

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 9, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 9, 2021, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	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 473 21
Amend
and
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to amend the Agenda by striking the Public Hearing on Conditional Use No. 2266 filed on behalf of MDO Dreamlands, LLC, which has been withdrawn, and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of October 26, 2021 were approved by consent.

**Public
Comments**

Public comments were heard and the following spoke:

Linda Pyatt and Willard Chartier spoke in regards to The Vines at Sand Hill stating that the Developer (Sposato) has made no progress on the promised amenities, and that Sposato was given until November 2021 for constructing the clubhouse and it has not been started.

Mr. Vincent asked for a report to be given to the Council on this matter.

Christian Hudson spoke in regards to the lodging tax, stating corrections to the record: that there was opposition to the lodging tax at the public hearing, that it is not a pass-through tax, that the hotel industry is still recovering from the pandemic; and that it is taxation without representation.

There were no additional public comments.

**M 474 21
Approve
Consent
Agenda
Items**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the following items listed under the Consent Agenda:

- 1. Existing Sewer Infrastructure Use Agreement, IUA-1173
Leisure Point, Long Neck Area**
- 2. Existing Sewer Infrastructure Use Agreement, IUA-1100
Friendship Creek, Miller Creek Area**
- 3. Existing Sewer Infrastructure Use Agreement, IUA-1099
Windswept of Lewes, Angola Neck Area**
- 4. Existing Sewer Infrastructure Use Agreement – IUA-993-1
Rehoboth Shores Area II, Long Neck Area**
- 5. Existing Sewer Infrastructure Use Agreement – IUA-1107
Tanager Woods, West Rehoboth Area**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Bayhealth
Medical
Center
Project/
Bond
Issuance**

A Public Hearing was held in respect to the proposed issuance by the Public Finance Authority of its Revenue Bonds, Bayhealth Medical Center Project, in one or more series, pursuant to a plan of finance, in an amount not to exceed \$103 million. The public hearing is required by Section 147(f) of the Internal Revenue Code.

Mrs. Jennings reported that Bayhealth Medical Center is in the process of issuing tax-exempt revenue bonds to provide financing for the eligible costs of the acquiring, constructing, renovating, improving and equipping of some or all of the health care facilities described in the list of expansion items, which were included in the Council and public packets for this meeting, and for the costs of issuance of the bonds. The \$103 million in tax-exempt debt will be used with other financing to expand their services in both Sussex and Kent counties. In order for the bonds to be tax-exempt under the Internal Revenue Code, an elected representative of the governmental unit that has jurisdiction over the area where the facilities are located shall approve the issuance of the bonds after a public hearing. Neither the faith and credit nor the taxing power of Sussex County shall be pledged to the payment of the bonds or any incidental costs; approving the issuance only allows the bonds to be considered tax-exempt under Section 147(f) of the Internal Revenue Code.

Mrs. Jennings noted that any comments will be passed on to Bayhealth's bond underwriting firm (a Wisconsin firm).

**Public
Hearing
(continued)**

Emilie Ninan of Ballard Spahr, LLP, the County’s bond counsel, joined the meeting by telephone and stated that she called in to answer any questions raised by Council. There were no questions raised for Ms. Ninan to respond to.

There were no public comments.

The Public Hearing and public record were closed.

**M 475 21
Adopt
Resolution/
Bayhealth
Medical
Center
Project/
Bond
Issuance**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt the Resolution entitled “APPROVING, IN ACCORDANCE WITH SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND IN ACCORDANCE WITH SECTION 66.0304(11)(A) OF THE WISCONSIN STATUTES, THE ISSUANCE OF BONDS TO FINANCE PROJECTS FOR BAYHEALTH MEDICAL CENTER, INC.”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**DeIDOT
Initiatives
and
Projects
Update**

Meghan Nehrbas, Senior Manager of GIS, discussed a recent initiative that the County and DeIDOT worked on together related to the County’s developer agreements. Ms. Nehrbas gave a demonstration on navigating the dashboard that tracks the release of building permits in real-time for developments in the County with DeIDOT off-site improvement agreements. This collaboration will improve coordination between the County and DeIDOT.

