

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 19, 2024**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 19, 2024, at 12:30 p.m., in Council Chambers, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>John L. Rieley</b>	<b>Vice President</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore</b>	<b>County Attorney</b>

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

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 583 24  
Approve  
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to approve the agenda as presented.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Minutes**

The minutes of the November 12, 2024, meeting were approved by consent.

**Correspond-  
ence**

There was no correspondence.

There were no public comments.

**Public  
Comments**

Mr. Lawson presented the proposed 2025 Council Meeting schedule and Holiday schedule for Council's consideration.

**2025  
Schedule**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved that the County Council approves the 2025 meeting schedule and holiday schedule as presented.

**M 584 24  
Approve  
2025  
Schedule**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Adminis-  
trator's**

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

## **Report**

### **1. Caroling on The Circle**

A reminder that the annual Caroling on The Circle program will take place on Thursday, December 5th, at 6:00 p.m. in front of the Sussex County Courthouse. This is a free event sponsored by the Sussex County Council each year. Everyone is welcome and encouraged to attend, and to bring a food item for the less fortunate if they can afford to do so. For those wishing to make a monetary donation, the County has partnered this year with the Food Bank of Delaware. Visit [give.fbd.org/caroling](http://give.fbd.org/caroling) to make an online donation. The “Pack the Pod” food drive campaign will remain in full swing until the end of December. For the night of Caroling on The Circle, we are once again partnering with the Georgetown Chamber of Commerce, which sponsors the Georgetown Christmas parade. Following Caroling on The Circle, the Town will hold its tree lighting before the parade steps off at 7:00 p.m. We invite the public to attend this fun-filled, festive evening.

### **2. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Heritage Shores – Villas at Bridgeville – Phase 5E (Construction Record) and Sandpiper Cove (FKA Cobb Property) – Phase 2 (Construction Record) both effective October 30<sup>th</sup>

### **3. Delaware State Police Activity Report**

The Delaware State police year-to-date activity report for October 2024 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 191 troopers assigned to Sussex County for the month of October.

### **4. Holiday and Council Meeting Schedule**

Council will not meet on Tuesday, November 26<sup>th</sup>, during the week of Thanksgiving. County offices will be closed on Thursday, November 28<sup>th</sup>, and Friday November 29<sup>th</sup>, for the Thanksgiving holiday and will reopen on Monday, December 2<sup>nd</sup>, at 8:30 a.m.

Please also note that Council will not meet on Tuesday, December 3<sup>rd</sup>. The next regularly scheduled Council meeting will be held on December 10<sup>th</sup> at 10:00 a.m.

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

**5. County Holiday and Employee Appreciation Luncheon**

The County's Holiday and Employee Appreciation Luncheon will take place on Friday, December 6, 2024, at the Crossroad Conference Center. County offices will close at 12:00 p.m. on December 6<sup>th</sup> and will reopen on Monday, December 9<sup>th</sup>, at 8:30 a.m. The public is asked to plan accordingly during this time, and we appreciate the public's understanding.

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

**Public  
Comments**

Mr. Gregg Lindner thanked County staff for their help with a project that occurred in his community.

**Fourth  
Quarter  
Shining Star**

Karen Brewington, Human Resources Director presented the fourth quarter employee recognition awards. She reported that 43 submissions were received for this quarter. The following people were selected as the winners Danielle Lones, Alberta Johnston and Oana Sofronie.

**Wolfe Neck  
CO No. 2**

Mike Harmer, County Engineer presented change order no. 2 for the Wolfe Neck RWF electrical service & switchgear replacement for Council's consideration.

**M 585 24  
Approve CO  
No. 2/Wolfe  
Neck**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department that change order no. 2 for contract S24-09, Wolfe Neck RWF electrical service & switchgear replacement, electrical construction be approved increasing the contract by \$6,102.82.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Long Neck  
Sewer**

Hans Medlarz, Project Engineer presented a final balancing change order and substantial completion for the Long Neck sewer project for Council's consideration.

