

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 30, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 30, 2018, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

| | |
|-----------------------------|-----------------------------|
| Michael H. Vincent | President |
| George B. Cole | Vice President |
| Robert B. Arlett | Councilman |
| Irwin G. Burton III | 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 592 18
Approve
Agenda**

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

Motion Adopted: 3 Yeas, 2 Absent.

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

Minutes

The minutes of October 23, 2018 were approved by consent.

**Corre-
spondence**

Correspondence

**SUSSEX COUNTY HEALTH COALITION, GEORGETOWN,
DELAWARE.**

RE: Letter in appreciation of donation to Project Purple.

**Public
Comments**

Public Comments

Dan Kramer referenced Election Day (November 6, 2018) and reminded everyone to vote.

**Wastewater
Agreement**

Mr. Lawson presented a Wastewater Agreement for the Council's consideration.

M 593 18

A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, for Sussex County

**M 593 18
Approve
Wastewater
Agreement
(continued)**

Project 81-04, Agreement No. 891-4, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and CMF Tidewater Landing, LLC for wastewater facilities to be constructed in Tidewater Landing – Phase 5A, located in the West Rehoboth Expansion North Planning Area.

Motion Adopted: 3 Yeas, 2 Absent.

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

**Adminis-
trator's
Report**

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

A. "Stockings for Soldiers"

A reminder that Sussex County government is 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 October 31st. 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.

B. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Coastal Club - Land Bay 7 - Phase A and Tidewater Landing - Phase 2 received Substantial Completion effective October 22nd and October 23rd, respectively.

C. Holiday and County Council Meeting Schedule

County offices will be closed on Tuesday, November 6th, for Election Day and Thursday, November 8th, for Return Day. Offices will also be closed on Monday, November 12th, in honor of Veterans Day.

The Sussex County Council will not meet on November 6th. The next regularly scheduled Council meeting will be held on November 13th at 10:00 a.m.

D. Distinguished Budget Presentation Award

I am pleased to announce that the Government Finance Officers Association of the United States and Canada has awarded Sussex County its Distinguished Budget Presentation Award for the Fiscal Year 2018 Budget Report. This is the first year that the County has received

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

this prestigious award acknowledging its budget report. In order to receive the award, the budget document must serve an entity as a policy document, financial plan, operations guide, and communication device.

Congratulations to Gina Jennings, Finance Director and Chief Operating Officer, and Kathy Roth, Deputy Finance Director, for their efforts in achieving this award.

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

**Construct
Taxiway D
Project/
Delta Task
Order 8**

Hans Medlarz, County Engineer, reported that the construction of Taxiway D will allow for the development of several corporate size hangars and a large acreage of apron for aircraft parking. In addition, Taxiway D will support the development of GPS based instrument flight approaches to both ends of the crosswind Runway 10-28. This project was awarded in August 2018 for a total of \$5,539,189.30, contingent on FAA funding. The project is now in the construction phase after receipt of the FAA grant in the amount of \$5,532,528.00 covering 90% of the project cost. In August 2018, Task Order 7 was awarded for construction phase services to Delta Airport Consultants, Inc. Additional costs were incurred due to rebidding; the costs were not covered under the original design Task Order 6, nor the subsequent construction phase Task Order 7. Mr. Medlarz reported that Task Order 8 for additional design and bidding phase services in the amount of \$37,500.00 is eligible for 90% reimbursement through the Airport Improvement Program. Reimbursement will be requested through an amendment to the FAA grant funding.

**M 594 18
Approve
Delta Task
Order 8/
Construct
Taxiway D
Project**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon the recommendation of the Engineering Department, that Sussex County Council approves Task Order 8 to the Engineering Agreement between Sussex County and Delta Airport Consultants, Inc. to provide professional services for Sussex County Project 17-20, Construct Taxiway D Design, which increases the original contract amount by no more than \$37,500.00.

Motion Adopted: 3 Yeas, 2 Absent.

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

Mr. Cole and Mr. Arlett joined the meeting.

