Lot C-1.

M 488 19
Approve Lease Amendment/ Georgetown Air Services

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Second Amendment to the April 29, 2014 Lease Agreement between Sussex County and Georgetown Air Services for Lot A3-2, 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

Airport Lease Agreement/ Schell Aviation

Jim Hickin, Airport Manager, reported that the Engineering Department is seeking Council's approval of a new lease with Schell Aviation, LLC. They propose to build a 22,000± square foot hangar facility with a lease term of 30 years commencing October 1, 2019, with two additional 10-year renewal options. Rent will begin at 40 cents per square foot per year and increase every five years by the CPI-U. Forty centers per square foot per year was established during the RFP process as a competitive starting point for market value rent at Delaware Coastal Airport. Mr. Hickin noted that

(continued) **Schell Aviation LLC is proposing a 26,000± square foot hangar facility.**

M 489 19 A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon
Approve the recommendation of the Sussex County Engineering Department, that
Lease the Sussex County Council approves the Lease Agreement between Sussex
Agreement/ County and Schell Aviation, LLC for Lot A3-2, as presented.
Schell

Aviation Motion Adopted: 5 Yeas.

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

Airport Jim Hickin, Airport Manager, reported that Cay Properties, LLC has
Lease leased Lots 17 and 18 in the Sussex County Industrial Park (now Delaware
Agreement/ Coastal Business Park) since 1996 and does business as TPI Partners, Inc.
Cay Cay Properties' initial lease term is due to expire in 2026; however, Cay
Properties Properties has requested a new lease be negotiated to provide increased
certainty for future expansion. Airport and County officials have been
working with Cay Properties on a lease acceptable to both parties. The
initial term of the lease will be 30 years, with the option to extend another
20 years. Rent will begin at \$7,008.00 per year (the current rate) and
steadily increase to \$33,075.50 per year in Year 18. Beginning in Year 19,
rent will be set at the appraised Fair Market Value, with CPI increases
every five years.

M 490 19 A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon
Approve the recommendation of the Sussex County Engineering Department, that
Lease the Sussex County Council approves the Lease Agreement between Sussex
Agreement/ County and Cay Properties LLC for Lots 17 and 18, as presented.
Cay

Properties Motion Adopted: 5 Yeas.

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

IBRWF/ Hans Medlarz, County Engineer, presented Change Order No. 1 to the
Regional Inland Bays Regional Wastewater Facility, Regional Biosolids and Septage
Biosolids Facilities, Project 18-19. It was noted that this contract was awarded to
and Bearing Construction, Inc. in the amount of \$13,668,346.00. This change
Septage order, which results in a credit of \$321.47, is for the elimination of a portion
Facilities of the 36" effluent line due to an improved future design and for the
Project increase of the size of the sludge cake pump station to allow for larger pump
Change and improved future maintenance.
Order

**M 491 19
Approve
Change
Order/
IBRWF/
Regional
Biosolids
and Septage
Facilities
Project**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract No. 18-19, Inland Bays Regional Wastewater Facility, Regional Biosolids and Septage Facilities (Project 18-19), be approved, decreasing the contract amount by \$321.47, for a new contract total of \$13,668.024.53.

Motion Adopted: 5 Yeas.

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

**Old
Business/
CZ 1878**

Under Old Business, the Council considered Change of Zone No. 1878 filed on behalf of Captain's Way Development.

The County Council held a Public Hearing on this application on July 16, 2019 at which time action was deferred for the recommendation of the Planning and Zoning Commission and the record was left open for 5 days for written comments regarding that recommendation.

Janelle Cornwell, Planning and Zoning Director, reported that the Planning and Zoning Commission made a recommendation of approval at their meeting on July 18, 2019, with an amendment to Condition A of Ordinance No. 2295 stating that "The maximum number of lots shall not exceed 301. *In addition to the main single-family dwelling on each lot, one (1) garage studio apartment shall be permitted. No garage studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage studio apartments shall be owned in common with the main single-family dwelling on the lot, and the owner of the residence shall occupy one of the units on the property.*"

Ms. Cornwell also reported that a letter from the Applicant was received requesting that the number of lots for the Special Use Exception under Section 115-23(C)6 be reduced from 301 lots to one (1) lot. In the Applicant's letter, it was stated that "The reason for this request for reduction from 301 lots to one (1) lot is that the approval and construction of one (1) garage/studio apartment will not require, trigger or create the need for any additional, revised or modified agency approvals. It was stated during the public hearing that approval for 301 lots with the accessory use would create the need for additional agency approvals. Acquiring those additional agency approvals would be extremely detrimental to the progression and timing of this project and cannot be entertained at this time. It is our intention to build a model home with the accessory use garage/studio apartment and allow the market to determine the receptibility of this option. If buyers desire such garage/studio apartment accessory use, then the applications for approval before the Board of Adjustment will be made at that time."