Nicole Majeski, Secretary of DeIDOT, and Shanté Hastings, Deputy Secretary/Chief Engineer of DeIDOT, presented an update on DeIDOT’s initiatives including the FAST Program, a collaborative effort with Sussex County. Secretary Majeski emphasized the Department’s mission to provide excellence in transportation and the Department’s top priority which is safety. The Secretary discussed: (1) the updated strategic highway and safety plan, (2) DART Connect, a pilot-program for an on-demand transit service (Georgetown to Millsboro), (4) the beach bus and the deployment of electric buses, (5) planning efforts - the Henlopen Transportation Improvement District and the Five Points Working Group, and (6) the Coastal Corridors Study.

Ms. Hastings presented a FAST (Funding Accelerating Safety and Transportation) Track Program update, and more specifically the alternatives/options and the schedule for the Cave Neck/Hudson/Sweetbriar Road intersection, the first project selected. Construction is projected to begin in Fall 2024. Ms. Hastings noted that this Program is a collaboration between Sussex County and DeIDOT to try and accelerate some projects that are already included in the CTP.

**DelDOT
Initiatives
and Projects
Update
(continued)**

Ms. Hastings also provided an update on general projects including the Georgetown East Gateway, Park Avenue Relocation Phase 1, Route 24 including widening from 1500 feet west of Love Creek Elementary School to SR 1, numerous intersection improvements, and various construction traffic impacts.

**Accommo-
dations Tax**

The Council discussed the collection of the Accommodations Tax including possible action.

Mrs. Green commented on the intention of the Motion made at the May 25, 2021 Council meeting that the tax was to be deferred and she commented on the inclusion of the tax in the budget as an accommodation fee versus a lodging tax. Mrs. Green also commented on the County's press release on the budget absent of any mention of a lodging fee and questioned how the tax got from deferred on May 25, 2021 to implemented without further discussion.

Mr. Schaeffer referenced the minutes of the Council meetings on April 7 and 28, 2020 delegating the time for lifting the suspension of the tax to the State of Delaware by virtue of the State of Emergency Order and that after more than a year, that time frame was still unclear and confusing to many; he commented on his intention of his Motion at the May 25, 2021 Council meeting to defer the tax; commented that, on that date, the Council took action to take back control of that time frame and made it clear what they felt was or wasn't in place by the State of Delaware and the Council had the opportunity to reinstate the tax or defer the tax and, in his opinion, a Motion was made and passed to defer the tax; that, on that date, Council could have taken no action and tabled the matter if they wanted to stick to the unclear timeframe that the State had imposed or they could have suspended the tax on the small businesses which is what he thinks is what they did; he commented that the Council took action to defer lifting the suspension on May 25, 2021 and stated that it is clear that that is the Motion made; that Council can take another vote on the issue if they need to, just like they did on April 28, 2020 when the original Motion was made and reaffirmed to suspend the lodging tax; he stated that it is his perception that no reasonable person would agree that this reinstatement of the tax could not have been handled in a better fashion and with more transparency. Mr. Schaeffer stated that he would like to introduce an ordinance to rescind this tax; however, he does not want to take up the County Attorney's time in drafting the ordinance if there is not a consensus to rescind the tax.

Mr. Vincent asked if there was a consensus of Council to draft an ordinance to rescind the accommodations tax.

Mr. Schaeffer and Mrs. Green stated their support for the introduction of an ordinance to rescind the tax.

Mr. Rieley stated that he supported the tax when it was originally introduced because he favors pushing the tax burden off of the citizens of

**Accommodations Tax
(continued)**

Sussex County and on to the visitors to the County who come here and take advantage of the amenities because he believes they should help bear that cost. Mr. Rieley stated that he does not support rescinding the tax.

Mr. Hudson stated that he agrees with Mr. Rieley's comments; that the tax is for the people that come here and use the County's infrastructure; and that the tax would help pay for the repairs to that infrastructure. Mr. Hudson stated that he does not support rescinding the tax.

Mr. Vincent stated that he supported the tax when it was originally introduced and he thinks the Council did it right; that the Council was approached about having a tax to help with some things like the dredging of the Inland Bays; that he did hear opposition because the proposed ordinance did not include Airbnbs and the opposition thought everyone should pay the tax; that they heard from people regarding hotels and motels in towns and cities that had the tax who thought that they were being treated unfairly because the County didn't have a tax and it wasn't a level playing field.