**Draft
Ordinance/
Chapter 99
Amend-
ments**

Hans Medlarz, County Engineer, presented for discussion a Draft Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III AND VI §§99-5, 99-18 AND 99-31, OF THE CODE OF SUSSEX COUNTY REGARDING STREETS, STREET DESIGN STANDARDS AND INSPECTIONS AND CLOSEOUT PROCEDURES". Chapter 99 of the Sussex County Code contains certain technical

Draft Ordinance/ Chapter 99 Amendments (continued)

requirements for the design, submission, and subsequent approval of Final Site Plans for subdivisions, including the provision for the approval of the Sussex Conservation District. The street design requirements contained in Chapter 99 of the Code were revised and improved through the adoption of Ordinance No. 2489 on March 28, 2017. After the implementation of Ordinance No. 2489, the Engineering Department recognized that further, minor modifications and corrections were necessary with regard to street design standards and inspection and closeout procedures. Mr. Medlarz highlighted the proposed changes.

Introduction of Proposed Ordinance

Mr. Arlett introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III AND VI §§99-5, 99-18 AND 99-31, OF THE CODE OF SUSSEX COUNTY REGARDING STREETS, STREET DESIGN STANDARDS AND INSPECTIONS AND CLOSEOUT PROCEDURES”. The Proposed Ordinance will be advertised for Public Hearing.

Request to Post Notices/ Wellesley Annexation

John Ashman, Director of Utility Planning, presented a request to post notices for the Wellesley Annexation of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area). The expansion, consisting of 286.24 acres, more or less, was requested by Davis Bowen & Friedel on behalf of their clients, Wellesley Partners, LLC for Parcel Nos. 334-12.00-46.01, 113.00 and 116.00. The project received preliminary approval on June 28, 2018. They propose to connect to existing infrastructure installed by the County; an Infrastructure Use Agreement will be required.

M 595 18 Post Notices/ Wellesley Annexation

A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Engineering Department is authorized to prepare and post notices for the Wellesley Expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area), as presented.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

Plantation Square/ Use of Existing Infrastructure Agreement

John Ashman, Director of Utility Planning, presented a request for approval of a Use of Existing Infrastructure Agreement with LMHT, LLC for the Plantation Square project in the West Rehoboth Area (recently annexed into the sewer district). This would allow the Plantation Square developers to connect up to 30 EDUs to the existing infrastructure in exchange for \$19,759.00.

M 596 18 Approve Agreement/ Plantation Square

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and LMHT, LLC for capacity allocation in the regional transmission system, as presented.

**M 596 18
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

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

**M 597 18
Countywide
Youth
Grant**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, to give \$2,100.00 from Countywide Youth Grants to the Optimist International Foundation / Optimist Club of Sussex County for essay contest scholarships.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea
Mr. Vincent, Yea**

**M 598 18
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$1,500.00 from Mr. Arlett's Councilmanic Grant Account to the Greater Millsboro Chamber of Commerce for the Stars & Stripes Celebration.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea
Mr. Vincent, Yea**

**M 599 18
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$2,000.00 (\$400.00 from each Councilmanic Grant Account) to the Town of Georgetown for the Mayor's Reception held on Return Day.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea
Mr. Vincent, Yea**

**Old
Business/
Proposed
Ordinance/
2018
Compre-
hensive
Plan**

Under Old Business, the Council considered the 2018 Comprehensive Plan Ordinance and Future Land Use Map. Janelle Cornwell, Planning and Zoning Director, stated that a Public Hearing on the Proposed Ordinance entitled "AN ORDINANCE ADOPTING THE 2018 COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING ORDINANCE NO. 1980, THE 2007 UPDATE OF THE COMPREHENSIVE PLAN, ADOPTED JUNE 24, 2008" was held on October 23, 2018 at which time action was deferred. Ms. Cornwell reported that staff is still working on the certification issue.

Old Business/ Proposed Ordinance/ 2018 Comprehensive Plan (continued)

Ms. Cornwell and Vince Robertson, Assistant County Attorney, presented for Council’s consideration, requests to change the Future Land Use Map. Mr. Robertson advised Council that the Future Land Use Map is not set in stone for the 10-year period of a plan; it can evolve and any requested changes would go through a public hearing process.

Request No. 1 - Tax Map and Parcel No. 235-19.00-37.00 to be designated as part of the Developing Area.

M 600 18 Land Use Map Change Request

A Motion was made by Mr. Arlett, seconded by Mr. Burton, that Tax Map and Parcel No. 235-19.00-37.00 be designated as part of the Developing Area on the Future Land Use Map in the 2018 Comprehensive Land Use Plan.

