A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 7, 2017 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent
George B. Cole
Robert B. Arlett
Irwin G. Burton III

President
Vice President
Councilman
Councilman

Todd F. Lawson
Gina A. Jennings
J. Everett Moore Jr.

County Administrator
Finance Director
County Attorney

Councilman Samuel R. Wilson, Jr. was absent.

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

Call to

Order Mr. Vincent called the meeting to order.

M 558 17 Approve Agenda A Motion was made by Mr. Cole,, seconded by Mr. Arlett, to approve the agenda, as posted.

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Minutes The minutes of October 31, 2017 were approved by consent.

Public Comments **Public Comments:**

Paul Reiger commented on matters discussed at the November 6, 2017 Board of Adjustment meeting. He advised that letters are to be sent to the County Council and he asks that the letters be read during public session, once the letters have been received.

Dan Kramer commented on having to go through the metal detector on this date.

Sam Deetz spoke regarding right-to-work legislation.

Update on Compre-

Comprehensive Plan Mr. Lawson, along with Janelle Cornwell, Planning and Zoning Director, and Vince Robertson, Assistant County Attorney, presented the timeline/schedule/framework for the Comprehensive Land Use Plan Update.

Update on Comprehensive Plan (continued) Mr. Lawson reported that Council workshops will begin in December (December 6 and 13); however, over the next two weeks, the Council will begin to review the Plan and have discussions with the Consultant, McCormick Taylor. It was noted that agendas will be developed based on work flow. Mr. Lawson reviewed the proposed order of items/chapters to be considered. It was further noted that information can be found on the Comprehensive Plan website at sussexplan.com and that comments on the Plan can still be submitted via that website. Ms. Cornwell noted that the comments that came into the website for the Planning and Zoning Commission will be included in the comments received for the Sussex County Council.

Time Extension Request/ Subdivision 2005-52 and 2008-25 Janelle Cornwell, Planning and Zoning Director, presented a request for a sixmonth time extension for Subdivision 2005-52 and 2008-25 for the Marsh Island Subdivision. This subdivision application was granted final approval by the Planning and Zoning Commission on December 13, 2012 for the construction of 152 single family dwellings. The property is located on the northeast side of Camp Arrowhead Road north of Water View Road. Ms. Cornwell commented on the status of agency approvals and reported that the only agency approval that they are waiting for is for the Notice to Proceed from the Sussex County Engineering Department. Ms. Cornwell recommended that the time extension be granted.

Grant Time Extension/ Subdivision

M 559 17

A Motion was made by Mr. Arlett, seconded by Mr. Cole, that the six-month time extension be granted for Subdivision 2005-52 and 2008-25 (Marsh Island), expiring in July 2018.

Subdivision 2005-52

Motion Adopted: 3 Yeas, 2 Absent.

and 2008-25 Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent; Mr. Wilson, Absent; Mr. Cole, Yea; Mr. Vincent, Yea

Contract Amendment for GHD Base Contract/ SCRWF Hans Medlarz, County Engineer, presented for Council's consideration Amendment No. 13 under the GHD, Inc. Base Contract, Electrical and Controls Value Engineering and Constructability Review, for the South Coastal Regional Wastewater Facility (SCRWF). Mr. Medlarz reported that this came about during the final design process to harness cost savings items associated with electrical, instrumentation and controls design for both SCRWF and the City of Rehoboth Beach facility, well in excess of the cost of the amendment. Amendment No. 13 is in an amount not to exceed \$95,089.94.

M 560 17 Approve Amendment to Base Engineering Contract with GHD

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Amendment No. 13 to the Base Engineering Contract with GHD, Inc. be approved in the amount not to exceed \$95,089.94 for Electrical and Controls Value Engineering and Constructability Review at the South Coastal Regional Wastewater Facility design process.

M 560 17

Motion Adopted: 3 Yeas, 2 Absent.

