

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 13, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 13, 2018, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
George B. Cole	Vice President
Robert B. Arlett	Councilman
Irwin G. Burton III	Councilman
Samuel R. Wilson Jr.	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 618 18
Amend
and
Approve
Agenda**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to amend the agenda by deleting “Cape Vikings Pop Warner for competition expenses” under “Grant Requests”, and to approve the agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of October 30, 2018 were approved by consent.

**Public
Comments**

Mr. Arlett joined the meeting.

Correspondence

CAPE HENLOPEN SENIOR CENTER, REHOBOTH, DELAWARE.

RE: Letter in appreciation of grant.

KENT-SUSSEX INDUSTRIES, INC., MILFORD, DELAWARE.

RE: Letter in appreciation of grant.

**EASTER SEALS, DELAWARE & MARYLAND’S EASTERN SHORE,
NEW CASTLE, DELAWARE.**

RE: Letter in appreciation of grant.

**Public
Comments
(continued)**

**LEWES SENIOR ACTIVITY CENTER, LEWES, DELAWARE.
RE: Letter in appreciation of grant.**

**SUSSEX COUNTY HABITAT FOR HUMANITY, GEORGETOWN,
DELAWARE.
RE: Letter in appreciation of grant.**

**DELAWARE FOUNDATION REACHING CITIZENS, NEWARK,
DELAWARE.
RE: Letter in appreciation of grant.**

**MILFORD HOUSING DEVELOPMENT CORPORATION, MILFORD,
DELAWARE.
RE: Letter in appreciation of grant.**

**SUSSEX COMMUNITY CRISIS HOUSING SERVICE, GEORGETOWN,
DELAWARE.
RE: Letter in appreciation of grant.**

**Public
Comments**

Public Comments

Dan Kramer raised a question regarding a Motion for Rehearing for the Board of Adjustment. Mr. Kramer also questioned the timing of the posting of the Council packet for this meeting.

Rich Borasso of Sussex Alliance for Responsible Growth stated that he has heard about another ordinance that is in the works in regards to wetlands. Mr. Borasso commented on the amount of land that comes into play and he referenced State of Delaware designated wetlands in Sussex County. (Mr. Borasso distributed a hand-out.)

Sue Claire Harper commented on the 2018 Comprehensive Plan process and the challenges facing the County to implement effective measures to address low to moderate income housing and work force housing needs.

Rob Morgan stated that many in and around Lewes are following the closely what the Council determines and look to the Council for leadership.

**Joshua M.
Freeman
Foundation/
Freeman
State Pre-
sentation**

Patti Grimes, Executive Director of the Joshua M. Freeman Foundation, presented an update on The Freeman Stage at Bayside and the progress they have made in bringing the arts to Sussex County. As part of the Joshua M. Freeman Foundation, they partner to present memorable performances and inspire arts education for all. Ms. Grimes reported on the 2018 season and its economic impact on Sussex County. Ms. Grimes also reported on future expansion plans. Ms. Grimes stated The Freeman Stage is a vessel for presenting a myriad of arts performances throughout the summer, and they could not promote the arts without their many volunteers and funding support. Ms. Grimes thanked the Council for its

(continued) past partnership and continued financial support for transportation costs for children to attend events at The Freeman Stage.

**Public Hearing/
Diamond
Acres
Street-
lighting
District** A Public Hearing was held on the Proposed Diamond Acres Streetlighting District. Earlier in 2018, the Council created the original District; thereafter, petitions were received from outside the original District area to expand the District. Council authorized posting notices on October 9, 2018 and polling letters were mailed. Hans Medlarz, County Engineer, reported on the polling results: 69 percent responded; 51 percent of all parcels responding voted in favor and 18 percent of all parcels responding voted in opposition. Mr. Medlarz also reported that the annual billing rate for the installation of additional streetlighting in the expanded district is to be set between \$65.00 and \$70.00 per year for each property having a residential improvement located within the boundaries of the expanded District.

Public comments were heard. Vicki Baker spoke in support of the Streetlighting District Expansion. Beverly Mitchell spoke in opposition to the Streetlighting District Expansion.

There were no additional public comments and the Public Hearing was closed.

**M 619 18
Adopt
R 017 18** A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Resolution No. R 017 18 entitled "A RESOLUTION EXTENDING THE DIAMOND ACRES STREETLIGHTING DISTRICT".

Motion Adopted: 5 Yeas.

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

**Fourth
Quarter
Employee
Recognition** Mrs. Jennings reported that the County recognizes employees for exceptional service and that a total of twenty-two (22) employees received recognition for the Fourth Quarter of 2018. Mrs. Jennings announced that Paramedic Greg Bell was selected to receive the Fourth Quarter Customer Service Award, and Paramedic Steve Bradley received Honorable Mention.

**John Hall
Recognition** The Council recognized County employee John Hall (Environmental Services) who retired effective October 31, 2018.

**Five
Points
Working
Group
Report** Mr. Lawson reported on the meetings of the Five Points Working Group. Sussex County was represented on the Working Group by Councilman Cole, Councilman Burton and Mr. Lawson. Mr. Lawson reported that the Working Group wrapped up their work in October and he presented the Group's Final Report (Phase I). The Working Group was developed to look for transportation solutions focused on the Five Points area. The Group's recommendations were voted on and are listed in the Final Report, which was distributed to the Council. Mr. Lawson noted that this was Phase 1 and

(continued) that DelDOT plans to continue the process with Phase 2.