DENIED

Motion Denied: 4 Nays, 1 Yea.

Vote by Roll Call: Mr. Arlett, Nay; Mr. Burton, Nay; Mr. Wilson, Yea; Mr. Cole, Nay; Mr. Vincent, Nay

Request No. 2 - Tax Map and Parcel No. 235-19.00-20.00 to be designated as part of the Developing Area.

M 601 18 Land Use Map Change Request

A Motion was made by Mr. Arlett, seconded by Mr. Burton, that Tax Map and Parcel No. 235-19.00-20.00 be designated as part of the Developing Area on the Future Land Use Map in the 2018 Comprehensive Land Use Plan.

DENIED

Motion Denied: 5 Nays.

Vote by Roll Call: Mr. Arlett, Nay; Mr. Burton, Nay; Mr. Wilson, Nay; Mr. Cole, Nay; Mr. Vincent, Nay

Mr. Burton recused himself from the discussion and Motion on the next request.

Request No. 3 – Three parcels (Hudson Road and Log Cabin Hill Road property and two properties on Route 30 and Sand Hill Road) to be designated as part of the Developing Area.

Ms. Cornwell stated that staff recommends that the properties and other surrounding properties be included in the Coastal Area (incorporating approximately three dozen properties).

M 602 18 Land Use Map Change Request

A Motion was made by Mr. Arlett, seconded by Mr. Cole, that the area within the north side of Lewes – Georgetown Highway, the east of Hudson Road, and the west side of Sweetbriar Road be designated as part of the Coastal Area on the Future Land Use Map in the 2018 Comprehensive

**M 602 18
(continued)**

Land Use Plan.

Motion Failed: 2 Yeas, 2 Nays, 1 Absent.

**MOTION
FAILED**

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

Request No. 4 - Tax Map and Parcel No. 235-8.00-39.00 to be designated as part of the Developing Area.

**M 603 18
Land Use
Map Change
Request**

A Motion was made by Mr. Cole, seconded by Mr. Burton, that Tax Map and Parcel No. 235-8.00-39.00 be designated as part of the Developing Area on the Future Land Use Map in the 2018 Comprehensive Land Use Plan.

Questions were raised about the availability of sewer infrastructure. Mr. Arlett requested that action on this request be deferred.

**MOTION
WITH-
DRAWN**

Mr. Cole and Mr. Burton withdrew their Motions.

Action was deferred on Request No. 4.

Mr. Cole suggested a map change for the Red Mill Pond Area due to its proximity to the watershed and Great Marsh, and eliminating Red Mill North from the Development District. It was discussed to include the parcels on New Road to the Milford Interchange (northeast side of Route One and parcels along New Road). Mr. Vincent asked that staff map this proposed area for consideration at the November 13th Council meeting.

Ms. Cornwell stated that staff will continue to work on the County's response to the PLUS letter; additionally, the affordable housing section of the Plan will be edited for Council's consideration at the November 13th meeting.

**Old
Business/
CU 2130**

Under Old Business, the Council considered Conditional Use No. 2130 filed on behalf of The Evergreene Companies, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on June 14, 2018 at which time action was deferred. On June 28, 2018, the Commission recommended approval with the following conditions:

- A. The maximum number of townhouse units shall be 16.**
- B. As provided by Section 115-218 of the Zoning Code, there shall be a forested or landscaped buffer installed around the entire perimeter of the project in compliance with Section 99-5 of the Code of Sussex County.**
- C. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT**

**Old
Business/
CU 2130
(continued)**

- requirements.
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
 - E. The project shall be served by central water to provide drinking water and fire prevention.**
 - F. Interior street design shall meet or exceed the Sussex County street design requirements.**
 - G. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 am. and 6:00 p.m., Monday through Saturday.**
 - H. No other outdoor construction activities shall occur at the site except between the hours of 7:30 a.m. through 7:00 p.m. Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
 - I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
 - J. The Applicant shall form a condominium association responsible for the perpetual maintenance, repair and replacement of the roads, the buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
 - K. 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.**
 - L. 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.**
 - M. As stated by the Applicant, there shall be a swimming pool and pool house installed on the premises. The swimming pool shall be at least 15 feet by 35 feet in size.**
 - N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

The County Council held a Public Hearing on this application on July 24, 2018 at which time action was deferred.