Mr. Schaeffer stated that when people pay a tax, that is disposable income that is taken out of their pockets and paid to government and that money cannot be spent in local businesses. He stated that he is for beach replenishment and dredging but they are state and federal issues and the cost should not be passed on to the citizens of Sussex County, and that those issues are public safety issues and Realty Transfer Tax money can be used for that. Mr. Schaeffer stated that he accepts the consensus of the Council.

Mr. Vincent stated that the tax is not on business owners, it is on the people visiting the County. He stated that in regard to the public safety comment, the County cannot use Realty Transfer Tax money for dredging or beach replenishment because that is maintenance and Realty Transfer Tax money must be used for capital projects.

Mr. Rieley stated that, according to Southern Delaware Tourism, the hotels in the area had a very good summer (2021). In 2019, the tax was suspended because the hotels were having a difficult time and in 2020, they had a tough year. However, when the tax was reinstated, they had returned to pre-pandemic levels of occupancy according to Southern Delaware Tourism, so they had recovered and the logic of pushing the tax onto people that come here and use the amenities is legitimate rather than assessing it against the citizens and taxpayers of Sussex County. Mr. Rieley stated that this past two week period of time has been unfortunate in that this matter could have been discussed on the dais openly during a Council meeting as it was done to begin with. He stated that on May 25, 2021, Mr. Schaeffer made a Motion to remove the discussion from the agenda and that on that date, the County Administrator clearly stated that the accommodations tax would be reinstated when the Governor lifted the State of Emergency. Mr. Rieley stated that Southern Delaware Tourism reports that 88% of people that stay in hotels are from out of state, 12% come from Delaware and a

**Accommodations Tax
(continued)**

percentage of those he speculates come from up-state. He referenced the comments made about a tax rebate and stated that it would be illegal to refund the Realty Transfer Tax money to the general property taxpayers – it would have to be returned to the people that paid it and that if this effort was successful, it would hamstring the County’s budget for years to come and could force the County to raise general property taxes to cover the loss of Realty Transfer Tax revenue that covers the cost of public safety, among other items. He noted that having reserves allows the County to enjoy a AAA credit rating and a 10-15 year capital projects budget that accommodates the need of a growing population without borrowing money and paying interest with tax dollars, and it also ensures that the County can fund fire companies, ambulance companies and paramedics.

Mr. Vincent stated that he asked Mr. Moore to research this matter. Mr. Moore reported that, on April 7, 2020, the County suspended the collection of the tax; it was not a suspension of the ordinance itself; it was under the umbrella of the Governor’s State of Emergency proclamation; this was reaffirmed by the Council on April 27, 2020. Mr. Moore stated that he reviewed two things: did it refer specifically to that specific State of Emergency declaration, and it did, and it related to the March 13, 2020 effective date of Governor Carney’s declaration of the State of Emergency and it said, “until such time as the declaration is lifted”. On May 25, 2021, Mr. Lawson had an item on the Agenda entitled “Discussion and Possible Action related to the Collection of Accommodations Tax”. During the process of approving the Agenda on that date, Mr. Lawson indicated there were no recommended changes to the agenda and thereafter, Mr. Schaeffer then stated that he “would like to make a Motion to remove Item 2 under the Administrator’s report; I don’t think the timing is appropriate to even discuss a possible tax increase.” Mr. Vincent suggested to wait until that item came up for discussion and a Motion made at that time, and Mr. Schaeffer agreed so it stayed on the Agenda. When the item came up on the Agenda, Mr. Lawson gave his report and during the report he stated “... the County suspended the Accommodations Tax collection due to the effects of the COVID-19 pandemic and the corresponding Declaration of a State of Emergency by Governor Carney. At that time, the Council voted to suspend the Accommodations Tax until the Governor’s Declaration is lifted... the restrictions are currently being modified and lifted, and the Council could consider reinstating the tax collection since it is unclear when the Governor will end his State of Emergency Declaration.” Further, in regard to the Motion that took place back in 2020, the Council simply stated that it would suspend the tax until the Emergency Declaration was lifted. On May 25, 2021, it was unknown or unclear when the Governor may actually lift the State of Emergency so if Council choose to take action on that date, the Council could reinstate the collection of that tax. Mr. Moore stated that this is the only issue being discussed, whether or not to lift that early; it wasn’t to do away with it totally, it was only about lifting it early before the State of Emergency was lifted. Before any discussion occurred, Mr. Vincent asked Mr. Schaeffer, in light of his prior statement, if he wanted to Move to defer. Mr. Schaeffer Moved to defer and after a vote,