Sussex County Land Trust Presentation Casey Kenton, Chairman of the Sussex County Land Trust (SCLT), and Mark Chura, Executive Director of the Sussex County Land Trust, discussed a preservation and recreation opportunity with the purchase of nearly 31 acres of land located on Route 9 near Coolspring; this purchase is proposed to build a trailhead along the Lewes-to-Georgetown Trail. The SCLT is a non-profit organization formed in 2001 dedicated to protecting natural, cultural, agricultural and recreational resources through land preservation, stewardship and education. Since 2003, the County and the SCLT have partnered to use a mix of public and private funds to purchase and preserve open space throughout the County. Mr. Chura reported on the State and private funding secured for this purchase from the State Open Space Council, from DelDOT, and additional funding which is from an undisclosed donor (at this time). Mr. Chura also reported that the SCLT has committed funding to the development of the property to include a parking lot, bicycle kiosk, access road and restroom and that DelDOT has committed work estimated at \$600,000 to connect the parcel and parking lot to the trail. In all, Mr. Chura said acquisition and development of the land totals \$1.6 million; when settlement on the property is concluded by the end of the year, the SCLT will start Phase 1, including design and engineering of the trailhead. A request of \$450,000 in funding from the County was submitted to the Council for its consideration.

M 620 18 Authorize Disbursement of Funds to Sussex County Land Trust A Motion was made by Mr. Cole, seconded by Mr. Burton, that the Sussex County Council authorizes the disbursement of \$450,000 to the Sussex County Land Trust to assist with the purchase of approximately 30.67 acres located at the corner of Route 9, Coolspring Road, Tax I.D. 235-31.00-10.00 for the preservation of open space and public access of the property.

Motion Adopted: 5 Yeas.

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

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

1. 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 November 19th at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. Gina Schoenberg, Deputy Attorney General, Delaware Consumer Protection Unit, will be speaking on "*Fraud and Scams That Target Seniors.*" The Conference Planning Subcommittee will also meet at 11:30 a.m. to discuss planning for the conference scheduled for May 9, 2019. A copy of the agenda for each meeting is

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

attached.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for October 2018 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 194 troopers assigned to Sussex County for the month of October.

3. Douglas Stewart

It is with sadness that we note the passing of County pensioner Douglas Stewart on Tuesday, October 30th. Mr. Stewart began his career with Sussex County in January 2001 and retired from the Engineering Department as a Project Engineer in January 2009 with eight years of service. We would like to extend our condolences to the Stewart family.

4. Thanksgiving Holiday

Please note that Council will not meet on Tuesday, November 20th, during the week of Thanksgiving. County offices will be closed on Thursday, November 22nd, and Friday, November 23rd, for the Thanksgiving holiday and will reopen on Monday, November 26th, at 8:30 a.m. The next regularly scheduled Council meeting will be held on Tuesday, November 27th, at 10:00 a.m.

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

**Proposed
Ordinance
Discussion/
Calculation
of Density/
Wetlands**

The Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115 ("ZONING"), ARTICLE III ("PROVISIONS APPLICABLE TO ALL DISTRICTS"), ARTICLE IV ("AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS") AND ARTICLE XXV ("SUPPLEMENTARY REGULATIONS") WITH RESPECT TO THE CALCULATION OF PERMITTED DENSITY". A Public Hearing was held on the Proposed Ordinance on October 9, 2018 at which time action was deferred.

Mr. Burton stated that the Proposed Ordinance has generated a lot of public input. He also stated that the subject of the Proposed Ordinance has been mentioned in the past two Comprehensive Land Use Plans and is mentioned in the latest draft of the Plan, and it is clear action is needed. Mr. Burton stated that with the introduction of this Proposed Ordinance, it has become clear that there is confusion on the definitions as to what is and what is not calculated in the density. For this reason, Mr. Burton has asked staff to look at the ordinance language and provide a better understanding of the ordinance and definitions contained therein. Vince Robertson,

Proposed Ordinance Discussion/ Calculation of Density/ Wetlands (continued) Assistant County Attorney, referenced definitions in the County Code which the Proposed Ordinance relies on and he reported that staff has worked on the definitions to improve/update them. Mr. Robertson reviewed the proposed definition changes, and other proposed amendments (reference to non-tidal wetlands and concerns of the agriculture community). Mr. Robertson stated that at the next Council meeting, he will submit for consideration proposed motions for amendment to the Proposed Ordinance. It was noted that the proposed amendments will make it clear that the Proposed Ordinance addresses State wetlands only.

Foreign Trade Zone Presentation William Pfaff, Director of Economic Development, reported that, at the request of Mr. Cole, they have been exploring having the Delaware Coastal Airport, Business/Industrial Park designated as a Foreign Trade Zone (FTZ). An overview of a FTZ designation was given along with a presentation on the process for the designation, including the application process, the advantages of the designation, and the cost to set up the FTZ. The presentation/overview was given by Patti Cannon, Division of Small Business, State of Delaware, and Scott Taylor, Esquire, for Miller & Company, P.C., the firm used by the State for the application process.

Materials – Effluent Force Main Pipeline Project/ Bid Award Hans Medlarz, County Engineer, presented the bid results for the South Coastal Regional Wastewater Facility (SCRWF), Materials – Effluent Force Main Pipeline, Project M19-13. Mr. Medlarz reported that to implement the budgeted third capital project at SCRWF, the 40-year old effluent forcemain must be relocated. The segment in question was slated for replacement due to three line breaks in the last 24 months. The relocation is to be accomplished under the General Labor & Equipment Contract; however, in order to conserve funds, the Engineering Department advertised the associated material for direct purchase. Three bids were received and the Engineering Department recommends award to the lowest bidder, Core & Main, L.P. in the amount of \$241,364.80.

M 621 18 Award Bid/ Materials – Effluent Force Main Pipeline Project/ Bid Award A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that the base bid for Sussex County Project M19-13, Materials – Effluent Force Main Pipeline, be awarded to Core & Main, L.P. at the bid amount of \$241,364.80.

Motion Adopted: 5 Yeas.

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

Agricultural Leases for Farmland/ Bid Award Hans Medlarz, County Engineer, reported on the County’s agricultural properties, five of which were being leased on a year-over-year basis. The Engineering Department canceled these types of leases and publicly advertised the Leases for Farmland RFP. Advertisements were directly mailed to the five farmers who lease the properties. On October 31, 2018, four bids were received; each offer was for four crop seasons, terminating

Agricultural Leases for Farmland/ Bid Award (continued) on December 31, 2022, which will bring all of the farm leases to the same termination year. Mr. Medlarz presented the bid award recommendations for the agricultural farmland lease agreements to the highest bidders; the bids were awarded based on the highest offer per acre over the five year period.