**M 586 24  
Approve  
Final CO &  
Substantial  
Completion/  
Long Neck**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering Department that change order no. 3 for contract S21-10, Long Neck Communities, be approved, for a decrease of \$748,897.05 and that substantial completion be granted effective August 21, 2024, with any held retainage released in accordance with the contract documents, contingent upon SRF concurrence.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Grant**

**Requests**

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

**M 587 24  
Downtown  
Seaford  
Association**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give \$1,250 (\$1,250 from Mr. Vincent's Councilmanic Grant Account) to the Downtown Seaford Association for their annual Christmas parade.

**Motion Adopted:** 4 Yeas, 1 Absent

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

**M 588 24  
Good  
Samaritan  
Aid  
Organiza-  
tion, Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mr. Vincent's Councilmanic Grant Account) to Good Samaritan Aid Organization, Inc. for their annual Christmas basket/toy outreach.

**Motion Adopted:** 4 Yeas, 1 Absent

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

**M 589 24  
Cape  
Henlopen  
High School  
Boys  
Basketball  
Boosters  
Club**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$750 (\$750 from Mr. Schaeffer's Councilmanic Grant Account) to Cape Henlopen High School Boys Basketball Boosters Club, Inc. for their beach bash tournament.

**Motion Adopted:** 4 Yeas, 1 Absent

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

**M 590 24  
Historical  
Georgetown  
Association**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$2,500 (\$2,500 from Mr. Rieley's Councilmanic Grant Account) to Historical Georgetown Association for their preservation and restoration of historical structures.

**Motion Adopted:** 4 Yeas, 1 Absent

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

**Mr. Vincent, Yea**

**M 591 24**      **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give \$1,500 (\$1,500 from the Countywide Youth Grant Account) to Optimist International Foundation for their essay contest and youth appreciation.**  
**Optimist International Foundation**      **Motion Adopted:      4 Yeas, 1 Absent**

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

**M 592 24**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000 (\$1,000 from Mr. Hudson’s Councilmanic Grant Account) to the Indian River School District for Lord Baltimore Elementary SRO.**  
**Indian River School District**

**Motion Adopted:      4 Yeas, 1 Absent**

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

**Proposed Ordinance Introduction**      **Mr. Vincent introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.07 ACRES, MORE OR LESS” filed on behalf of Kabir Corporation – c/o Dhruv Patel & Shaileshkumar Patel.**

**Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A WAREHOUSE, OFFICE, INDOOR AND OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.95 ACRES MORE OR LESS” filed on behalf of Jose Hernandez Perez.**

**The Proposed Ordinances will be advertised for a public hearing.**

**CM**  
**Comments**      **There were no Council Member comments.**

**M 593 24**      **At 12:55 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess the Regular Session and go into Executive Session to discuss matters relating to land acquisition.**  
**Go Into Executive Session**

**Motion Adopted:      4 Yeas, 1 Absent**

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

**Executive Session** At 1:01 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to land acquisition. The Executive Session concluded at 1:19 p.m.

**M 594 24 Reconvene** At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of Executive Session back into Regular Session.

**Motion Adopted:** 4 Yeas, 1 Absent

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

**M 595 24 E/S Action/ Parcel 2024-S** A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to authorize the County Administrator to negotiate, enter into a contract and proceed to closing on a parcel identified as 2024-S.

**Motion Adopted:** 4 Yeas, 1 Absent

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

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

**Public Hearing/ CZ2022 & CU2528** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS” (property lying on the south side of Conleys Chapel Road [S.C.R. 280B], 0.2 mile east of Beaver Dam Road [Rt. 23]) (911 Address: 30764 Conleys Chapel Road, Lewes) (Tax Map Parcel: 234-11.00-75.01 [p/o]) filed on behalf of Holdren LLC.

The Planning & Zoning Commission held a Public Hearing on the application on October 9, 2024. At the meeting of October 23, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons as outlined within the motion.