Accommodations Tax
(continued)

the Motion passed. Mr. Moore stated that it is clear to him, based on the transcript (May 25, 2021), that the action that was being discussed was the early reinstatement of the collection of the tax, it was not to abolish the tax nor to extend the stay beyond the lifting of the State of Emergency but instead, possibly ending the abatement immediately instead of when the State of Emergency was over. That Motion to defer stopped the discussion of having that suspension lifted immediately, so then it went back to what the original Motion was, which was when the State of Emergency was lifted, and then the State of Emergency was lifted. Mr. Moore noted that there is a public health emergency but that is different than the State of Emergency.

Mr. Vincent stated that it is his understanding that the tax would go in place when the Governor lifted the State of Emergency and he knew what the Motion was and it was to bring it back automatically with no additional Motion required.

Mrs. Green stated that when they deferred that day (May 25, 2021), they thought it was to defer the tax for a little longer or that it just be deferred.

Mr. Hudson stated that during the meeting in May (May 25, 2021), he seconded Mr. Schaeffer's Motion and it was completely clear to him that the Motion was to defer action on that particular item and not to get rid of the tax. Mr. Hudson noted that, to rescind the tax, it would require (a new ordinance and) a public hearing. Mr. Hudson stated that he voted in favor of implementing the tax in 2019 and he never would have voted to rescind the tax. Mr. Hudson expressed his concerns about accusations that have been made and he stated that this matter was never discussed outside of a Council meeting.

There was no consensus to draft an ordinance.

2021 Re-districting
Process

Mr. Lawson announced the start of the 2021 redistricting process. County Attorney Everett Moore will lead this effort. Mr. Moore noted that, this year, the redistricting process is taking place later than normal due to the delay in the receipt of raw census data as a result of COVID; that information has now been received. Mr. Moore reported that a similar process will be used as was used ten years ago when the County allowed written comments to be offered prior to the drafting of the maps. As part of this redistricting effort, the County is inviting the public to comment on how new Council districts should be drawn; the public can submit comments/suggestions by email to redistricting@sussexcountvde.gov. Comments will be received until the close of business on December 1, 2021. Comments received will be taken into consideration and reported to Council. Mr. Moore stated that, in regard to the drafting of the maps, several items are taken into consideration:

- the overall growth and population
- trying to keep communities of interest together

2021 Re-districting Process (continued)

- looking at major landmarks, roads, streams and rivers, etc.
- looking at historic trends and data

Mr. Moore reported that: the County will work closely with the Board of Elections to make sure the district lines are consistent with the locations of polling places; and the lines of the State Senate and House maps will be considered and incorporated as much as possible. After completing this process, including receipt of written public comments, maps will be drafted and brought to the Council in December. The public will then have the opportunity to review the maps prior to an ordinance being introduced. Once the ordinance is introduced, a public hearing will be scheduled and held.

Administrator'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, the following projects have received Substantial Completion: Rehoboth Shores Area 2 effective October 26th, Marsh Island – Phase 2 (Construction Record) effective November 3rd, and Canal Corkran – 8 Lot Expansion effective November 4th.

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

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet Monday, November 15th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. A copy of the agenda for the meeting is attached.

3. Veterans Day Holiday

County offices will be closed on Thursday, November 11th in honor of Veterans Day. Offices will reopen on Friday, November 12th, at 8:30 a.m.

4. Eugene Bayard

It is with sadness that we note the passing of former County Attorney Eugene Bayard on Saturday, October 30th. Mr. Bayard served as the County Attorney from January 1991 until December 2002. We would like to extend our condolences to the Bayard family.

(Attachments to the Administrator's Report are not attached to the minutes.)