M 622 18 Approve Bid Award/ Agricultural Leases for Farmland A Motion was made by Mr. Arlett, seconded by Mr. Cole, based upon the recommendation of the Engineering Department, that the Sussex County Council approve the award of bid items A, C, D and E to C. Magee Farms, LLC for a combined total of 13,237.60 per year and Bid Item B to Darold Adkins in the amount of \$6,660.00 per year, each lease effective through four crop seasons ending on December 31, 2022.

Motion Adopted: 5 Yeas.

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

Maintenance Garage Project/ Change Order Hans Medlarz, County Engineer, presented Change Order No. 2 to the Maintenance Garage Project No. 17-09. The garage is currently being constructed and was previously awarded to Delmarva Veteran Builders, LLC. The majority of the cost included in the Change Order is due to the fire alarm system and the addition of an enhanced HVAC control system.

M 623 18 Approve Change Order/ Maintenance Garage Project A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Change Order No. 2 for Contract No. 17-09, Sussex County Maintenance Garage, be approved, increasing the contract amount by \$73,197.49, for a new contract total of \$2,075,277.49.

Motion Adopted: 5 Yeas.

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

Surface Water Planning Grant/ Silver Lake/ Lake Comegys Hans Medlarz, County Engineer, reported on a Surface Water Matching Planning Grant for the Silver Lake / Lake Comegys Management Plan. The lake falls under three jurisdictions (City of Rehoboth, Town of Dewey Beach, and the unincorporated area of Sussex County). The three jurisdictions have met to discuss the various outfalls contributing to the stormwater run-off into the lake and how that affects the interjurisdictional issues; the State encouraged the three jurisdictions to jointly file for this planning grant whereby the State would provide 50% of the match and the three jurisdictions would provide an equal share (33% each of \$50,000).

M 624 18 **A Motion was made by Mr. Arlett, seconded by Mr. Burton, based upon the**
Approve **recommendation of Sussex County Administration and the Sussex County**
Planning **Engineering Department, that the Sussex County Council approves one-**
Grant **third of the \$50,000.00 required match for the State’s Surface Water**
Match/ **Planning Grant application.**

Silver
Lake/ **Motion Adopted: 5 Yeas.**

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

2018
Compre- **Janelle Cornwell, Planning and Zoning Director, presented for discussion**
hensive **the 2018 Comprehensive Plan including a review of the response to the**
Plan/PLUS **PLUS comments from the Office of State Planning and Coordination,**
Comments **including the following:**

A certification issue in Chapter 4 – Future Land Use, regarding affordable housing and density. Ms. Cornwell reported that new language was submitted back to the Delaware State Housing Authority; the language would be the same for both the Developing Areas and the Coastal Areas, as follows: “Densities – Sussex County’s base density of 2 units per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations. Medium and higher density could be supported in areas: where there is central water and sewer, near sufficient commercial uses and employment centers; where it is in keeping with the character of the area; where it is along a main road at/or near a major intersection; or where other considerations exist that are relevant to the requested project and density.” The Delaware State Housing Authority has responded that the proposed language does comply with the certification.

Mr. Cole questioned, and Council and staff discussed, if the language should not contain a reference to transportation issues.

M 625 18 **A Motion was made by Mr. Arlett to accept the language (as read by Ms.**
Accept New **Cornwell regarding densities / affordable housing), as recommended.**
Language

(DIED) **The Motion died for the lack of a Second.**

M 626 18 **A Motion was made by Mr. Cole, seconded by Mr. Burton, to include**
Accept New **“Level of Service” in the language (as read by Ms. Cornwell regarding**
Language **densities / affordable housing).**

Motion Adopted: 3 Yeas, 1 Nay, 1 Abstention.

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

**Language
Amend-
ment/
Compre-
hensive
Plan**

Mr. Lawson stated that the language will be amended and staff will get feedback from the State and from the Delaware State Housing Authority.

Ms. Cornwell stated that another certification issue is in regard to education and public buildings and that a sentence will be added to address the issue. She noted that other PLUS comments related to general information and the Plan and Maps will be updated as required.

Mr. Robertson reported that in Section 5.2.4.3 regarding wetlands, there is a sentence that states “The County will consider evaluating the County’s buffer requirement for wetlands and based on the type of wetlands will consider establishing a minimum buffer distance of 50 to 300 feet for adequate protection efforts and 100 feet to 500 feet for optimal protection efforts. These distances would be consistent with adequate optimal buffer distances established by DNREC.” Mr. Robertson stated that it is recommended that these sentences be taken out and replaced with “The County will consider evaluating the County’s buffer requirements for wetlands and based on the type of wetland will consider establishing buffer distances for adequate and optimal protection efforts based on DNREC’s recommendations.”

Mr. Robertson stated that staff will run the new language back through PLUS and the PLUS letter will be placed back on the next Council Agenda for consideration.

**Future Land
Use Map
Designations**

Mr. Robertson and Ms. Cornwell reported on the requests to change the Future Land Use Map designation for certain properties (previously presented to Council on October 30, 2018).

**Tax Map
and Parcel
No. 235-
8.00-39.00**

In regard to the request for property located on Route 16 and Route One to change the designation from Low Density to Developing Area, action on this request was previously deferred to determine sewer service availability. Ms. Cornwell reported that a letter has been received from Artesian that states they have the ability to serve the property in the future and that the property is located within their CPCN.

**M 627 18
Designate
Tax Map
and Parcel
No. 235-
8.00-39.00
as
Developing
Area
New Road/
Lewes
Area**

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

Motion Adopted: 5 Yeas.

