

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 12, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 12, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	Councilman
Samuel R. Wilson Jr.	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 556 19
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of November 5, 2019 were approved by consent.

**Public
Comments**

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

**Collective
Bargaining
Agreement/
AFSCME
AFL-CIO/
Local
Union
1926**

Mr. Lawson reviewed the Collective Bargaining Agreement (CBA) between Sussex County and AFSCME affiliated Local Union No. 1926. The terms of the CBA were agreed upon by both sides after several days of negotiations, including mediation. The terms of the agreement were previously presented to the Council members in Executive Session and a copy of the agreement was previously distributed to the Council members. Mr. Lawson noted that the terms have not changed since last reviewed during a qualified discussion in Executive Session. The members of the Local Union No. 1926 ratified the CBA on November 4, 2019.

M 557 19

A Motion was made by Mr. Burton, seconded by Mr. Wilson, that the Sussex County Council authorizes the County Administrator to sign the ratified Collective Bargaining Agreement between Sussex County and the

M 557 19 Ratify Collective Bargaining Agreement (continued)	Delaware Public Employees Council 81 AFSCME AFL-CIO and its Affiliated Local Union 1926. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea
Adminis- trator's Report	Mr. Lawson read the following information in his Administrator's Report. 1. <u>Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County</u> The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet November 18th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. The Conference Planning Subcommittee will also meet at 11:30 a.m. to discuss planning for the May 8, 2020, conference. A copy of the agenda for each meeting is attached. [Attachments to the Administrator's Report are not attachments to the minutes.]
Western Sussex Trans- mission Facilities/ Contract 4/ Project S19-28	Hans Medlarz, County Engineer, presented the bid results for the Western Sussex Transmission Facilities, Contract 4, Pump Stations, Project S19-28. The pump stations will be located in Bridgeville and Seaford. Four bids were received; Zack's Excavating, Inc. submitted the lowest responsible bid in the amount of \$3,236,939.00. The Engineering Department and George, Miles & Buhr recommend awarding the project to Zack Excavating, Inc. in the amount of \$3,236,939.00, which includes the Total Base Bid, including Bid Alternate No. 1.
M 558 19 Award Contract S19-28/ Western Sussex Trans- mission Facilities	A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Contract S19-28, Western Sussex Transmission Facilities, Contract 4, Pump Stations, be awarded to Zack Excavating, Inc. for the Base and Alternate No. 1 total bid of \$3,236,939.00. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea
FY 2019 General Labor & Equipment Contract	Hans Medlarz, County Engineer, presented Change Order No. 2 to the FY 2019 General Labor & Equipment Contract, Project No. 19-01. Mr. Medlarz reported that several emergencies and several urgent repairs resulted in the Change Order; in order to cover the expanded scope, the

(continued) **Engineering Department requests approval of Change Order No. 2, in the total amount of \$292,200.00. Mr. Medlarz presented a list of items that are covered in Change Order No. 2.**

M 559 19 **A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon**
Approve **the recommendation of the Sussex County Engineering Department, that**
Change **Change Order No. 2, FY 20, for Contract 19-01, FY 19 General Labor &**
Order/ **Equipment Contract, in the amount of \$292,200.00, be approved for**
Contract **emergency work and urgent repair items.**
19-01/

FY 2019 **Motion Adopted: 5 Yeas.**

General **Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;**
Labor & **Mr. Wilson, Yea; Mr. Burton, Yea;**
Equipment **Mr. Vincent, Yea**
Contract

Grant **Mrs. Jennings presented a grant request for Council's consideration.**
Request

M 560 19 **A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to give**
Council- **\$1,000.00 (\$500.00 each from Mr. Rieley's and Mr. Vincent's Councilmanic**
manic **Grant Accounts) to the Good Samaritan Aid Organization for their annual**
Grant **Christmas outreach for needy families.**

Motion Adopted: 5 Yeas.

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

Old **Under Old Business, the Council considered Conditional Use No. 2183 filed**
Business/ **on behalf of Brent and Lisa Hershey.**
CU 2183

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred. On September 26, 2019, the Commission recommended approval with conditions.

The County Council held a Public Hearing on this application on September 24, 2019 at which time action was deferred.

The public record was officially closed on October 8, 2019.