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-

**Public  
Hearing/  
CZ2022 &  
CU2528  
(continued)**

**1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR STORAGE OF WATERCRAFT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS” (property lying on the south side of Conleys Chapel Road [Rt. 280B], 0.2 mile east of Beaver Dam Rd. [Rt 23]) (911 Address: 30764 Conleys Chapel Road, Lewes) (Tax Map Parcel: 234-11.00-75.01 [p/o]) filed on behalf of Holdren LLC.**

**The Planning & Zoning Commission held a Public Hearing on the application on October 9, 2024. At the meeting of October 23, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 7 recommended conditions as outlined.**

**The Council found that Ms. Mackenzie Peet, Esq., of Saul Ewing, LLP, spoke on behalf of the applicant, Holdren, LLC that they are seeking a Change in Zone to down zone a portion of the property from a MR Medium Density to an AR-1 Agricultural Residential to allow a Conditional Use to allow for indoor storage of watercraft on an existing 7,500 sq. foot pole building; that representatives of Holdren, LLC, a family owned business were present today; that Dillan Holdren and his father, Robert Holdren were present along with Robert Palmer, P.E., President of Beacon Engineering; that the site is located near the intersection of Beaver Dam and Conley’s Chapel Rd., where one of the Holdren family members lives in the front of the property and has a pole building in the rear; that the family runs Dewey Beach Water Sports, which is a watercraft shop in Dewey; that this pole building was constructed in the hopes of storing the watercrafts in the off season; that watercraft is stored in season in the bay and then removed from the bay in early September and stored in the pole building in the office season; that the proposal is to store 30 jet skis, 14 boats along with watercraft trailers inside the existing pole building; that they are seeking to store jet ski floating docks outside between the detached garage and pole building; that this is a violation case from the Constables for storage of watercrafts on site; that the Holdren’s were not aware that they needed a permit outside of the building permit to store the watercraft within the building; that being in an MR zoning a Conditional Use cannot be permitted which entails the reason behind the Change in Zone and the Conditional Use applications; that this site is in the Designated Growth Area and Coastal Area where AR-1 is an applicable zoning district; that this falls under recreational tourism; that this family business has been servicing not only locals, but tourists in the area for years; that the Code provides that property owners in each zoning district can undertake certain uses of their property by right, while certain uses are prohibited outright and others are allowed up receipt of a conditional use approval; that the use is a semi-public use directly connected with a public use which contributes to and benefits our local economy and ecotourism; that traffic is minimal; that they plan to use vegetative buffers around the building, the hours of operation will be limited and during day light only; that they will be moving watercrafts to and from at the beginning and the end of the season; that there are three requests to amend the conditions**

**Public Hearing/ CZ2022 & CU2528 (continued)** provided by the Planning & Zoning Commission; that condition A describing the use, condition C concerning maintenance and condition F concerning storage of hazardous materials; that the recommended changes were reviewed; that the neighbors have not complained about the application; that the applicant wishes to do oil changes on site.

There were no public comments.

The Public Hearing and public record were closed.

**M 596 24 Adopt Ordinance No. 3057/ CZ2022** A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 3057 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission as follows:

1. The property is currently a large lot. The applicant is requesting this change in Zone to AR-1 so that a conditional use can be sought to allow the applicant to store boats associated with its business on the property. The primary use of the property will remain residential. This type of conditional use is not possible in the MR-1 Zoning District.
2. Downzoning this property to AR-1 is consistent with the Sussex County Comprehensive Plan and its Future Land Use Map.
3. The purpose of this downzoning is to enable a conditional use for the off-season storage of watercraft and boats associated with the applicant’s business. There will not be any public access, and the use will not have an adverse impact on the neighborhood. The applicant will continue to reside on the property and the storage use will be a passive use in the off-season.
4. Should the conditional use not be approved, or should it expire, the AR-1 zoning will remain in place, which is a less-intensive zoning district than the MR District.
5. There was no opposition to this application.
6. For all of these reasons, the rezoning of this property from MR to AR-1 is appropriate.