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

In regard to Council’s request to amend the designation of the east side of Route One near the New Road / Lewes area, Ms. Cornwell presented an amended map to change the designation from the Coastal Area to Low

- New Road/
Lewes
Area
Designation** **Density.**
Mr. Burton asked that the north side of New Road near Great Marsh be taken out of the Coastal Area designation.
- M 628 18
Amend
New Road/
Lewes
Area
Designation** **A Motion was made by Mr. Burton, seconded by Mr. Cole, to amend the left side of New Road taking it out of the Developing District and moving the area of Route One from Nassau to yellow (designation) but New Road to Pilottown would be white (designation) and enclaves would remain.**
After discussion, Mr. Burton and Mr. Cole withdrew their Motions.
- Motion
Withdrawn** **It was noted that staff will adjust the map according to Mr. Burton's wishes and it will be placed on the next Council agenda for consideration.**
- Elizabeth-
town RPC
Property
Designation** **Ms. Cornwell referenced the Old Elizabethtown RPC property which is zoned HR-1 and the land use classification is commercial. She stated that the land use classification and zoning do not match and she recommended that it be designated a Developing Area which surrounds the property.**
- M 629 18
Amend
Elizabeth-
Town RPC
Property
Designation** **A Motion was made by Mr. Cole, seconded by Mr. Burton, that the area identified as the Elizabethtown RPC be designated as part of the Developing Area on the Future Land Use Map in the 2018 Comprehensive Land Use Plan.**
Motion Adopted: 5 Yeas.
**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**
- Compre-
hensive
Plan
Ordinance** **Mr. Robertson stated that action cannot be taken on this date on the Proposed Ordinance to adopt the Comprehensive Plan and that the Proposed Ordinance along with the PLUS matters and the map change will be placed on the next Council agenda for consideration.**
- Old
Business/
CU 2142** **Under Old Business, the Council considered Conditional Use No. 2142 filed on behalf of RH Orr, LLC, c/o Ribera Development, LLC.**
The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018. On October 11, 2018, the Commission recommended approval with the following conditions:
- A. The maximum number of residential units shall be 133. The two units located closest to Central Avenue shall be eliminated to reduce the impact of this development upon properties across Central Avenue and to create greater separation of the development from the Central Avenue right of way.**
 - B. All entrances, intersection, roadway and multi-modal improvements**

**Old
Business/
CU 2142
(continued)**

- shall be completed by the Developer in accordance with all DeIDOT requirements.
- C.** The project shall have active and passive amenities including a swimming pool and pool house. All amenities shall be completed prior to the issuance of the 75th residential building permit in the property.
 - D.** The project shall be served by Sussex County sewer. The Developer shall comply with all Engineering Department requirements including any offsite upgrades necessary to provide service to the project. The connection to the existing County sewer along the northern boundary of this site shall be made by directional drilling under the wetlands. No open trenching or disturbance of the wetlands shall occur as part of the sewer connection.
 - E.** The project shall be served by central water to provide drinking water and fire protection.
 - F.** Interior street design shall meet or exceed the Sussex County street design requirements.
 - G.** As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.
 - H.** The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffers areas. The landscape plan shall clearly designate all existing forested areas that will be preserved.
 - I.** As stated by the Applicant, there shall be a landscape buffer of at least 50 feet along the northeastern common boundary with Forest Landing. There shall be a 20 foot landscaped buffer along the eastern common boundary with Forest Landing. The Developer shall also use every effort to keep existing vegetation or install landscaping along the entire Central Avenue frontage of the property to screen the development from the roadway and properties across from it. These buffer areas shall be shown within the landscape plan submitted as part of the Final Site Plan.
 - J.** Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between the hours of 7:00 am. and 6:00 p.m. Monday through Saturday.
 - K.** Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
 - L.** The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.
 - M.** The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
 - N.** The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - O.** The Developer, and the HOA or Condo Association shall protect and

**Old
Business/
CU 2142
(continued)**

preserve the Hall Cemetery on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for visitors to the cemetery. Access to the cemetery shall be shown on the Final Site Plan.

- P.** The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.
- Q.** The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

The County Council held a Public Hearing on this application on October 30, 2018 at which time action was deferred.

**M 630 18
Amend
Condition**

A Motion was made by Mr. Arlett, seconded by Mr. Burton to amend Condition O to read as follows: “The Developer, and the HOA or Condo Association shall protect and preserve the Hall Cemetery and any other grave sites found on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for visitors to the cemetery. Access to the cemetery shall be shown on the Final Site Plan.”

Motion Adopted: 5 Yeas.

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

**M 631 18
Amend
Condition**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition J to read as follows: “Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, 7:00 a.m. and 2:00 p.m. on Saturdays, and no Sunday hours.

Motion Adopted: 5 Yeas.

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

**Gavel
Passed**

After the following Motion was made by Mr. Arlett, Mr. Vincent passed the gavel to Mr. Cole to make the Second on the Motion.

**M 632 18
Adopt
Ordinance
No. 2612/
CU 2142**

A Motion was made by Mr. Arlett, seconded by Mr. Vincent, to Adopt Ordinance No. 2612 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (135 TOWNHOUSES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 47.7177

**M 632 18
Adopt
Ordinance
No. 2612/
CU 2142
(continued)**

ACRES, MORE OR LESS” (Conditional Use No. 2142) filed on behalf of RH Orr, LLC, c/o Ribera Development, LLC, with the following conditions, as amended:

- A. The maximum number of residential units shall be 133. The two units located closest to Central Avenue shall be eliminated to reduce the impact of this development upon properties across Central Avenue and to create greater separation of the development from the Central Avenue right of way.**
- B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- C. The project shall have active and passive amenities including a swimming pool and pool house. All amenities shall be completed prior to the issuance of the 75th residential building permit in the property.**
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Engineering Department requirements including any offsite upgrades necessary to provide service to the project. The connection to the existing County sewer along the northern boundary of this site shall be made by directional drilling under the wetlands. No open trenching or disturbance of the wetlands shall occur as part of the sewer connection.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. Interior street design shall meet or exceed the Sussex County street design requirements.**
- G. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- H. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffers areas. The landscape plan shall clearly designate all existing forested areas that will be preserved.**
- I. As stated by the Applicant, there shall be landscape buffer of at least 50 feet along the northeastern common boundary with Forest Landing. There shall be a 20 foot landscaped buffer along the eastern common boundary with Forest Landing. The Developer shall also use every effort to keep existing vegetation or install landscaping along the entire Central Avenue frontage of the property to screen the development from the roadway and properties across from it. These buffer areas shall be shown within the landscape plan submitted as part of the Final Site Plan.**
- J. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between the hours of 7:00 am. and 6:00 p.m. Monday through Friday, 7:00 a.m. through 2:00 p.m. on Saturdays, and no Sunday hours.**
- K. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- L. The Applicant shall form a homeowners’ or condominium association**

**M 632 18
Adopt
Ordinance
No. 2612/
CU 2142
(continued)**

responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping stormwater management facilities, erosion and sediment control facilities and other common elements.