Former Governor Minner Mr. Lawson recognized the passing of Former Governor Ruth Ann Minner on November 4, 2021. A Memoriam issued by the Sussex County Council will be presented to the family.

Advisory Committee Vacancy Mr. Rieley referenced the second item under the Administrator's Report and noted that there is a vacancy in District 5 on the Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County and he encourages anyone in the public with an interest in serving on this Committee to notify the County.

Blackwater Village Area/ Additional Utility Services/ Public Hearing Results John Ashman, Senior Manager of Utility Planning and Design, and Hans Medlarz, County Engineer, reported that, on August 24, 2021, the Engineering Department requested and received the Council's approval to prepare and post notices for a public hearing for additional utility services for the Blackwater Village Area. The public hearing was held and the Engineering Department presented estimated costs, timelines, and referendum/voting guidelines. The residents in attendance objected to the estimated costs stating that they had no knowledge of these costs prior to submitting the petition. The residents inquired about a path forward without involving a referendum. Upon their inquiry, they were advised that they could submit notarized letters from at least 50 percent of the lot owners for the Council's consideration. To date, 147 signed and notarized letters for the revocation of their interest in central water, street lighting and drainage improvements have been submitted. With 268 improved lots in the Blackwater Village Area, 135 constitute a majority. Based on the number of notarized letters received, the Engineering Department recommends terminating the process and not proceeding with the referendum. It was noted, however, that this is an area that has already been established to receive central sewer; therefore, the design of the central sewer will proceed as scheduled.

M 476 21 Terminate Process and Stop Referendum for the Blackwater Village Additional Utilities Project A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that based on the receipt of notarized letters representing more than 50 percent of the Blackwater Village owners, the Sussex County Council hereby grants permission for the Sussex County Engineering Department to terminate the process and stop the referendum for the Blackwater Village Additional Utilities Project.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

Gavel Mr. Vincent passed the gavel to Mr. Rieley.

Conley's Chapel Sewer Ext. Hans Medlarz, County Engineer, presented a request for the approval of a purchase order for sewer extension to the Conley's United Methodist Church Historic Chapel off of Robinsonville Road. Mr. Medlarz reported

**Conley's
Chapel
Sewer
Extension
PO
Approval
(continued)**

that a letter was received from the Church for the expansion of sewer service to the Chapel and thrift store facility. The Engineering Department previously approved construction plans for a residential subdivision known as Beachtree Preserve across Robinsonville Road from the Chapel. The Department was also able to secure a "no cost" easement from the developers extending from the interior right-of-way of Beachtree Preserve where existing sewer is located to Robinsonville Road across from the Chapel. Under the County Engineer's authority, Mr. Medlarz authorized the contractor to place the order for materials. He noted that the authorization of the construction had to be placed on the Council's agenda for approval. He further noted that A.P. Croll & Son is the contractor of record for the Developer. The Developer granted the County the easement necessary to extend the sewer to the Chapel.

**M 477 21
Approve
Purchase
Order/
Conley's
Chapel
Sewer
Extension**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, based upon the recommendation of the Sussex County Engineering Department, that the Council approves a Purchase Order to A.P. Croll & Son in the amount of \$18,989.25 for the extension of sewer infrastructure from the Beachtree Preserve Community to the Historic Conley's Chapel.

Motion Adopted: 4 Yeas, 1 Abstention

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Abstained**

Mr. Vincent did not vote since he was out of the room during the discussion.

Gavel

Mr. Rieley turned the gavel back over to Mr. Vincent.

**Grant
Requests**

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

**M 478 21
Council-
manic
Grant**

A Motion was made by Mrs. Green, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 from Mrs. Green's Councilmanic Grant Account, \$500.00 from Mr. Rieley's Councilmanic Grant Account, and \$500.00 from Mr. Schaeffer's Councilmanic Grant Account) to Delmarva Clergy United in Social Action Foundation for Christmas gifts for children.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 479 21
Countywide
Youth
Grant**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$1,500.00 from Countywide Youth Grants to Coastal Concerts for music scholarships.

Motion Adopted: 5 Yeas.

