

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 5, 2019**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 5, 2019, at 1:00 p.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>Irwin G. Burton III</b>	<b>Vice President</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>John L. Rieley</b>	<b>Councilman</b>
<b>Samuel R. Wilson Jr.</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>

**Call to Order**                   The Invocation and Pledge of Allegiance were led by Mr. Vincent.

Mr. Vincent called the meeting to order.

**M 546 19**                   A Motion was made by Mr. Wilson, seconded by Mr. Burton, to amend the  
**Amend**                   Agenda by deleting “Western Sussex Transmission Facilities, Contract 4,  
**and**                        Pump Stations, Project S19-28, Recommendation to Award”, and to  
**Approve**                approve the Agenda, as amended.  
**Agenda**

**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 October 29, 2019 were approved by consent.

**Public**                 A public comment period was held and the following spoke: Paul Reiger  
**Comments**            and David Stevenson.

**Retiree**                The Council recognized Steven Bradley, Paramedic, who is retiring after 25  
**Recognition**         years of service to Sussex County.

**Adminis-**             Mr. Lawson read the following information in his Administrator’s Report:  
**trator’s**  
**Report**

1. **“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”

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

has been placed in the County Administrative Offices building and includes a shopping list for deployed men and women, as well as our K9 soldiers. Donations to the County's box will be accepted up to November 12<sup>th</sup>. 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.

**2. Project Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheet, Beebe Medical Center – South Coastal E.D. & Cancer Center received Substantial Completion effective October 30<sup>th</sup>.

**3. Veterans Day Holiday**

County offices will be closed on Monday, November 11<sup>th</sup>, in honor of Veterans Day. Offices will reopen on Tuesday, November 12<sup>th</sup>, at 8:30 a.m., and Council will meet at 10:00 a.m.

**4. Sarah Washington**

It is with sadness that we note the passing of County pensioner Sarah "Shirley" Washington on Wednesday, October 23<sup>rd</sup>. Ms. Washington began her career with Sussex County in August 1976 where she worked in the Prothonotary's Office until September 1987 for a total of 11 years of service. We wish to extend our condolences to the Washington family.

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

**FY2020  
Human  
Service  
Grants  
Recom-  
mendation**

Mrs. Jennings provided the FY2020 Human Service Grants recommendation and an overview of the program. This program provides grants to countywide non-profit agencies for the purpose of enhancing health and human services, which contribute to a safe, healthy and self-sufficient community. This program provides grants that assist organizations with operating or capital expenses.

Mrs. Jennings explained the application process. She discussed the online application and the formula-based approach to awarding Human Service Grants. Mrs. Jennings outlined the method and criteria for determining recommended grant amounts and presented the recommended Human Service Grants for Fiscal Year 2020 (funds totaling \$224,488.00).

**M 547 19  
Approve  
FY2020  
Human  
Service  
Grants**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Sussex County Council approves the Fiscal Year 2020 Human Service Grants allocation, as presented.

**Motion Adopted: 5 Yeas.**

**M 547 19  
(continued)**

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

**Robinson-  
ville Road  
Core  
Infra-  
structure/  
Project  
S19-16**

**Hans Medlarz, County Engineer, presented bid results for the Robinsonville Road Core Infrastructure Project, Project S19-16 (a combined water/sewer construction project). Three bids were received; the Engineering Department recommends that the bid be awarded to the lowest responsible bidder, Teal Construction, Inc. of Dover, Delaware, in the amount of \$1,635,126.00. Tidewater Utilities has concurred with the County's recommendation.**

**M 548 19  
Award  
Bid/  
Robinson-  
ville Road  
Core  
Infra-  
structure/  
Project  
S19-16**

**A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Contract S19-16, Robinsonville Road Core Infrastructure, be awarded to Teal Construction, Inc. for their total bid of \$1,635,126.00.**

**Motion Adopted: 5 Yeas.**

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

**Ellendale  
Water  
District  
Agreement/  
Design  
Services**

**Hans Medlarz, County Engineer, presented a Design Services Agreement with Davis Bowen & Friedel (DBF) for the Ellendale Water District. The agreement is for design, permitting and bidding assistance for new waterline construction along N/S Old State Road to serve properties in the Ellendale Water District. The Engineering Department recommends approval of DBF's proposal in the amount of \$185,000.00.**