- M.** The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- N.** The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O.** The Developer, and the HOA or Condo Association shall protect and preserve the Hall Cemetery and any other grave sites found on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for visitors to the cemetery. Access to the cemetery shall be shown on the Final Site Plan.
- P.** The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.
- Q.** The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Nay.

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

Mr. Cole passed the gavel back to Mr. Vincent.

**Old
Business/
CZ 1856**

Under Old Business, the Council discussed Change of Zone No. 1856 filed on behalf of Melissa and Nate Walker.

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2018 at which time action was deferred. Action was deferred again on October 11, 2018. On October 25, 2018, the Commission recommended approval.

The County Council held a Public Hearing on this application on October 30, 2018 at which time action was deferred.

**M 633 18
Adopt
Ordinance
No. 2613
(CZ 1856)**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Ordinance No. 2613 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS" (Change of Zone No. 1856) filed on behalf of Melissa and Nate Walker.

**M 633 18
(continued)**

Motion Adopted: 4 Yeas, 1 Nay.

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

**Grant
Requests**

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

**M 634 18
Council-
manic
Grant/
Withdrawn**

A Motion was made by Mr. Wilson, seconded by Mr. Burton, to give \$500.00 from Mr. Wilson's Councilmanic Grant Account to Grace-N-Mercy Ministries for their Thanksgiving Community Dinner.

Mr. Wilson and Mr. Burton withdrew their Motions.

**M 635 18
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to give \$1,860.00 (\$500.00 from Mr. Wilson's Councilmanic Grant Account, \$500.00 from Mr. Vincent's Councilmanic Grant Account, and \$860.00 from Mr. Arlett's Councilmanic Grant Account) to Grace-N-Mercy Ministries for their Thanksgiving Community Dinner.

Motion Adopted: 5 Yeas.

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

**M 636 18
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to give \$600.00 from Mr. Vincent's Councilmanic Grant Account to the Town of Blades for the Kid's Christmas Party.

Motion Adopted: 5 Yeas.

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

**M 637 18
Council-
manic
Grant**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to give \$500.00 (\$250.00 each from Mr. Vincent's and Mr. Arlett's Councilmanic Grant Accounts) to American Youth Football (Seaford Elite Travel Football Club) for competition expenses.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Arlett introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONCRETE CONSTRUCTION BUSINESS WITH EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.51 ACRES, MORE OR LESS” (Conditional Use No. 2154) filed on behalf of Arturo Granados-Gonzalez (Tax I.D. No. 134-14.00-20.00, 20.03 & 20.04) (911 Address: None Available).

Mr. Arlett introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 91.304 ACRES, MORE OR LESS” (Conditional Use No. 2158) filed on behalf of Millsboro Solar, LLC (Tax I.D. No. 233-15.00-57.01 & 57.02) (911 Address: None Available).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.3673 ACRE, MORE OR LESS” (Conditional Use No. 2159) filed on behalf of Elisabeth Ann Burkhardt (Tax I.D. No. 335-8.18-28.00) (911 Address: 1500 Savannah Road, Lewes).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.91827 ACRE, MORE OR LESS” (Conditional Use No. 2160) filed on behalf of Procino, Wells and Woodland, P.A. (Tax I.D. No. 335-12.06-3.00) (911 Address: 1519 Savannah Road, Lewes).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE FOR ACCOUNTING, TAX PREPARATION, AND BOOKKEEPING SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.9468 ACRE, MORE OR LESS” (Conditional Use No. 2161) filed on behalf of Howard Weston Development Company, LLC (Tax I.D. No. 334-4.00-80.00) (911 Address: 29065 Lewes-Georgetown Highway (Route 9)).

- Introduction of Proposed Ordinances (continued)** Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (22 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.59 ACRES, MORE OR LESS” (Conditional Use No. 2151) filed on behalf of Francis C. Warrington III (Tax I.D. No. 334-19.00-1.00) (911 Address: 20873 Old Landing Road, Rehoboth Beach).
- M 638 18 Go Into Executive Session** At 1:36 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to recess the Regular Session and to go into Executive Session to discuss matters relating to pending litigation.
- Motion Adopted:** 5 Yeas.
- Vote by Roll Call:** Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea
- Executive Session** At 1:40 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to pending litigation. The Executive Session concluded at 2:08 p.m.
- M 639 18 Reconvene Regular Session** At 2:13 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to come out of Executive Session and reconvene the Regular Session.
- Motion Adopted:** 3 Yeas, 2 Absent.
- Vote by Roll Call:** Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Absent; Mr. Cole, Absent; 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.
- (Mr. Cole and Mr. Wilson joined the meeting during the next public hearing.)
- Public Hearing/ CU 2145** A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (2 DUPLEXES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.169 ACRE, MORE OR LESS” (Conditional Use No. 2145) filed on behalf of 105 Seagull Drive, LLC (Tax I.D. No. 334-23.06-10.00) (911 Address: 38737 Seagull Drive, Dewey Beach).

**Public
Hearing/
CU 2145
(continued)**

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on October 11, 2018 at which time action was deferred. The Commission deferred action again October 25, 2018.

(See the minutes of the Planning and Zoning Commission dated October 11 and 25, 2018.)

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

Mark Davidson of Pennoni Associates was present on behalf of the application. He reported that the application is for one duplex / two units located south of Dewey Beach on Seagull Drive; that the property is located in the Environmentally Sensitive Development District Overlay Zone; that the parcel contains two single family lots contained; that the property abuts up to Anchors Way Condos; that the adjacent property is a duplex; that the County would provide water and sewer; that no Traffic Impact Study was required; that the house will be elevated; that no written road maintenance agreement exists with other property owners; that they are not asking for more density, just a better house; and that the proposed use is not out of character with the area.