(continued)

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Wolfe Neck Regional Wastewater Facility/ Pole Building Hans Medlarz, County Engineer, presented the bid results for the Wolfe Neck Regional Wastewater Facility Pole Building Project (Project No. 18-10). Mr. Medlarz noted that, in the FY 2018 Budget, Council approved the construction of a pole building to house equipment. Three bid were received; the Engineering Department recommends award to Humphries Construction, Inc., the low bidder, for their Base Bid and Additive Bids B-1,

B-2 and B-3, in the total amount of \$119,999.00.

M 561 17 Award Bid/ Wolfe Neck

Project

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that the bids for Contract 18-10, Wolfe Neck Regional Wastewater Facility Pole Building, be awarded to Humphries Construction, Inc. of Greenwood for the Base Bid and Additive Bids B-1, B-2 and B-3 in the total amount of \$119,999.00.

Regional

Wastewater Motion Adopted: 3 Yeas, 2 Absent.

Facility/

Pole Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent; Building Mr. Wilson, Absent; Mr. Cole, Yea;

Project Mr. Vincent, Yea

Use of
Existing
Infrastructure
Agreement/
Marsh
Island

John Ashman presented a proposed Use of Existing Infrastructure Agreement with Marsh Island Partners, LLC for the Marsh Island project in the Angola Neck Area. Under the proposed arrangement, Marsh Island development will construct an on-site pump station that will connect to an existing regional forcemain on Camp Arrowhead Road. In return for utilization of said infrastructure, Marsh Island Partners, LLC will contribute \$170,805.95 for the perpetual use of these transmission facilities.

M 562 17 Approve Use of Existing InfraA Motion was made by Mr. Cole, 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 Marsh Island Partners, LLC for a capacity allocation in the Regional Transmission System, as presented.

structure

Motion Adopted: 3 Yeas, 2 Absent.

Agreement/ Marsh

Island Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Joy Beach Expansion/ SCUSSD (Angola Neck Area) (continued) John Ashman, Director of Utility Planning, reported that permission to prepare and post notices for the Joy Beach Expansion of the Sussex County Unified Sanitary Sewer District (Angola Neck Area) was granted by Council on August 29, 2017; that the notice referenced the proposed expansion which would include the Joy Beach Community and parcels along Waterview Road and Bookhammer Landing Road from Camp Arrowhead Road to Joy Beach; that polling letters were mailed to the community and adjacent parcels and the area posted; that a Public Hearing was held on October 20, 2017; that following the Public Hearing, residents were given the opportunity to change their decision made on their polling letters; owners of five parcels changed their decision; that the revised numbers show that 35 indicated an immediate need, 29 indicated a future need, and 31 indicated no need; that this represents 95 of 105 lots responding; that the boundary was approved for posting; that an additional parcel (Happy Go Lucky Trailer Park) submitted a letter requesting to be included in the proposed expansion; that the trailer park consists of 34 trailers or permanent campers connected to cesspools; and that the Engineering Department recommends proceeding with this annexation with the boundary, as proposed, and including the Happy Go Lucky Trailer Park.

M 563 17 Adopt R 030 17 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adopt Resolution No. R 030 17 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) ANGOLA NECK AREA, TO INCLUDE THE JOY BEACH AREA, SEVERAL PARCELS OF LAND ALONG THE EAST SIDE OF CAMP ARROWHEAD ROAD, HAPPY GO LUCKY AND BOTH SIDES OF BOOKHAMMER LANDING ROAD LOCATED IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Conley's Chapel Village Expansion of the SCUSSD John Ashman, Director of Utility Planning, reported that permission to prepare and post notices for the Conley's Chapel Village Expansion of the Sussex County Unified Sanitary Sewer District (Chapel Branch Area) was granted by Council on August 29, 2017; that polling letters were mailed to the community and adjacent parcels and the area was posted; that a Public Hearing was held on October 20, 2017; that following the Public Hearing, residents were given the opportunity to change their decision made on their polling letters; and that the revised numbers show that 16 indicated an immediate need, 11 indicated a future need, and 11 indicated no need; and that this represents 38 of 44 parcels responding.

Conley's Chapel Village (continued) Mr. Ashman reported that a request for inclusion was received from a neighboring property owner; the property is owned by Robert Clark who also owns another parcel within Conley's Chapel Village.