**Introduction
of Proposed
Ordinances
(continued)**

Use No. 2309) filed on behalf of Rockswitch Properties, LLC (Tax I.D. No. 235-8.00-62.00) (911 Address: 12537 Coastal Highway, Milton).

Mrs. Green introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE AND SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 0.65 ACRES, MORE OR LESS” (Conditional Use No. 2312) filed on behalf of G. Fedale (Tax I.D. No. 133-2.00-38.00) (911 Addresses: 24207 and 24217 DuPont Blvd., Georgetown).

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF 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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” (Change of Zone No. 1949) filed on behalf of J.G. Townsend Jr. & Co. (Tax I.D. No. 334-12.00-16.04) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

**Corre-
spondence**

Mr. Lawson read correspondence from Mr. Jack Leonard thanking Mr. Hudson and Sue Keefe, Director of South Coastal Library, for their assistance in making computers at the library available for disabled veterans to use video-conferencing technology for their appeal claims with the Department of Veterans Affairs.

**M 482 21
Go Into
Executive
Session**

At 11:46 a.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green, to recess the Regular Session and go into Executive Session to discuss matters relating to pending/potential litigation, land acquisition and personnel.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Executive
Session**

At 11:50 a.m., an Executive Session of the Sussex County Council was held to discuss matters relating to pending/potential litigation, land acquisition and personnel. The Executive Session concluded at 1:23 p.m.

**M 483 21
Reconvene**

At 1:33 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.

**M 483 21
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

E/S Action

There was no action on Executive Session matters.

Rules

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

**Public
Hearing/
CU 2265**

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 CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS” (Conditional Use No. 2265) filed on behalf of Pro Carpet, LLC (Tax I.D. No. 234-21.00-189.00) (911 Address: 26315 Miller Street, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended approval with the following conditions:

- a. The use shall be limited to parking of vehicles, trailers and equipment associated with the Applicant’s carpet business. No business shall be conducted on the site, and no retail sales shall occur on the site.**
- b. Although the Applicant’s vehicles are permitted on the site, no vehicle maintenance shall occur on the site.**
- c. No junked, inoperable or untitled vehicles or trailers shall be located on the site.**
- d. The areas set aside for vehicle parking shall be clearly shown on the Final Site Plan and these areas shall be clearly marked upon the site itself.**
- e. Any dumpsters or trash containers shall be screened from view of neighboring properties and the front roadway.**
- f. Because this is a primarily residential area, no sign shall be permitted.**
- g. No storage of hazardous materials shall be permitted on the site. Any other materials associated with the use shall only be stored indoors.**
- h. Failure to abide by these conditions of approval may be grounds for revocation of this Conditional Use.**
- i. 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 October 14 and 28, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

**Public
Hearing/
CU 2265
(continued)**

The Council found that Juan Izara was present and spoke on behalf of the application. Mr. Izara stated that they do not propose to conduct a business on the site; that they only want to park employees' vehicles there; that the employees will park there and then go to the job site in vans; that one of the employees lives on the site; that there are no more than five (5) employees parking on the site; that they do not need to do any maintenance of the vehicles on the property; and that they agree with the conditions recommended by the Planning and Zoning Commission.

Public comments were heard.

There were no public comments in support of the application.

Melody Johnson spoke in opposition to the application. She stated that she lives on Miller Street which is the same street where the application site is located and she expressed concern about additional traffic along the road, which is a dead-end road with only fifteen (15) houses located along it. She also stated that she does not want her property devalued by the use.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 484 21
Adopt
Ordinance
No. 2808/
CU 2265**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to Adopt Ordinance No. 2808 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS" (Conditional Use No. 2265) filed on behalf of Pro Carpet, LLC (Tax I.D. No. 234-21.00-189.00) (911 Address: 26315 Miller Street, Millsboro), with the following conditions:

- a. The use shall be limited to parking of vehicles, trailers and equipment associated with the Applicant's carpet business. No business shall be conducted on the site, and no retail sales shall occur on the site.**
- b. Although the Applicant's vehicles are permitted on the site, no vehicle maintenance shall occur on the site.**
- c. No junked, inoperable or untitled vehicles or trailers shall be located on the site.**
- d. The areas set aside for vehicle parking shall be clearly shown on the Final Site Plan and these areas shall be clearly marked upon the site itself.**
- e. Any dumpsters or trash containers shall be screened from view of neighboring properties and the front roadway.**
- f. Because this is a primarily residential area, no sign shall be permitted.**
- g. No storage of hazardous materials shall be permitted on the site. Any other materials associated with the use shall only be stored indoors.**
- h. Failure to abide by these conditions of approval may be grounds for**