(continued) **Mr. Burton commented on the application and concerns he has with the application and the Applicant's request for reduction**

**M 492 19
Amend
Condition/
CZ 1878**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition A (of Ordinance No. 2295) to read as follows: "The maximum number of lots shall not exceed 301. In addition to the main single family dwelling on each lot, one (1) garage studio apartment shall be permitted on no more than 15 percent of the lots. The Restrictive Covenants and the Final Recorded Site Plans shall clearly state that 15 percent of the homes may have garage studio apartments and all purchasers shall sign an acknowledgement that they are aware of that covenant. Further, the Developer or HOA shall notify all lot owners in each phase when a garage/studio apartment is built in that phase. No garage/studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage/studio apartment shall be owned in common with the main single family dwelling on the lot and the owner of the residence shall occupy one of the units on the property."

Motion Adopted: 3 Yeas, 2 Nays.

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

**M 493 19
Adopt
Ordinance
No. 2681/
CZ 1878**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2681 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO ALLOW FOR GARAGE STUDIO APARTMENTS FOR CHANGE OF ZONE NO. 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS" (Change of Zone No. 1878) filed on behalf of Captain's Way Development, LLC, for reasons given by the Planning and Zoning Commission, and for reasons given by Mr. Burton, and with Condition 7A, as amended.

7A. "The maximum number of lots shall not exceed 301. In addition to the main single family dwelling on each lot, one garage studio apartment shall be permitted on no more than 15 percent of the lots. The Restrictive Covenants and the Final Recorded Site Plans shall clearly state that 15 percent of the homes may have garage studio apartments and all purchasers shall sign an acknowledgement that they are aware of that covenant. Further, the Developer or HOA shall notify all lot owners in each phase when a garage/studio apartment is built in that phase. No garage/studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage/studio apartment shall be owned in

M 493 19 **common with the main single family dwelling on the lot and the owner**
(continued) **of the residence shall occupy one of the units on the property.”**

Motion Adopted: 5 Yeas.

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

Introduction **Mr. Burton introduced the Proposed Ordinance entitled “AN**
of Proposed **ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF**
Ordinances **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 INDIAN
 RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED,
 SUSSEX COUNTY, CONTAINING 0.927 ACRES, MORE OR LESS”
 (Change of Zone No. 1901) filed on behalf of Mary and Victor Rico (Tax
 I.D. No. 234-7.00-100.00) (911 Address: 20797 Sunset Lane, Lewes).

Mr. Burton introduced the Proposed Ordinance entitled “AN
ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR
MEDIUM-DENSITY RESIDENTIAL DISTRICT) FOR MULTI-FAMILY
(7 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND
LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND
REHOBOTH HUNDRED, SUSSEX COUNTY CONTAINING 0.927
ACRES, MORE OR LESS” (Conditional Use No. 2200) filed on behalf of
Mary and Victor Rico (Tax I.D. No. 234-7.00-100.00) (911 Address: 20797
Sussex Lane, Lewes).

The Proposed Ordinances will be advertised for Public Hearing.

M 494 19 **At 12:23 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Wilson,**
Go Into **to recess the Regular Session and go into Executive Session for the purpose**
Executive **of discussing matters relating to land acquisition and collective bargaining.**
Session

Motion Adopted: 5 Yeas.

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

Executive **At 12:30 p.m., an Executive Session was held in the Basement Caucus Room**
Session **for the purpose of discussing matters relating to land acquisition and**
 collective bargaining. The Executive Session concluded at 1:26 p.m.

M 495 19 **At 1:33 p.m., a Motion was made by Mr. Burton, seconded by Mr. Rieley, to**
Reconvene **come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 5 Yeas.

**M 495 19
(continued)** **Vote by Roll Call:** **Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

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

**M 496 19
Adjourn** **At 1:33 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson,
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.}