**Motion Adopted: 4 Yeas, 1 Absent**

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



**M 597 24**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to amend**  
**Amend**            **Condition A to read as follows: “The use shall be limited to indoor storage of**  
**Condition A/**      **watercraft and watercraft trailers except for outdoor jet ski floating dock**  
**CU2528**           **storage which shall be limited to the outside storage area sheltered between**  
                      **the existing detached garage and pole building. The use shall only occupy a**  
                      **0.87-acre portion of the entire property, and that 0.87-acre area shall be**  
                      **shown on the Final Site Plan. No other storage of vehicles, boats, watercraft**  
                      **or equipment shall occur on the site”.**

**Motion Adopted:      4 Yeas, 1 Absent**

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

**M 598 24**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to amend**  
**Amend**            **Condition C to read as follows “No maintenance of watercraft shall occur on**  
**Condition C/**      **the site, except for limited maintenance and repair services that can be**  
**CU2528**           **reasonably performed onsite. These services may include minor maintenance**  
                      **tasks such as battery replacement, oil changes, tire changes, and minor trailer**  
                      **repairs, such as to tongues or hitches, and watercraft pressure washing. Such**  
                      **maintenance service shall not require extensive equipment or facilities available**  
                      **only at a designated repair facility. All minor maintenance or repairs shall be**  
                      **performed either indoors or on an impervious surface on the site”.**

**Motion Adopted:      4 Yeas, 1 Absent**

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

**M 599 24**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to amend**  
**Amend**            **Condition F to read as follows “No hazardous materials or fuel shall be stored**  
**Condition F/**      **on the site, except for limited quantities necessary for routine maintenance,**  
**CU2528**           **such as oil changes, other than what may be in the tanks of watercraft and**  
                      **vehicles located on the site. All oil and hazardous materials shall be handled**  
                      **and property disposed of in accordance with industry practices, including the**  
                      **use of spill containment systems and proposed disposal methods”.**

**Motion Adopted:      4 Yeas, 1 Absent**

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

**M 600 24**      **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt**  
**Ordinance No. 3058 entitled “AN ORDINANCE TO GRANT A**  
**CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**

**Adopt  
Ordinance  
No. 3058/  
CU2528**

**RESIDENTIAL DISTRICT FOR INDOOR STORAGE OF WATERCRAFT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:**

- 1. The Applicant operates a boat and watercraft rental business in Dewey Beach. The Applicant seeks approval for this conditional use to allow the indoor storage of its watercraft and boats in the off season at its residential property along Conleys Chapel Road.**
- 2. The Applicant’s family will continue to reside at the property and the indoor storage will occur in an existing pole building at the rear of the property. This is an appropriate, convenient location that addresses the need for off-site storage of the Applicant’s boats and watercraft.**
- 3. The Applicant has stated that there will be no public access to the facility. Also, the facility will only create traffic at the beginning or ending of each summer season when the boats and watercraft are hauled in or out of the water. As a result, the use will not have a substantial impact upon area roadways.**
- 4. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.**
- 5. Tourism is a significant part of the Sussex County economy, and the boat and watercraft rental business promotes tourism. As a result, the use as a boat and watercraft storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of residents and visitors to this area of Sussex County.**
- 6. No parties appeared in opposition to this Application.**
- 7. This recommendation for approval is subject to the following conditions:**
  - a. The use shall be limited to indoor storage of watercraft and watercraft trailers except for outdoor jet ski floating dock storage which shall be limited to the outside storage area sheltered between the existing detached garage and pole building. The use shall only occupy a 0.87-acre portion of the entire property, and that 0.87-acre area shall be shown on the Final Site Plan. No other storage of vehicles, boats, watercraft or equipment shall occur on the site.**
  - b. The facility shall not be accessible to the public.**
  - c. No maintenance of watercraft shall occur on the site, except for limited maintenance and repair services that can be reasonably performed onsite. These services may include minor maintenance tasks such as battery replacement, oil changes, tire changes, and minor trailer repairs, such as to tongues or hitches, and watercraft pressure washing. Such maintenance service shall not require extensive equipment or facilities available only at a designated**