**M 484 21
(continued)**

- revocation of this Conditional Use.**
- i. 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: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2267**

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 CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS” (Conditional Use No. 2267) filed on behalf of Cynthia Gibbs (Tax I.D. No. 230-20.00-9.10) (911 Address: 11420 Hollytree Road, Lincoln).

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended approval with the following conditions:

- a. The use shall be limited to a catering business. No events catered as part of the Applicant’s business shall occur on the site.**
- b. The site shall maintain its residential appearance and the catering business shall be conducted from the home on the property.**
- c. One lighted sign shall be permitted. It shall not be any larger than 32 square feet in size.**
- d. No catered events shall occur on this property.**
- e. The failure to comply with any of these conditions of approval may result in the revocation of this Conditional Use.**
- f. 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 October 14 and 28, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Cynthia Gibbs was present on behalf of her application. Ms. Gibbs stated that she has operated a food truck in the past and now wants to start her own catering business; that she cannot run her catering business from her home without approval; that she cannot run her catering business from her food truck; and that she agrees with the conditions recommended by the Planning and Zoning Commission.

**Public
Hearing
(continued)**

There were no public comments.

The Public Hearing and public record were closed.

**M 485 21
Adopt
Ordinance
No. 2809/
CU 2267**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to Adopt Ordinance No. 2809 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS” (Conditional Use No. 2267) filed on behalf of Cynthia Gibbs, with the following conditions:

- a. The use shall be limited to a catering business. No events catered as part of the Applicant’s business shall occur on the site.**
- b. The site shall maintain its residential appearance and the catering business shall be conducted from the home on the property.**
- c. One lighted sign shall be permitted. It shall not be any larger than 32 square feet in size.**
- d. No catered events shall occur on this property.**
- e. The failure to comply with any of these conditions of approval may result in the revocation of this Conditional Use.**
- f. 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: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2268**

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 BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS” (Conditional Use No. 2268) filed on behalf of Staci C. and Winfield S. Walls, Jr. (Tax I.D. No. 234-33.00-44.00) (911 Address: 30600 and 30606 Gull Point Road, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended approval with the following conditions:

- a. The use shall be limited to a boat shrink wrapping business only, which shall include temporary storage of boats, materials, and equipment related to the operation of this business. The use shall only occupy a**

**Public
Hearing/
CU 2268
(continued)**

2.0-acre portion of the entire property, and that the 2.0-acre area shall be shown on the Final Site Plan. This area shall be located to the rear of the site so that it is screened from view of Gull Point Road.

- b. There shall be no retail sales occurring from the site.**
- c. No maintenance of boats shall occur on-site.**
- d. No unregistered or permanently inoperable boats, trailers, or watercraft shall be stored at this site.**
- e. There shall not be any boats permanently stored on this site other than the Applicant's own boats or watercraft.**
- f. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Sunday.**
- g. All business related equipment and materials shall always be kept in a neat and presentable appearance.**
- h. The existing landscape buffer shall continue to be maintained between the southern side yard property line and the neighboring property for the entire duration the use is operated on the property. The Final Site Plan shall identify this landscape buffer area.**
- i. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- j. One lighted sign shall be permitted. The sign shall be no larger than 32 square feet per side.**
- k. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- l. The Applicants shall comply with DelDOT requirements, including any entrance or roadway improvements.**
- m. Failure to comply with any of these conditions may 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 October 14 and 28, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Ms. Mackenzie Peet, Attorney, was present on behalf of the Applicants. She stated that the Applicants occupy the home located towards the front of the property; that they wish to operate a boat shrink-wrapping business on approximately 2 acres of their 3.97 acre parcel; that the use will be concentrated around their approximately 1,500 sq. ft. pole barn, more or less, located in the upper middle portion of their property which is shown on the survey prepared by Miller Lewis; that area zonings include AR, MR, HR-2 and Marine; that the Planning and Zoning Commission recommended approval with conditions and that the reasons and conditions stated by the Commission are acceptable to the Applicants except for a slight clarification to Condition A; that Condition A presently requires that "This area shall be located to the rear of the site so that it is

**Public
Hearing/
CU 2268
(continued)**

screened from view of Gull Point Road.”; that the use will specifically be concentrated towards the upper middle of the property around the 1,500 sq. ft. pole barn; that the use will be located to the rear of the house; and that this area will be identified on the Final Site Plan.