M 561 19 **A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt**
Adopt **Ordinance No. 2688 entitled "AN ORDINANCE TO GRANT A**
Ordinance **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**
No. 2688/ **RESIDENTIAL DISTRICT FOR A STORAGE FACILITY WITH**
CU 2183 **OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF**
 LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX
 COUNTY, CONTAINING 9.167 ACRES, MORE OR LESS" (Conditional

**M 561 19
Adopt
Ordinance
No. 2688/
CU 2183
(continued)**

Use No. 2183) filed on behalf of Brent & Lisa Hershey, with the following conditions:

- A. There shall not be any outside storage on the premises. This includes the prohibition against outside storage of building materials, construction materials, boats and RVs within the site.**
- B. The storage shall be limited to the structure that is identified as “The Existing Hog Barn” which is no longer used in farming operations. The collapsed dairy barn may not be rebuilt and used for storage purposes.**
- C. As stated by the Applicant, no sign shall be permitted.**
- D. The site shall be posted with hours of operation limited to 6:00 a.m. until 9:00 p.m. seven (7) days per week.**
- E. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.**
- F. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Old
Business/
CU 2184**

Under Old Business, the Council considered Conditional Use No. 2184 filed on behalf of Linda Ann Yupco-Connors.

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred. On September 26, 2019, the Commission recommended denial .

The County Council held a Public Hearing on this application on September 24, 2019 at which time action was deferred.

The public record officially closed on October 8, 2019.

**M 562 19
Adopt
Proposed
Ordinance/
CU 2184

Denied**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRE, MORE OR LESS” (Conditional Use No. 2184) filed on behalf of Linda Ann Yupco-Connors.

Motion Denied: 5 Nays.

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

**Old
Business/
CU 2187**

Under Old Business, the Council considered Conditional Use No. 2187 filed on behalf of Daniel Ostinvil.

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2019 at which time action was deferred. On September 26, 2019, the Commission recommended denial.

The County Council held a Public Hearing on this application on September 24, 2019 at which time action was deferred.

The public record officially closed on October 8, 2019.

**M 563 19
Adopt
Ordinance
No. 2689/
CU 2187**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2689 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MOTOR VEHICLE SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.1657 ACRE, MORE OR LESS” (Conditional Use No. 2187) filed on behalf of Daniel Ostinvil, with the following conditions:

- A. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.**
- B. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.**
- C. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.**
- D. The site shall be subject to all DelDOT entrance and roadway requirements.**
- E. The cars shall be parked within a fenced area, and the fence and parking area shall be shown on the Final Site Plan.**
- F. The automotive sales hours shall only be from 9:00 a.m. through 3:30 p.m., Monday through Friday, and 9:00 a.m. until 2:30 p.m. on Saturdays. There shall not be any Sunday hours.**
- G. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.**
- H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Lodging
Tax
Ordinance**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 103 (“TAXATION”) OF THE CODE OF SUSSEX COUNTY TO INCLUDE A NEW ARTICLE VI, §§ 103-39 THROUGH 103-42 WHICH SHALL PERMIT THE IMPOSITION

**Public
Hearing/
Lodging
Tax
Ordinance
(continued)**

OF A LOCAL LODGING TAX OF NO MORE THAN 3% OF THE RENT FOR ANY ROOM IN A HOTEL, MOTEL OR TOURIST HOME IN THE UNINCORPORATED AREAS OF SUSSEX COUNTY”.

Synopsis: This Ordinance amends Chapter 103 (“Taxation”) of the Sussex County Code by adopting a new Article VI, §§ 103-39 through 103-42 which shall permit the imposition of a local lodging tax of no more than 3% of the rent for any room in hotel, motel or tourist home in the unincorporated areas of Sussex County in accordance with 9 Del. C. § 8112(b). The effective date for the tax imposed by this ordinance is January 1, 2020. Accordingly, operators of hotels, motels and tourist homes shall remit to the Sussex County Department of Finance, or its designee, the lodging tax imposed herein for January 2020 no later than February 15, 2020.