**M 604 18
Amend
Condition/
CU 2130**

A Motion was made by Mr. Cole, seconded by Mr. Burton to amend Condition A recommended by the Planning and Zoning Commission to read as follows: "The maximum number of townhouse units shall be 14."

Motion Denied: 3 Nays, 2 Yeas.

DENIED

**Vote by Roll Call: Mr. Arlett, Nay; Mr. Burton, Yea;
Mr. Wilson, Nay; Mr. Cole, Yea;
Mr. Vincent, Nay**

**M 605 18
Amend
Condition/
CU 2130**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to amend Condition G recommended by the Planning and Zoning Commission to read as follows: "All construction and site work on the property, including

M 605 18 deliveries of materials to or from the property, shall only occur between
(continued) 7:00 a.m. and 6:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m.
on Saturdays.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

M 606 18 A Motion was made by Mr. Burton, seconded by Mr. Wilson, to amend
Amend Condition H recommended by the Planning and Zoning Commission to
Condition/ read as follows: “No other outdoor construction activities shall occur at the
CU 2130 site except between the hours of 7:00 a.m. through 6:00 p.m., Monday
through Friday, and 8:00 a.m. though 2:00 p.m. on Saturdays. There shall
be no construction activities at the site on Sundays.”

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

M 607 18 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend
Amend Condition B recommended by the Planning and Zoning Commission to read
Condition/ as follows: “As provided by Section 115-218 of the Zoning Code, there shall
CU 2130 be a forested or landscaped buffer installed around the entire perimeter of
the project in compliance with Section 99-5 of the Code of Sussex County.
The buffer on the north side shall be extended up to 25 feet to accommodate
existing vegetation and trees.”

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea

M 608 18 A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt
Adopt Ordinance No. 2609 entitled “AN ORDINANCE TO GRANT A
Ordinance CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY
No. 2609/ RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (20
CU 2130 TOWNHOMES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND
LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,
CONTAINING 2.3817 ACRES, MORE OR LESS” (Conditional Use No.
2130) filed on behalf of The Evergreene Companies, LLC. (Tax I.D. No.
134-13.00-72.00 and 72.01) (911 Address: 30733 Cedar Neck Road, Ocean
View) with the following conditions:

A. The maximum number of townhouse units shall be 16.

**M 608 18
Adopt
Ordinance
No. 2609/
CU 2130
(continued)**

- B. As provided by Section 115-218 of the Zoning Code, there shall be a forested or landscaped buffer installed around the entire perimeter of the project in compliance with Section 99-5 of the Code of Sussex County. The buffer on the north side shall be extended up to 25 feet to accommodate existing vegetation and trees.**
- C. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DeIDOT requirements.**
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- E. The project shall be served by central water to provide drinking water and fire prevention.**
- F. Interior street design shall meet or exceed the Sussex County street design requirements.**
- G. 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 Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays.**
- H. No other outdoor construction activities shall occur at the site except between the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- J. The Applicant shall form a condominium association responsible for the perpetual maintenance, repair and replacement of the roads, the buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
- K. 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.**
- L. 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.**
- M. As stated by the Applicant, there shall be a swimming pool and pool house installed on the premises. The swimming pool shall be at least 15 feet by 35 feet in size.**
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 3 Yeas, 2 Nays.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Nay;
Mr. Wilson, Yea; Mr. Cole, Nay;
Mr. Vincent, Yea**

**Council
Members'
Comments**

Council Members' Comments

(continued) **Mr. Arlett reminded everyone to vote on Election Day.**

M 609 18
Go Into
Executive
Session
At 11:51 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Arlett, 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Executive
Session
At 11:55 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/potential litigation and land acquisition. The Executive Session concluded at 1:30 p.m.

M 610 18
Reconvene
Regular
Session
At 1:39 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Burton, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Action
No action was taken on Executive Session matters.

Rules
Mr. Moore read the rules of procedure for public hearings on zoning matters.