**M 600 24  
Adopt  
Ordinance  
No. 3058/  
CU2528  
(continued)**

- repair facility. All minor maintenance or repairs shall be performed either indoors or on an impervious surface on the site.
- d. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
  - e. The use shall be subject to any DeDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
  - f. No hazardous materials or fuel shall be stored on the site, except for limited quantities necessary for routine maintenance, such as oil changes, other than what may be in the tanks of watercraft and vehicles located on the site. All oil and hazardous materials shall be handled and properly disposed of in accordance with industry practices, including the use of spill containment systems and proposed disposal methods.
  - g. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Public  
Hearing/  
CU2454**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 ACRES, MORE OR LESS” (property lying on northwest side of Shiloh Church Road [Rt. 74] approximately 0.38 mile west of East Trap Pond Road [Rt. 62]) (911 Address: N/A) (Tax Map Parcel: 232-8.00-44.01) (Zoning: AR-1 [Agricultural Residential District]) filed on behalf of H&K Group LLC.**

**The Planning & Zoning Commission held a Public Hearing on the application on October 9, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated and subject to the 18 recommended conditions as outlined.**

**Mr. Moore stated that he has not represented this applicant, however, he has represented the landowner. He contacted Mr. Robertson to handle the hearing, however, he was not available. He added that he has no vote in the matter, if there are questions regarding legal matters, he requested they be directed to Mr. Robertson.**

**The Council found that Mr. David Hutt, Esq., of Morris James, LLP, spoke on behalf of the applicant, H&K Group who lease the property that is the subject of the application; that he distributed the traffic analysis that was**

**Public  
Hearing/  
CU2454  
(continued)**

**completed; that the applicant is a Pennsylvania corporation; that they joined with George & Lynch and formed River Asphalt, LLC that has two locations in Sussex County; that a background of the property was provided; that the entire property is 309.6+/- acres, but only 269+/- acres are in question for this application; that the borrow pit area is 195.83 acres; that this is an application for a borrow pit off of Shiloh Church Rd; that the forest has a planting pattern; that the property is located within a AR-1 Zoning district and is a low density area on the Future Land Use Map; that the 2015 state strategies map identifies this property as being in Investment Level 4 area; that this means that important materials can be mined from this rural area to help support development in investment levels where there is a greater deal of population and intense uses; that this area of Sussex County is rich in natural resources; that there are 7 other borrow pit operations in this area; that the entrance is from Shiloh Church Road; that the actual processing area will be approximately 1,000 feet off of Shiloh Church Road; that there are wetlands that run along Beaver Dam Branch and basically bisects the property; that the Army Corp of Engineers will facilitate the crossing of any of the wetlands; that with this type of Conditional Use there are several special requirements that must be followed under Section 115-172 subsection B; that there are 6 special conditions that will be followed:**

- 1. No material may be brought into the site for processing, mixing or similar purposes.**
- 2. The excavation be controlled to offer reasonable protection to surrounding properties to include odors, dust, etc.**
  - a. The entranceway will be paved to reduce noise and dust.**
  - b. There will be a gated entranceway at Shiloh Church Rd. The Planning Commission recommended that be at least 50 feet from Shiloh Church Rd., the applicant is proposing the area be 100 feet.**
  - c. Water trucks will be available to control dust issues.**
  - d. The proposed hours of operation will be Monday through Friday 6:00 a.m. – 6:00 p.m. and Saturday 6:00 a.m. – 2:00 p.m. with no Sunday hours. The Planning Commission changed the hours recommending 7:00 a.m. to 5:00 p.m. 6 days a week with no Sunday hours. The hours of operation recommended by the Planning Commission are acceptable to the applicant.**

**The applicant filed a service evaluation level request with DelDOT; that they indicated that the impact on traffic would be less than 50 vehicle trips in any hour and less than 500 vehicle trips per day; that due to the concerns expressed during the Planning Commission hearing relating to traffic, the applicant reached out to have a traffic analysis completed; that a professional traffic operation engineer performed the study; that Mr. Wilson who performed the study also has a road safety professional level 1 certification; that the traffic conditions here do not warrant a traffic impact study; that based on the concerns raised during the Planning Commission hearing, a traffic analysis was prepared.**