Mr. Lawson explained that this initiative started more than a year ago when the Delaware General Assembly approved enabling legislation for New Castle County to enact a lodging tax in that county only. With legislators’ support, both Sussex and Kent counties were successful in having the General Assembly pass enabling legislation for the remaining two counties this year (House Bill 228). Per the legislation, Sussex County may impose up to a 3% tax of the rent for any room or rooms in a hotel, motel, or tourist home, as defined by Delaware Code. The tax does not apply to short-term rentals, i.e. Airbnbs, VRBOs, etc. The tax only applies to venues within unincorporated Sussex County. The legislation approved for Sussex County limited the funding categories; the lodging tax funding can only be spent on projects within Sussex County and only on the following: capital and operating costs of beach nourishment, waterway dredging, economic development, tourism programs, recreational activities, and water quality and flood control projects. In addition, Sussex County is permitted to use up to 5% of the funding for administration costs. To implement this new lodging tax, Council is required to pass an ordinance establishing the levy.

Mr. Lawson reported on the County’s proposal to collect the funds. If the Proposed Ordinance is passed, the funds will be collected through a monthly payment voucher; collections would begin in January 2020. It is estimated that this tax will generate \$1.3 million annually for Sussex County. This funding will be placed in a “lock box” account and controlled by the Sussex County Council; any future expenditures will be decided by the County Council and deliberated during the annual budget approval process. A priority will be focused on waterway dredging; County staff has already met with DNREC staff and identified eligible projects.

Mr. Lawson announced that information, including the monthly payment voucher, is available on the County’s website at www.sussexcountytde.gov/lodging-tax.

Public comments were heard.

**Public
Hearing/
Lodging
Tax
Ordinance
(continued)**

Dan Kramer stated that the County has surplus money in the budget and he questioned why the County is taxing for something when the funding is not needed. Mr. Kramer opposed the funding going to DNREC projects.

Julie Cummings, motel owner, stated that she is not opposed to the 3 percent but she is opposed to the State's definition of what a tourist home is; that the State needs to change the definition to include everyone, including condos, campgrounds, and Airbnbs; that renters of short term rentals use the beaches and they are all beneficiaries of the tourism programs in the County; and that excluding short term rentals from paying the tax gives them an unfair advantage. Ms. Cummings asked Council to send the legislation back to the State asking them to institute a fee on short term rentals.

Coy Johnston, hotel owner, stated that this extra tax will be a burden on the guests; that the hotel business is seasonal; that reservations were down in 2019; and that there is a fine line where hotels/motels will be charging too much.

Reinie Thompson, hotel manager, stated that she agrees with the other two speakers; that when you add the State tax with this proposed tax, it totals 11 percent, which is more than the tax in Ocean City, Maryland; that where the funding is going is loosely defined; that she questions if any research has been done on short term rentals and how much the County would gain; that possibly a smaller tax could be charged to short term rentals; and that this year has been a down year for the hotel/motel industry in the County.

Scott Thomas, Executive Director of Southern Delaware Tourism, stated that the Council needs to be conscious of what other regions are charging; that Sussex County needs to remain competitive; that when large groups come in, they pay close attention to taxes/costs; and that there is pressure on hotels and motels by short term rentals.

Gina White, Realtor, referenced definitions being used to define tourism housing versus short term lodging and she stated that this is an issue that impacts realtors.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 564 19
Adopt
Ordinance
No. 2687**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2687 entitled "AN ORDINANCE TO AMEND CHAPTER 103 ("TAXATION") OF THE CODE OF SUSSEX COUNTY TO INCLUDE A NEW ARTICLE VI, §§ 103-39 THROUGH 103-42 WHICH SHALL PERMIT THE IMPOSITION OF A LOCAL LODGING TAX OF NO MORE THAN 3% OF THE RENT FOR ANY ROOM IN A HOTEL, MOTEL OR TOURIST HOME IN THE UNINCORPORATED AREAS OF SUSSEX COUNTY".

**M 564 19
(continued)**

Motion Adopted: 5 Yeas.

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

**M 565 19
Go Into
Executive
Session**

At 11:02 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending litigation and land acquisition.

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 11:05 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 litigation and land acquisition. The Executive Session concluded at 12:03 p.m.

**M 566 19
Reconvene
Regular
Session**

At 12:09 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 567 19
Land
2019-R**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the Sussex County Council authorizes the County Administrator to negotiate, enter into a contract, and proceed to closing on property identified as Land 2019-R.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 568 19
Adjourn**

At 12:09 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to adjourn.

Motion Adopted: 4 Yeas, 1 Absent.

**M 568 19
(continued)**

Vote by Roll Call:

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; 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.}