Public
Hearing/
CU 2141
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 TREE CUTTING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.81 ACRE, MORE OR LESS” (Conditional Use No. 2141 filed on behalf of Miller’s Tree & Outdoor Services (David Miller) (Tax I.D. No. 532-16.00-14.01 (portion of) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018 at which time action was deferred. On October 11, 2018, the Commission recommended approval with the following conditions:

- A. This use shall be limited to a tree cutting business. No other business shall be conducted from the site, and no vehicles associated with any**

**Public
Hearing/
CU 2141
(continued)**

- business shall be parked on the site.
- B. No retail sales shall be conducted from the site.**
 - C. No mulching, chipping, shredding or grinding of any materials, including the dyeing of mulch or similar materials, shall occur on the site.**
 - D. As stated by the Applicant, no sign shall be permitted.**
 - E. The hours of operation shall be limited to 6:00 am through 6:00 pm, Monday through Friday and 7:00 am through 2:00 pm on Saturday. No hours on Sunday.**
 - F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
 - G. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
 - H. Any stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of any required stormwater management areas.**
 - I. There shall not be any dumping on the site, and a single dumpster permitted on the site shall be screened from the view of neighboring properties and roadways.**
 - J. The Final Site Plan shall clearly show all areas where cut timber may be stored, and these areas shall be clearly marked on the site itself.**
 - K. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself.**
 - L. All equipment and vehicle maintenance and repair shall occur indoors.**
 - M. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
 - N. 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 September 27 and October 11, 2018.)

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

An Exhibit Booklet was previously provided by the Applicant.

Also submitted, on this date, was a Lot Line Adjustment Plan.

The Council found that Mark Davidson with Pennoni Associates was present with the Applicant and Owner, David Miller. They discussed the proposed use of the property to service and maintain equipment for a tree cutting business. They discussed the proposed use, the construction of a 2,000 square foot building, the history of the property, the layout of the site, proposed hours of operation, proposed future septic area, parking, activities proposed on the site, and future plans for the site/business. It was noted that DelDOT did not require a Traffic Impact Study. They stated that the Applicant is a sole proprietor and currently has no employees; that

**Public
Hearing/
CU 2141
(continued)**

the Applicant subcontracts employees; that the Applicant resides across the road and that business activities on his home site will cease; and that he would like to have a sign up to 32 square feet.

There were no public comments.

The Public Hearing and public record were closed.

**M 611 18
Amend
Condition/
CU 2141**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to strike Condition No. D recommended by the Planning and Zoning Commission and replace it with the following “One unlighted sign permitted up to 16 square feet.”

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Nay; Mr. Cole, Yea;
Mr. Vincent, Yea**

**M 612 18
Amend
Condition/
CU 2141**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition F recommended by the Planning and Zoning Commission so that it reads as follows: “Any security lighting shall be screened so that it does not shine on neighboring properties or roadways and the front shall have a 20-foot forested buffer.”

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**M 613 18
Adopt
Ordinance
No. 2610/
CU 2141**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2610 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE CUTTING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.81 ACRE, MORE OR LESS” (Conditional Use No. 2141) filed on behalf of Miller’s Tree & Outdoor Services (David Miller), with the following conditions, as amended:

- A. This use shall be limited to a tree cutting business. No other business shall be conducted from the site, and no vehicles associated with any business shall be parked on the site.**
- B. No retail sales shall be conducted from the site.**
- C. No mulching, chipping, shredding or grinding of any materials, including the dyeing of mulch or similar materials, shall occur on the site.**
- D. One unlighted sign permitted up to 16 square feet.**

**M 613 18
Adopt
Ordinance
No. 2610/
CU 2141
(continued)**

- E. The hours of operation shall be limited to 6:00 am through 6:00 pm, Monday through Friday and 7:00 am through 2:00 pm on Saturday. No hours on Sunday.**
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways and the front shall have a 20-foot forested buffer.**
- G. The Applicant shall comply with all DeIDOT requirements, including any entrance or roadway improvements.**
- H. Any stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of any required stormwater management areas.**
- I. There shall not be any dumping on the site, and a single dumpster permitted on the site shall be screened from the view of neighboring properties and roadways.**
- J. The Final Site Plan shall clearly show all areas where cut timber may be stored, and these areas shall be clearly marked on the site itself.**
- K. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself.**
- L. All equipment and vehicle maintenance and repair shall occur indoors.**
- M. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- N. 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2142**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (135 TOWNHOUSES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 47.7177 ACRES, MORE OR LESS” (Conditional Use No. 2142) filed on behalf of RH Orr, LLC, c/o Ribera Development, LLC (Tax I.D. No. 134-16.00-39.00) (911 Address: 34365 Central Avenue, Frankford).