Mr. Davidson submitted suggested Findings of Fact and conditions of approval. Mr. Davidson previously submitted an Exhibit Booklet.

Public comments were heard.

There were no public comments in support of the application.

Carol Mertes-Smith spoke on behalf of the Mertes family in opposition to the application. She stated that her mother is the only year-round resident in the area; that the adjacent lot does not contain a duplex but two single family homes; that the condos referenced by the Applicant's attorney are located within city limits; that allowing a multi-family unit could set a precedent; that flooding is a concern; and that the fire hydrant on the property needs to remain accessible. Ms. Mertes-Smith submitted a letter into the record from her mother, Victorine Mertes.

There were no additional public comments.

The public record and Public Hearing were closed.

**M 640 18
Defer
Action on
CU 2145**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to defer action on Conditional Use No. 2145 filed on behalf of 105 Seagull Drive, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2146**

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 AN INDOOR/OUTDOOR SOCCER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.67 ACRES, MORE OR LESS” (Conditional Use No. 2146) filed on behalf of Jose Carrillo (Tax I.D. No. 330-15.00-10.00) (911 Address: 19008 Speed Street, Lincoln).

The Planning and Zoning Commission held a Public Hearing on this application on October 11, 2018 at which time action was deferred. On October 25, 2018, the Commission recommended approval with the following conditions:

- A. The use shall be limited to an indoor and outdoor soccer facility. The indoor soccer shall utilize the existing building. As stated by the Applicant, there will only be one outdoor field.**
- B. The Final Site Plan shall clearly show the location of the outdoor field.**
- C. All parking areas shall be clearly marked on the site.**
- D. The Applicant shall comply with all DelDOT entrance and roadway improvement requirements.**
- E. One unlighted sign shall be permitted. It shall not exceed 32 square feet in size. The location of the sign shall take into account how it may affect neighboring properties along Marshall Street. The location of the sign shall be shown on the Final Site Plan.**
- F. The hours of operation shall be limited to 10:00 a.m. through 10:00 p.m., 7 days a week.**
- G. The outdoor field shall not be lighted for nighttime use.**
- H. Any security lights on the property shall be downward screened so that they do not shine on neighboring properties or roadways.**
- I. Any violation of these conditions shall be grounds for termination of the Conditional Use.**
- J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated October 11 and 25, 2018.)

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

The Council found that Jose Carrillo was present on behalf of the application. He stated that they purchased the warehouse property to use as an indoor and outdoor sports facility; that the building has previously been used for a baseball, gymnastics and cheerleading venue; that there was a previous Conditional Use for a canning business; that DelDOT has approved the driveway; that the entrance is from Marshall Street; that they have sufficient area for parking; that no new building construction is proposed; that they need a sign at the entrance; that there is no intent for any activity behind the building; that they would like two fields outside and

**Public
Hearing/
CU 2146
(continued)**

one field inside the building; and that there will not be any activities after dark.

There were no public comments.

The public record and Public Hearing were closed.

**M 641 18
Amend
Condition**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to amend Condition E to read as follows: "One unlighted sign shall be permitted. It shall not exceed 16 square feet in size. The location of the sign shall take into account how it may affect neighboring properties along Marshall Street. The location of the sign shall be shown on the Final Site Plan."

Motion Adopted: 5 Yeas.

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

**M 642 18
Amend
Condition/
Failed**

A Motion was made by Mr. Cole, seconded by Mr. Burton, to amend Condition B to read as follows: "The Final Site Plan shall clearly show the location of the outdoor fields and fencing along the property line of neighboring properties along Marshall Street."

Motion Failed: 3 Nays, 2 Yeas.

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

**M 643 18
Amend
Condition**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to amend Condition A to read as follows: "The use shall be limited to an indoor and outdoor soccer facility. As stated by the Applicant, there will be up to two (2) outdoor fields. The indoor soccer shall utilize the existing building."

Motion Adopted: 5 Yeas.

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

**M 644 18
Amend
Condition**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to amend Condition B to read as follows: The Final Site Plan shall clearly show the location of the outdoor fields and a vegetated buffer next to the residential properties.

Motion Adopted: 4 Yeas, 1 Nay.

**M 644 18
(continued)**

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

**M 645 18
Adopt
Ordinance
No. 2614/
CU 2146**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2614 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN INDOOR/OUTDOOR SOCCER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.67 ACRES, MORE OR LESS” (Conditional Use No. 2146) filed on behalf of Jose Carrillo, with the following conditions, as amended:

- A. The use shall be limited to an indoor and outdoor soccer facility. As stated by the Applicant, there will be up to two (2) outdoor fields. The indoor soccer shall utilize the existing building.**
- B. The Final Site Plan shall clearly show the location of the outdoor fields and a vegetated buffer next to the residential properties.**
- C. All parking areas shall be clearly marked on the site.**
- D. The Applicant shall comply with all DelDOT entrance and roadway improvement requirements.**
- E. One unlighted sign shall be permitted. It shall not exceed 16 square feet in size. The location of the sign shall take into account how it may affect neighboring properties along Marshall Street. The location of the sign shall be shown on the Final Site Plan.**
- F. The hours of operation shall be limited to 10:00 a.m. through 10:00 p.m., 7 days a week.**
- G. The outdoor field shall not be lighted for nighttime use.**
- H. Any security lights on the property shall be downward screened so that they do not shine on neighboring properties or roadways.**
- I. Any violation of these conditions shall be grounds for termination of the Conditional Use.**
- J. 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. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU 2148**

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 MINISTORAGE WITH CARETAKER RESIDENCE AND OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY,

**Public
Hearing/
CU 2148
(continued)**

CONTAINING 2.31 ACRES, MORE OR LESS” (Conditional Use No. 2148) filed on behalf of Sussex Farms, LLC c/o Samuel Connors (Tax I.D. No. 234-29.00-19.00) (911 Address: 26750 John J. Williams Highway, Millsboro).