**M 549 19  
Approve  
Ellendale  
Water  
District  
Agreement**

**A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Ellendale Water District Agreement with Davis Bowen & Friedel be approved in the amount not to exceed \$185,000.00 for design, permitting, bidding, survey and geotechnical work.**

**Motion Adopted: 5 Yeas.**

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

**Addendum  
to MOU  
with  
Beebe  
Medical  
Center**

**John Ashman, Director of Utility Planning, presented Addendum No. 1 to the County's Memorandum of Understanding with Beebe Medical Center for sanitary sewer service for their new Radiation Oncology Center on Route 24. Addendum No. 1 addresses additional lands that Beebe Medical Center wishes to connect to the County's existing sanitary sewer service.**

**M 550 19  
Approve  
Addendum  
to MOU  
with  
Beebe  
Medical  
Center**

**A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Addendum No. 1 to the Memorandum of Understanding between Sussex County and Beebe Medical Center adding Parcel 334-12.00-125.00 to the original Memorandum of Understanding, as presented.**

**Motion Adopted: 5 Yeas.**

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

**Introduction  
of Proposed  
Ordinance**

**Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXPANSION TO A RESTAURANT (SEASIDE BAR AND GRILL) WITHIN A MANUFACTURED HOME PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.3 ACRES, MORE OR LESS” (Conditional Use No. 2191) filed on behalf of Jason Hill (Tax I.D. No. 234-31.00-4.00 (portion of) (911 Address: None Available).**

**The Proposed Ordinance will be advertised for Public Hearing.**

**Public  
Hearing/  
CU 2186**

**At 1:30 p.m., 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 AND GR GENERAL RESIDENTIAL DISTRICT FOR SLUDGE AND WASTEWATER SPRAY IRRIGATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 351.86 ACRES, MORE OR LESS” (Conditional Use No. 2186) filed on behalf of Mountaire Farms of Delaware, Inc. (Tax I.D. No. 234-28.00-1.00, 2.00, and 3.00) (911 Address: None Available).**

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

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

**The Planning and Zoning Commission held a Public Hearing on this application on October 10, 2019 at which time action was deferred. On October 24, 2019, the Commission recommended approval with conditions.**

**(See the minutes of the Planning and Zoning Commission dated October 10 and 24, 2019.)**

**Ms. Cornwell noted that letters of opposition have been received.**

**Public  
Hearing/  
CU 2186  
(continued)**

**The Council found that Lisa McLaughlin, Attorney, was present with Michael Tirrell, Mountaire's Vice President of Processing and Operations, and Tanya Rogers-Vickers, Mountaire's Director of Environmental Compliance. They stated that Mountaire has a multi-million dollar wastewater treatment plant in Millsboro; that upgrades to the plant are being worked on; that they have 13 spray irrigation fields where they spray the treated wastewater; that they have 5 bio-solid/sludge fields where sludge is applied from the wastewater treatment plant; that no sludge has been applied since October 2017; that they already own the subject properties; that the application is for a request to use two of the parcels that were sludge fields for use for spray irrigation of treated wastewater; that this is not a request to increase production; that this is not a request to add more spray irrigation water, just more land for spray irrigation; that approval of this application will help Mountaire meet the objectives that they have with DNREC to bring everything into compliance in Millsboro; that they have a total of 13 permitted spray irrigation fields; that 6 of the fields are located south of John J. Williams Highway adjacent to the Mountaire facility; that the remaining 7 fields are located north of John J. Williams Highway on both sides of Maryland Camp Road; that these 13 fields are permitted and the permits require at least monthly reporting, monitoring at different frequencies and visits and inspections, both scheduled and unannounced; that these spray fields require 50 foot buffers from roads and property lines; that this application is for approval of 350 additional acres to add to their spray irrigated property acres; that the additional land will provide Mountaire better flexibility in their spray irrigation operation; that Mountaire has no plans to increase production and they only want to better manage the current flow; that the water sprayed onto their fields is used to help their crops grow; that the water is piped to the fields; that the crops are harvested and used by Mountaire; that they currently spray on a little over 900 acres; that Mountaire provides employment to approximately 3,000 people at their facility in Millsboro; that they provide employment for hundreds of chicken growers and farmers; that they contribute to the vitally important agricultural community; that they are working to bring the facility into full compliance; that they are spending millions of dollars to bring the facility up to a state-of-the-art facility; and that the application meets all County Code requirements.**