There were no public comments.

The Public Hearing and public record were closed.

**M 486 21
Amend
Condition/
CU 2268**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Amend Condition A recommended by the Planning and Zoning Commission to read as follows: “The use shall be limited to a boat shrink wrapping business only, which shall include temporary storage of boats, materials, and equipment related to the operation of this business. The use shall only occupy a 2.0-acre portion of the entire property, and that the 2.0-acre area shall be shown on the Final Site Plan. This area shall be located to the rear of the home so that it is screened from view of Gull Point Road.”

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 487 21
Adopt
Ordinance
No. 2810/
CU 2268**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2810 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS” (Conditional Use No. 2268) filed on behalf of Staci C. and Winfield S. Walls, Jr., with the following conditions, as amended:

- a. The use shall be limited to a boat shrink wrapping business only, which shall include temporary storage of boats, materials, and equipment related to the operation of this business. The use shall only occupy a 2.0-acre portion of the entire property, and that the 2.0-acre area shall be shown on the Final Site Plan. This area shall be located to the rear of the home so that it is screened from view of Gull Point Road.
- b. There shall be no retail sales occurring from the site.
- c. No maintenance of boats shall occur on-site.
- d. No unregistered or permanently inoperable boats, trailers, or watercraft shall be stored at this site.
- e. There shall not be any boats permanently stored on this site other than the Applicant’s own boats or watercraft.
- f. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Sunday.

**M 487 21
Adopt
Ordinance
No. 2810/
CU 2268**

- g. All business related equipment and materials shall always be kept in a neat and presentable appearance.**
- h. The existing landscape buffer shall continue to be maintained between the southern side yard property line and the neighboring property for the entire duration the use is operated on the property. The Final Site Plan shall identify this landscape buffer area.**
- i. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- j. One lighted sign shall be permitted. The sign shall be no larger than 32 square feet per side.**
- k. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- l. The Applicants shall comply with DelDOT requirements, including any entrance or roadway improvements.**
- m. Failure to comply with any of these conditions may 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: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2269**

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 TRACTOR TRAILER PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.17 ACRES, MORE OR LESS” (Conditional Use No. 2269) filed on behalf of Dennis Nelson, Jr. (Tax I.D. No. 531-12.00-129.00) (911 Address: 26147 Craigs Mill Road, Seaford).

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended denial.

(See the minutes of the Planning and Zoning Commission dated October 14 and 28, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Dennis Nelson, Jr. was present on behalf of his application. He stated that he started out with one truck and his business grew and now supports eight families; that he is looking for a more suitable site which is proving difficult to find; that he is hoping to continue the use at

**Public
Hearing/
CU 2269
(continued)**

this site, with restrictions, until he can find a new site; that he has taken measures to correct things that people have expressed concern about and opposition to; and that there are other commercial businesses in the area.

Public comments were heard.

There were no public comments in support of the application.

Karl and Donna Steinbiss, neighboring property owners, spoke in opposition to the application and expressed concern about the growth of Mr. Nelson's business, especially the number of trucks growing from one to five or six active trucks; that one truck was fine but no more; that the road the trucks travel on to the property are tar and chip roads with no shoulders; that the trucks "eat up" the roads; that the roads and the area are not made for truck traffic; that there are derelict trucks on the site; that the Applicant is not a good steward of his land; that their parking lot is not paved; and that there is concern with spillage of oil, etc. especially with a nearby body of water.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 488 21
Defer
Action/
CU 2269**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to defer action on Conditional Use No. 2269) filed on behalf of Dennis Nelson, Jr.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 489 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to adjourn at 2:15 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, 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.}