The Planning and Zoning Commission held a Public Hearing on this application on October 11, 2018 at which time action was deferred. On October 25, 2018, the Commission recommended approval 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. Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.**
- C. The perimeter of the storage area shall be fenced and gated. As stated by the Applicant, the fencing shall be vinyl coated or shall utilize a similar material. The location and type of fencing shall be shown on the Final Site Plan.**
- D. There shall be only one lighted sign allowed on the site of no more than 32 square feet per side.**
- E. Stormwater management shall be maintained on the site, using Best Management Practices.**
- F. One caretaker’s residence shall be permitted for security.**
- 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 approval of the Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated October 11 and 25, 2018.)

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

The Council found that Larry Fifer, Attorney, was present with Sam Connors, owner of Sussex Farms, LLC and Kevin Smith with The Kercher Group. They stated that the property is located near the intersection of Route 24 and Mount Joy Road; that east of the property is a large office building which houses medical offices and nearby is the Royal Farms complex; that the proposal is to construct three buildings for self-storage facilities; that there would be no outside storage; that no one would live on the property; that there would be a caretaker office (not a residence); that the proposal is not for a typical mini-storage facility – it would be a commercial self-storage facility for vehicles, trailers, boats, etc.; and that they propose that the facility would be used by small contractors for storage of commercial vehicles.

There were no public comments.

(continued) **The Public Hearing and public record were closed.**

**M 646 18
Adopt
Ordinance
No. 2615/
CU 2148**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2615 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MINISTORAGE WITH CARETAKER RESIDENCE AND OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES, MORE OR LESS” (Conditional Use No. 2148) filed on behalf of Sussex Farms, LLC c/o Samuel Connors, 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. Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.**
- C. The perimeter of the storage area shall be fenced and gated. As stated by the Applicant, the fencing shall be vinyl coated or shall utilize a similar material. The location and type of fencing shall be shown on the Final Site Plan.**
- D. There shall be only one lighted sign allowed on the site of no more than 32 square feet per side.**
- E. Stormwater management shall be maintained on the site, using Best Management Practices.**
- F. One caretaker’s residence shall be permitted for security.**
- 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 approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU 2150**

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 LAWNMOWER AND SMALL ENGINE REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.83748 ACRES, MORE OR LESS” (Conditional Use No. 2150) filed on behalf of Leo Sweeney (Tax I.D. No. 230-21.00-12.01 (portion of) (911 Address: 10449 Cedar Creek Road, Lincoln).

The Planning and Zoning Commission held a Public Hearing on this

**Public
Hearing/
CU 2150
(continued)**

application on October 11, 2018 at which time the Commission recommended approval with the following conditions:

- A. The use shall be limited to a lawnmower and small engine repair business. There shall not be any automobile, truck or large equipment repairs on the site.**
- B. The hours of operation shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturdays. There shall not be any Sunday hours.**
- C. The existing sign shall be permitted to remain.**
- D. All repairs and maintenance shall occur inside of a structure.**
- E. Any new security lighting shall be downward screened so that it does shine on neighboring properties or roadways.**
- F. All junk and permanently inoperable lawnmowers or engines shall be screened from view.**
- G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

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

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

The Council found that Leo Sweeney was present on behalf of his application. He stated that he purchased the property six months ago; that he previously leased the property; that he has run his business from the site for ten years and that he has not heard any complaints; that the business is lawnmower and small engine repair; and that he does not have any employees.

There were no public comments.

The Public Hearing and public record were closed.

**M 647 18
Adopt
Proposed
Ordinance/
CU 2150/
Withdrawn**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt the Proposed Ordinance (Conditional Use No. 2150) filed on behalf of Leo Sweeney with the conditions recommended by the Planning and Zoning Commission.

Mr. Arlett and Mr. Cole withdrew their Motions.

**M 648 18
Amend
Condition**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to amend Condition C recommended by the Planning and Zoning Commission to read as follows: "The existing unlit sign shall be permitted to remain and shall not exceed 32 square feet."

Motion Adopted: 5 Yeas

**M 648 18
(continued)**

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

**M 649 18
Adopt
Ordinance
No. 2616/
CU 2150**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Ordinance No. 2616 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LAWNMOWER AND SMALL ENGINE REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.83748 ACRES, MORE OR LESS” (Conditional Use No. 2150) filed on behalf of Leo Sweeney, with the following conditions, as amended:

- A. The use shall be limited to a lawnmower and small engine repair business. There shall not be any automobile, truck or large equipment repairs on the site.**
- B. The hours of operation shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturday. There shall not be any Sunday hours.**
- C. The existing unlit sign shall be permitted to remain and shall not exceed 32 square feet.**
- D. All repairs and maintenance shall occur inside of a structure.**
- E. Any new security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. All junk and permanently inoperable lawnmowers or engines shall be screened from view.**
- G. 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. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1858**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1 – RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS” (Change of Zone No. 1858) filed on behalf of OA Oaks, LLC (Ashton Oaks) (Tax I.D. No. 533-11.00-82.00) (911 Address: 36161 Zion Church Road, Frankford).

The Planning and Zoning Commission held a Public Hearing on this application on October 11, 2018 at which time action was deferred and the

**Public
Hearing/
CZ 1858
(continued)**

record was left open for 15 days to receive written comments and to allow time for the staff to solicit comments from Milford Housing Development Corporation and Sussex County Community Development. No action has been taken by the Commission as of this date.

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

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

Ms. Cornwell reported that approximately 200 letters have been received in opposition to the application and that two letters have been received in support of the application.

It was noted that an Exhibit Book was previously submitted into the record.