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018 at which time action was deferred. On October 11, 2018, the Commission recommended approval with the following conditions:

- A. The maximum number of residential units shall be 133. The two units located closest to Central Avenue shall be eliminated to reduce the**

**Public
Hearing/
CU 2142
(continued)**

impact of this development upon properties across Central Avenue and to create greater separation of the development from the Central Avenue right of way.

- 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 have active and passive amenities including a swimming pool and pool house. All amenities shall be completed prior to the issuance of the 75th residential building permit in the project.**
- D. 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. The connection to the existing County sewer along the northern boundary of this site shall be made by directional drilling under the wetlands. No open trenching or disturbance of the wetlands shall occur as part of the sewer connection.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. Interior street design shall meet or exceed the Sussex County street design requirements.**
- G. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- H. 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.**
- I. As stated by the Applicant, there shall be a landscape buffer of at least 50 feet along the northeastern common boundary with Forest Landing. There shall be a 20 foot landscaped buffer along the eastern common boundary with Forest Landing. The Developer shall also use every effort to keep existing vegetation or install landscaping along the entire Central Avenue frontage of the property to screen the development from the roadway and properties across from it. These buffer areas shall be shown within the landscape plan submitted as part of the Final Site Plan.**
- J. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.**
- K. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- L. 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.**
- M. 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.**
- N. The Final Site Plan shall contain the approval of the Sussex County**

**Public
Hearing/
CU 2142
(continued)**

Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.

- O. The Developer, and the HOA or Condominium Association shall protect and preserve the Hall Cemetery on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for visitors to the cemetery. Access to the cemetery shall be shown on the Final Site Plan.**
- P. 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.**
- Q. 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 September 27 and October 11, 2018.)

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

The Council found that William Scott, Attorney, was present with Mike Fitzgerald and Rich Thomas with RH Orr, LLC; Jason Palkewicz with Solutions IPM; and Ed Launey with Environmental Resources, Inc. They presented an overview of the application: the proposed use of the property for 135 townhomes with active and open space, density, layout of the site, design details, proposed stormwater management, preservation of open space, preservation of woodlands and wetlands, water and sewer availability, amenities, buffers, sidewalks and multi-modal path, existing cemetery on the site, parking, DelDOT improvements, and the trend of residential development in the area.

Public comments were heard.

Tyler Hickman spoke in opposition to the application. He expressed concern about traffic, the amount of impervious surface, flooding, the cemetery on the property, and the incompatibility of multi-family in an area of single family homes.

Mr. Tyler read a letter into the record from Lorraine Bunting regarding the cemetery on the site and the need for an archaeological survey.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 614 18
Defer
Action/
CU 2142**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, to defer action for two weeks on Conditional Use No. 2142 filed on behalf of RH Orr, LLC, c/o Ribera Development, LLC.

Motion Adopted: 5 Yeas.

**M 614 18
(continued)**

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2144**

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 TREE COMPANY OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.5851 ACRES, MORE OR LESS” (Conditional Use No. 2144) filed on behalf of William Caldwell (Tax I.D. No. 230-5.20-55.00 and 56.00) (911 Address: 18576 Greely Avenue, Lincoln).

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018 at which time action was deferred. On October 11, 2018, the Commission recommended approval with the following conditions:

- A. This use shall be limited to a tree cutting business. No other business shall be conducted from the site, and no vehicles associated with any other business shall be parked on the site.**
- B. No retail sales shall be conducted from the site.**
- C. No mulching, chipping, shredding or grinding of any materials, including the dyeing of mulch or similar materials shall occur on the site.**
- D. As requested by the Applicant, a small unlighted sign shall be permitted. It shall not exceed 8 square feet per side.**
- E. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Friday and 7:00 a.m. through 2:00 p.m. on Saturday. There shall not be any Sunday hours of operation.**
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- G. The Applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
- H. Any stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for any required stormwater management areas.**
- I. No cut trees, logs or timber shall be stored on the site. All timber and logs currently on the site shall be removed within 4 months of County Council’s approval of this Conditional Use.**
- J. There shall not be any dumping on the site.**
- K. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself.**
- L. No sirens or flashing lights shall be used anywhere on the site.**
- M. All equipment and vehicle maintenance and repair shall occur indoors.**
- N. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**

**Public
Hearing/
CU 2144
(continued)**

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 September 27 and October 11, 2018.)