**Public  
Hearing/  
CU2454  
(continued)**

The Council found that Mr. Carl Wilson, a traffic engineer with the Traffic Group came forward; that the traffic analysis was prepared for the site; that they looked at the adjacent intersections to the east from the site and to the west, the nearest intersection was Johnson Road about 2 miles away; that on October 30<sup>th</sup>, counts were collected; that they were collected by the use of video camera; that a classification count was completed on Shiloh Church Road for a week to determine the amount of traffic that travels the road well as classification; that DelDOT showed the average traffic for Shiloh Church Road to be about 2,300; that they calculated about 2,600 so it is pretty consistent with DelDOT's numbers; that an existing level of service evaluation was completed at the two adjacent intersection; that the peak level volumes will be very low for this site, approximately 19 trips; that they looked at other borrow pit operations in Sussex County; that Shiloh Church Road is classified as a minor collector road; that it has about 24 feet of pavement width; that there is one other borrow pit on a minor collector road that has similar features.

Mr. Vincent expressed concerns for the ability of the road to hold up over a period of time holding dump trucks rather than cars. Mr. Wilson replied that 80-90 percent of the vehicles are cars and pick-up trucks. There is also about 3 percent trips that are class 8 and 9 which are the larger trucks. He understands that this is going to be primarily smaller dump trucks. Mr. Vincent added that there is no shoulder on the road, and it is a heavily farmed area.

Mr. Wilson explained that a minor collector is a road that typically connects local roads; that the higher classifications are to move traffic at a higher speed over longer distances; that he believes that this is a safe location for a borrow pit; that the other borrow pits are mostly located on higher classified roads than this; that there are several that are located along local roads; that majority of the borrow pits are on local or minor collector roads; that most of the other roads do not have accelerating or decelerating lanes which indicates that DelDOT indicated that they are not warranted for a borrow pit.

Mr. Hutt stated that the third of the special criteria factor was:

3. The location of the excavation will be done in relation to the water table and the side slopes of the pit, and the processing area will be more than 80ft from all property lines. The Planning Commission's recommendation included that there would be a bench at the 10ft level and then continue on with the 3 to 1 side slope down to the bottom.

There would be no wetlands disturb as part of this; that the property is located within zone X on the flood zone map; that the next factor is:

**Public  
Hearing/  
CU2454  
(continued)**

- 4. The burrow pit needs to be surrounded by a landscaped unexcavated buffer strip of open space with a minimum distance of 100ft from a street line and a minimum of 50 feet from all other property lines.**

**The plans show a 50 foot landscape buffer around the entire pit; that there is a 30 feet area between that the landscape buffer and the edge of the pond; that the next factor is:**

- 5. The burrow pit shall be at least 200 feet from any dwelling on the property of other ownership.**

**That there is an abandoned home about 230 feet from the entrance; that the nearest occupied home is about 750 feet from the entrance; that on Shiloh Church Road, the closest a person would live is 1,700 feet; that on Beaver Dam Branch the nearest neighbor is 3,000ft. away; that on Sycamore Road, the closest neighbor is 2,300 feet away; that along East Trap Pond Road, the closes neighbor is 2,000 feet away; that the next condition is:**

- 6. There are various requirements for existing conditions, proposed excavation areas, reclamation areas and approvals from various agencies.**