The Council found that Jim Fuqua, Attorney, was present with Preston Schell, Principal of OA Oaks, LLC, and Zac Crouch of Davis Bowen & Friedel. They stated that the application is for HR zoning with a RPC overlay; that they propose six apartment buildings with 178 rental units and with recreational amenities; that 36 units will be restricted for workforce housing (with certain qualifications and restrictions); that the application is for a modern affordable housing option for low and moderate income individuals/families; that the application site is located in the Environmentally Sensitive Developing Area where a range of housing is permitted; that the application site is located in Level 3 of the State Strategies for Policies and Spending where growth is anticipated; that the site will be served by County sewer; that they are requesting the RPC to allow for conditions on the application and they submitted proposed conditions, including a private deed restriction on the property; that the trend on Zion Church Road is commercial and the proposal is not spot zoning; that the distance from the buildings to existing homes in the Batson Creek community will be between 667 feet and 732 feet and a portion of that area is wooded and includes wetlands; that there will be no negative impact on the Batson Creek community; that funding will be from the private sector and there will be no federal money nor any HUD money; and that the project is not a low income project. They outlined how the application conforms with the Comprehensive Plan (current and draft) and the Zoning Ordinance; discussed the affordable housing dilemma in Sussex County and especially in the coastal area of the County; referenced the County's Fair Housing Policy and the Affordable Housing Support Policy; discussed the need for workforce housing; described the area including other zonings, uses, housing types and densities; discussed DeIDOT's response/report and requirements, and the traffic impact; discussed conversations with DART regarding a bus route in the area; discussed stormwater management facilities, wetlands delineation, buffers, setbacks; and presented information on the planned amenities. Mr. Fuqua asked that Council remember that this is a zoning decision and not a popularity contest.

**Public
Hearing/
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(continued)**

It was noted that Mr. Fuqua submitted proposed findings and conditions.

Mr. Moore noted that Mr. Fuqua has proposed that the record remain open. Mr. Moore raised a question stating that, if the record does remain open, would Mr. Fuqua put together some kind of penalty if the project does not follow through with the affordable housing proposal as stated on the record, and he asked Mr. Fuqua and the Applicant to consider this.

Public comments were heard.

Tyler Berl, Manager of Community Development and Advocacy for Housing Alliance Delaware, and Josh Grapski, Managing Member of La Vida Hospitality Group, spoke in support of the application and referenced the great need for affordable/workforce housing.

Robert Witsil, Attorney, was present on behalf of the Batson Creek Estates owners, John Cain (the principal contact), and several other property owners in the area, in opposition to the application. He stated that the property owners purchased their homes in reliance upon the AR-1 sections of the Code and the County Comprehensive Plan; that none of his clients are opposed to affordable/workforce housing opportunities; that he argues for the density requirements that presently exists in the Sussex County Code and Comprehensive Plan which never anticipated such an application; that the Engineering Department never anticipated HR development in this area; that approval of this application would be spot zoning; that affordable housing developments should be located in municipal and development areas; that the application site is not in an Environmentally Sensitive Developing Area; that affordable housing developments should be located where there are major intersections and towns and within walking distance to public services; that this is not an area where affordable housing should be located since there is no public transportation and walking is not an option and since there is no shopping center and no medical facilities in the area to support the community; that they question why only 25% of the project is allocated to affordable housing; that Investment Level 3 of State Strategies does not support this project; that this is a high density proposal (600% of allowable density for the adjacent parcel); that the ability for emergency service providers to serve this high density development is a concern; that there is concern that the development would be regulated by private rules; and that approval of this application would be a door opener for very high density unprecedented development.

Mr. Witsil referenced the report from the Planning and Zoning Director (staff analysis) and referenced the application's non-compliance with the County Code, the County's Comprehensive Plan, and Delaware Code. Mr. Witsil discussed DelDOT's letter and the recommendation for a Traffic Impact Study. He also referenced the PLUS Report and DNREC's buffer recommendations.

**Public
Hearing/
CZ 1858
(continued)**

Mr. Witsil stated that this is not a public hearing on the general advisability of affordable housing,

Mr. Witsil submitted exhibits into the record along with Proposed Findings of Fact.

During Mr. Witsil's presentation, a short recess was taken due to an emergency.

The following people spoke in opposition to the application: Lionel Weeks, Dennis Smith, Robert Ackerson, Donald Hess, Rick Evans, Carol Buchler, John Derion, Melissa Pape, John Meiklejohn, Diane Hubert, Julie Cummings, Jim Doyle, and Gary Meiklejohn. They expressed concern about the tax ditches and run-off, no job opportunities in the area, no public transportation, no wooded buffer during the winter months, noise from HVAC units, cars, music, etc., lighting, not an appropriate location, non-compliance with the Comprehensive Plan, the development should be directed to areas with existing infrastructure and services, high volume traffic area with major congestion and increasing accidents on Bayard Road and Zion Church Road, key evacuation route, adding a high density development will have a negative impact on the area; agriculture land and the Inland Bays need to be protected, the proposed density is too high, negative impact on emergency services, the fire company cannot protect the area as they used to due to the population increase, the proposed rental rates for the affordable housing units are not affordable, loss of property values, the school system cannot support the increase in density; a comprehensive plan is needed for affordable rentals, home ownership, etc., flooding is a concern; and the proposed use is not compatible with the area. Dennis Smith reported on an ongoing property dispute regarding this property.

There were no additional public comments.

Mr. Fuqua asked that the record remain open since the Planning and Zoning Commission has not yet made a recommendation.

Mr. Cole questioned the DeIDOT letter and more specifically, DeIDOT requiring the Applicant to pay a fee in lieu of a study. Ms. Cornwell stated that she would look into it.

It was noted that John Cain had wished to speak during the public hearing but had to leave unexpectedly and that the record should remain open for him to submit written comments.

**M 650 18
Record
Left
Open/
CZ 1858**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to leave the record open on Change of Zone No. 1858 for a period of 5 calendar days after the Planning and Zoning Commission makes its recommendation (starting the day after the recommendation is made).

M 650 18 (continued) **(It was noted/clarified that the record is left open only for written public comments regarding the Planning and Zoning Commission's recommendation and for John Cain's written comments.)**

Motion Adopted: 4 Yeas, 1 Nay.

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

M 651 18 **Adjourn** **A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 7:15 p.m.**

Motion Adopted: 5 Yeas

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