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

The Council found that William Caldwell was present on behalf of his application. He reported that he has operated his tree service out of this site for many years; that most of his work is off-site; that he resides on the property; that he has stacks of wood and logs on his property and that some of them will be removed/sold; and that many of the stacks of wood on the property are for personal use.

Public comments were heard.

Robert Ingram spoke in support of the application.

There were no comments in opposition to the application.

The Public Hearing and public record were closed.

**M 615 18
Adopt
Ordinance
No. 2611/
CU 2144**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2611 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE COMPANY OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.5851 ACRES, MORE OR LESS" (Conditional Use No. 2144) filed on behalf of William Caldwell, with the following conditions:

- A. This use shall be limited to a tree cutting business. No other business shall be conducted from the site, and no vehicles associated with any other business shall be parked on the site.**
- B. No retail sales shall be conducted from the site.**
- C. No mulching, chipping, shredding or grinding of any materials, including the dyeing of mulch or similar materials shall occur on the site.**
- D. As requested by the Applicant, a small unlighted sign shall be permitted. It shall not exceed 8 square feet per side.**
- E. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Friday and 7:00 a.m. through 2:00 p.m. on Saturday. There shall not be any Sunday hours of operation.**
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- G. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- H. Any stormwater management facilities shall be subject to the review**

**M 615 18
Adopt
Ordinance
No. 2611/
CU 2144
(continued)**

and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for any required stormwater management areas.

- I. No cut trees, logs or timber shall be stored on the site. All timber and logs currently on the site shall be removed within 4 months of County Council’s approval of this Conditional Use.**
- J. There shall not be any dumping on the site.**
- K. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself.**
- L. No sirens or flashing lights shall be used anywhere on the site.**
- M. All equipment and vehicle maintenance and repair shall occur indoors.**
- N. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- 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: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1856**

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-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS” (Change of Zone No. 1856) filed on behalf of Melissa and Nate Walker (Tax I.D. No. 234-17.00-35.00) (911 Address: 22935 John J. Williams Highway, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018 at which time action was deferred. On October 11, 2018, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated September 27 and October 11, 2018.)

The Applicant previously submitted an Exhibit Book into the record.

Mark Davidson with Pennoni Associates was present with the Applicants, Melissa and Nate Walker. They discussed the rezoning request and proposed use for a specialty retail sales business / boutique that will sell architectural interior design salvage goods and services out of the existing dwelling on the property, the purpose of the C-2 District and how this site is appropriate for C-2 zoning, the buildings on the property and the layout of the site, the dog grooming business currently operating on the site;

**Public
Hearing/
CZ 1856
(continued)**

character of the surrounding area, the commercial trend of the area, and the location on an arterial road. They stated that the proposed uses will not affect property values in the neighborhood. They stated that they previously submitted an application for rezoning to the B-1 District and for the uses proposed, they submitted for a Conditional Use for the residence on the property. Thereafter, the Planning and Zoning Department made a recommendation that the Applicant revise the application and come in with an application for the new C-2 zoning classification. They stated that the size of the parcel will restrict the use; that they believe the commercial zoning classification will improve their ability to obtain a business loan; and that the family lives on the property.

Public comments were heard.

There were no public comments in support of the application.

Paul Sheppard submitted into the record pictures of the area depicting the rural nature of the area and a letter of opposition with four signatures. He expressed concern about spot zoning and about the possibility of someone purchasing adjacent land to the application site for the purpose of having a larger commercial lot. Mr. Sheppard also expressed concern about traffic along Route 24.

Suzanne McKaskill expressed concern about setting a precedent of commercial zoning in the area and also about the negative effect the commercial zoning will have on property values.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 616 18
Defer
Action/
CZ 1856**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to defer action for two weeks on Change of Zone No. 1856 filed on behalf of Melissa and Nate Walker.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Nay; Mr. Cole, Yea;
Mr. Vincent, Yea**

**M 617 18
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 3:42 p.m.

Respectfully submitted,

Robin A. Griffith, Clerk of the Council

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