Mr. Ashman advised that the Engineering Department recommends proceeding with this annexation with the boundary, as proposed, and including the property owned by Robert Clark.

M 564 17 Adopt R 031 17 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to Adopt Resolution No. R 031 17 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) CHAPEL BRANCH AREA, TO INCLUDE THE SUBDIVISION KNOWN AS CONLEY'S CHAPEL VILLAGE AND TWO ADJACENT PARCELS LOCATED IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Mr. Burton joined the meeting.

Mallard Creek Expansion of the SCUSSD (Holt's Landing Area) John Ashman, Director of Utility Planning, reported that permission to prepare and post notices for the Mallard Creek Expansion of the Sussex County Unified Sanitary Sewer District (Holt's Landing Area) was granted by Council on August 29, 2017. Polling letters were mailed; the results showed 63 percent in favor and 38% not in favor. Notices were mailed and the area was posted; a Public Hearing was held on October 20, 2017. Mr. Ashman reported that following the Public Hearing, residents were given the opportunity to change their decision made on their polling letters; however, no changes were requested.

Mr. Ashman advised that the Engineering Department recommends proceeding with this annexation with the boundary, as proposed.

M 565 17 Adopt R 032 17 A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Resolution No. R 032 17 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) HOLT'S LANDING AREA, TO INCLUDE THE SUBDIVISION KNOWN AS MALLARD CREEK LOCATED IN THE BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 4 Yeas, 1 Absent.

M 565 17 (continued)

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Grant Requests Kathy Roth, Deputy Finance Director, presented grant requests.

Mr. Vincent stated that the grant request from Georgetown Little League

would be deferred due to Mr. Wilson's absence.

M 566 17 Councilmanic Grant A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$600.00 (\$300.00 each from Mr. Vincent's and Mr. Arlett's Councilmanic Grant Accounts) to the Town of Blades for the Kids Christmas Party.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Council Members' **Council Members' Comments**

Comments Mr. Arlett referenced Veterans Day on November 11th and expressed

thanks to all veterans for their service.

M 567 17 Go Into Executive Session At 11:24 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session to discuss matters relating to potential litigation and land acquisition.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Executive Session

At 11:26 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 potential litigation and land acquisition. The Executive Session concluded at 12:18 p.m.

M 568 17 Reconvene Regular At 12:20 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.

Session Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

M 569 17 Approve Purchase of Land A Motion was made by Mr. Cole, seconded by Mr. Arlett, to approve the purchase of Parcel (Land 2017-10) and that the County Administrator be authorized to complete negotiations on a contract and proceed to purchase the parcel.

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

M 570 17 Recess At 12:21 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to recess until 1:30 p.m.

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

M 571 17 Reconvene At 1:30 p.m., a Motion was made by Mr. Burton, seconded by Mr. Cole, to reconvene.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Rules

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

Public Hearing/ CU 2103 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 RECREATION FACILITY, OFFICE, CARETAKER HOUSE, EQUINE-ASSISTED THERAPY AND STABLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.38 ACRES, MORE OR LESS" (Conditional Use No. 2103) filed on behalf of Southern Delaware Therapeutic and Recreational Horseback Riding, Inc. (Tax I.D. No. 235-26.00-17.14) (911 Address: 17170 Harbeson Road, Milton).

Janelle Cornwell, Director of Planning and Zoning, presented the Conditional Use application.

The Planning and Zoning Commission held a Public Hearing on this application on October 12, 2017 at which time the Commission recommended approval with conditions.

Public Hearing/ CU 2103 (See the minutes of the Planning and Zoning Commission dated October 12, 2017.)

(continued)

An Exhibit Book was previously distributed to Council members.

Mark Davidson with Pennoni Associates was present on behalf of the application with members of the Board of Directors of Southern Delaware Therapeutic and Horseback Riding, Inc. (Scott Swingle, Tom Peet, Kelly Boyer, and Georgia Truitt). Mr. Davidson explained that this is an Association that provides therapeutic horseback riding for individuals with disabilities: that they have been in operation since 1988: that they are a nonprofit association that has been using rented facilities since 1988; that they wish to have a permanent home; that they own this property; that a caretaker lives on the site; that there are four pastures and an indoor riding facility; that the site has two entrances; that ingress and egress is on the south side of the property; that no Traffic Impact Study was required; that no infrastructure is needed; that there are two existing on-site wells and an existing on-site wastewater disposal system; that the property is already zoned for agriculture and has long been used for horse stables and riding; that this use is needed in the area; and that the use will not alter the character of the neighborhood.