**There were no public comments in support of the application.**

**Public comments were heard in opposition to the application.**

**Andrea Green, Attorney with Jacobs & Crumplar, was in attendance in opposition to the application. She advised that the law firm is involved in some litigation involving both Mountaire and DNREC; that the litigation currently pending regarding Mountaire deals with claims regarding harm to their clients (health, enjoyment of life, and property values); that she would not speak to the merits of that litigation; that the law firm of Jacobs and Crumplar has also in the past forwarded a Notice of Intent to Sue in Federal Court regarding DNREC's failure to enforce certain environmental**

**Public  
Hearing/  
CU 2186  
(continued)**

regulations specifically with respect to its oversight of Mountaire; that shortly thereafter, DNREC filed suit against Mountaire in Federal Court and this litigation is currently Stayed pending negotiations between the parties; and that the litigation that Jason and Crumplar has also filed on behalf of over 100 plaintiffs in Sussex County is also Stayed pending negotiations between the parties. Ms. Green referenced the Gag Order issued by Superior Court on September 13, 2019 and its impact on the individual litigants and their ability to make statements regarding this application. Ms. Green stated that this application seeks approval for future conduct that their clients believe carries the risk of adding more harmful nitrates into an environment that is already subject to extreme stress; that what Mountaire is proposing is not truly an agricultural activity; that they are proposing to dispose of industrial waste on these lands; that it is not necessary to irrigate lands or apply fertilizer on a regular basis; that Mountaire is an operation that utilizes 2.4 million gallons of water per day all year long; that the application is for sludge and wastewater spray irrigation but the Applicant has stated that Mountaire has not been and does not plan to apply sludge; that this will also include sanitary sewer; that the subject properties adjoin a residential development; that Mountaire has a history of violations. Ms. Green referenced the Zoning Code and stated that this application does not promote the health, safety, morals, convenience, prosperity and general welfare of residents of the County. Ms. Green also stated that it would be best for Council to defer a decision until there has been a resolution to the litigation.

At the request of Council, County Engineer Hans Medlarz commented on the County's South Coastal and Wolfe Neck facilities and spray irrigation lands.

Mike Huff, Maria Payan, Lou Podolske, Keith Steck, and Leon Dudley also spoke in opposition to the application. They stated that Mountaire and DNREC have proven they cannot be trusted; that many residents are experiencing health issues; that chloroform has been found in the water; that the water quality in the area needs to be protected; that there have been fish kills in area creeks; that runoff feeds into Indian River and into the bays; that there was a spill at Mountaire of approximately 1 million gallons of wastewater earlier this year; that health and environmental impacts need to be considered; that they question why the rendering plant is still operational; that DNREC doesn't do anything when Mountaire violates DNREC permits; that the Council should stipulate requirements for Mountaire to develop a plan and a timetable so as not to spread pollution further; that the area is a designated Coastal Zone and wastewater should not be placed on that kind of property; that the reference to sludge should be taken out of the application since the Applicant stated that they do not plan to apply sludge; and that Mountaire's application and the Sussex County Engineering Memo of September 9th erroneously state that the project is just over 200 acres and the actual size is over 350 acres. Mr. Huff presented a sample of well water

(continued) from a faucet in the area.

There were no additional public comments.

The Public Hearing was closed.

**M 551 19  
Record  
Open/  
CU 2186**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to leave the record open on Conditional Use No. 2186 for Council to ask questions of staff and agencies; that all questions have to be submitted by November 12th at 4:30 p.m.; that responses to those questions are due back by December 9th at 4:30 p.m.; that the Planning and Zoning Director will report to Council on the questions raised and the answers received at the Council meeting on December 10th; thereafter, for a period of 5 days, the record will remain open for the public and the Applicant to comment, in writing, on the responses received (responses due by December 16th at 4:30 p.m.).

**Motion Adopted: 5 Yeas.**

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

**M 552 19  
Defer  
Action on  
CU 2186**

A Motion was made by Mr. Hudson, seconded by Mr. Wilson, to defer action on Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc.

**Motion Adopted: 5 Yeas.**

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

**M 553 19  
Recess  
Regular  
Session**

At 3:00 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to collective bargaining, land acquisition and personnel.

**Motion Adopted: 5 Yeas.**

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

**Executive  
Session**

At 3:10 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to collective bargaining, land acquisition and personnel. The Executive Session concluded at 3:57 p.m.

**M 554 19**      **At 4:01 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson,**  
**Reconvene**      **to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted:    5 Yeas.**

**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 555 19**      **At 4:02 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson,**  
**Adjourn**      **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.}*