Public comments were heard.

Jessica Hudson and her daughter, Alyssa Hudson, spoke in support of the application. They talked about how the program benefits people with disabilities.

Paul Reiger and Dan Kramer stated that the application should only have been required to apply for a Special Use Exception from the Board of Adjustment.

There were no additional public comments.

The Public Hearing and public record were closed.

M 572 17 Adopt Ordinance No. 2532/ CU 2103 A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Ordinance No. 2532 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECREATION FACILITY, OFFICE, CARETAKER HOUSE, EQUINE-ASSISTED THERAPY AND STABLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.38 ACRES, MORE OR LESS" (Conditional Use No. 2103) filed on behalf of Southern Delaware Therapeutic and Recreational Horseback Riding, Inc., with the following conditions:

A. The hours of operation shall be 7:00 a.m. until 10:00 p.m., Monday through Sunday.

M 572 17 Adopt Ordinance No. 2532/ CU 2013 (continued)

- B. All entrances, intersections, or other improvements required by DelDOT shall be completed by the Applicant, as required by DelDOT.
- C. One lighted sign shall be permitted. The sign shall not exceed 32 square feet per side.
- D. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. Any dumpsters shall be screened from view of neighboring properties or roadways.
- F. The failure to abide by the conditions shall result in the termination of this Conditional Use.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

Public Hearing/ CZ 1829 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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.58 ACRES, MORE OR LESS" (Change of Zone No. 1829) filed on behalf of Theresa Elizabeth Murray Irrevocable Trust (Tax I.D. No. 134-9.00-70.00) (911 Address: Not Available).

Janelle Cornwell, Planning and Zoning Director, presented the Change of Zone application.

The Planning and Zoning Commission held a Public Hearing on this application on October 12, 2017 at which time action was deferred. On October 26, 2017, the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated October 12 and 26, 2017.)

An Exhibit Book was previously distributed to Council members.

The Council found that Dennis Schrader, Attorney, was present on behalf of the application with Ellen Magee, one of the Trustees. They stated that the property is owned by the Theresa Elizabeth Murray Irrevocable Trust; that there are general commercial and high and medium density residential uses in the area; that the site is presently used as open storage for boats, trailers, and travel trailers (pursuant to Conditional Use No. 478); that the intended use of the property is a mini storage complex; that a Traffic

Public Hearing/ CZ 1829 (continued) Impact Study was not required; that the use is needed in the area as the other storage facility in the area is full; that they would put up fencing and lighting that will be downward illuminated; that the property will be gated; that Mrs. Magee's mother lives on the property; and that a commercial designation is needed so that they can obtain funding.

Public comments were heard.

There were no public comments in support of the application.

Donald Gettle and John Hickman spoke in opposition to the application. They stated that the site is an eyesore; that lighting will be disruptive to area properties and they do not need more lighting; that there was supposed to be pine tress as a buffer; that the use and zoning change will impact property values and the ability to sell property in the area; that they would like to see the use stopped; that there have been boats on the property for years that have not been moved; that there have been thefts; that the area is residential and this use is out of character with the area; that a need does not exist for the use; and that there can be many permitted uses with a Change of Zone.

There were no additional public comments.

The Public Hearing and public record were closed.

M 573 17 Adopt Ordinance No. 2533/ CZ 1829 A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Ordinance No. 2533 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.58 ACRES, MORE OR LESS" (Change of Zone No. 1829) filed on behalf of Theresa Elizabeth Murray Irrevocable Trust.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, Yea;

Mr. Vincent, Yea

M 574 17 Adjourn A Motion was made by Mr. Arlett, seconded by Mr. Burton, to adjourn at 2:25 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Wilson, Absent; Mr. Cole, 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.}