**The reclamation plan for this property is that upon completion, this will be a wildlife pond for fish and fowl; that Chapter 115 talks about conditional use and certain uses being permitted by a Conditional Use because the use is a public or semi-character and requires the exercise of planning judgement regarding location and site plan; that the location of this property is ideal for this proposed use; that this is located in a wooded area; that all surrounding properties are very large parcels; that the fundamental need and use of aggregates demonstrates the semi-public or public nature of this burrow; that it was shown what a person needs regarding minerals during the course of their lifetime; that there is a large need for aggregates in this area; that it unknown if this will all stay in Delaware; that there are 11 letters of support that were submitted; that there were concerns raised about traffic; that the information that Mr. Wilson provided in the traffic analysis and his testimony is given weight under the law than the thoughts and opinions of lay people; that some things have professional expertise with them regarding calculations for traffic and stormwater management; that we have heard from DelDOT and Mr. Wilson regarding traffic and their testimony is consistent; that the Deputy State Forester reached out to Mr. Whitehouse after the Commission hearing; that Mr. Hutt spoke with the Deputy State Forester regarding this property being enrolled in the CFPA (commercial forest plantation act) program; that it provides a property tax benefit to a property owner that is enrolled in the property; that there are trees planted and harvested on this site on an annual basis; that Mr. Ellis, the property was not aware of the program when he purchased the property; that after reviewing the files, nobody could locate where there was any notice from the seller regarding the property's enrollment in the CFPA program; that you**

**Public  
Hearing/  
CU2454  
(continued)**

can unenroll yourself from the program; that there are rollback taxes when that occurs; that after completing the research, the property owner withdrew his program from the program; that the applicants proposes that the Council add a condition; that the new condition would state “The Final Site Plan shall not be approved until the area of the borrow pit has been removed from any enrollment in the commercial forest plantation program (Title 3, Chapter 26 of the Delaware Code) and any rollback taxes due have been paid.”; that there was reference to the denial of a borrow pit that occurred by this Council; that the Planning Commission recommended approval for CU2300 for a borrow pit but was later denied by this Council; that when voted on for denial, Mr. Hudson provided his reasons; that one of his statements was that while there is a need for dirt, sand and gravel, there are better locations for borrow pits in more rural areas in the County that will not have an impact on homes or community use properties like the adjacent recreational fields that are next door to this property; that this application addresses those points almost point by point; that this is a rural location; that this is a minor collector with traffic capacity; that there are no community use properties located nearby or adjacent to the property; that the location is surrounding by woods, large parcels and the nearest home greatly exceeds the 100 feet requirement; that the applicant requests that Council adopts the recommendation given by the Planning Commission with the addition of Condition S.

Mr. Rieley questioned the impact it would have on irrigation in the area.

Mr. Vincent questioned what would power the dredge.

Public comments were heard.

Mr. Jerry Marbel spoke in opposition to the application; that the traffic counter was there for three days; that as soon as the counter was gone, the traffic increased; that the road has been resurfaced more than one time on just the traffic now; that he has seen skid markets from large trucks where they are going off the road and coming back on the road; that recently, there was a dump truck in the woods; that there is a tax ditch behind his house that goes across East Trap Pond Road; that if it rains steady for a day and half or two days, that floods the property nearby; that he is not aware of a gravel pit that you are allowed to fish in; that there are 7 sand pits still operating; that he believes that commercial vehicles has tripled in the last year and a half.

Mr. Willis Kirk spoke in opposition to the application; that he is a farmer that owns land adjacent to the site; that he spoke about the acreage; that the land is surrounded by hardwoods; that it one of the largest forested area within the Laurel School District not counting the state lands; that he distributed a report that was done for Lawrence Lank back in 2008; that the report is from DNREC to the County Planning Zoning office; that this verifies the information from his standpoint; that his farms consists of two farms that are in the preservation program; that there are wetlands on the

**Public  
Hearing/  
CU2454  
(continued)**

farmland that go right up to and onto to this property; that one of these reports states that when a pit is put in, it does have an effect on wetlands; that this is going to dry a lot of wetlands out; that you cannot determine where wetlands are during a drought which we currently have; that his land is irrigated, that it is difficult to get water out that way; that the report states that the pit continues to grow; that as it flows, it will affect the irrigation within those wells; that he questioned who would replace a well if one went dry; that there is a large farm that has irrigation well down the road; that the noise will affect a row of houses; that the buffer should be large; that this will be one of the largest borrow pits in Sussex County; that there are people that are affected by this; that this is a lot of forest land that is being changed into a borrow pit; that there is wildlife in the area; that he doesn't believe this should be done in a forested area; that all of these open spaces with water are not confined; that he questioned if we need additional borrow pits; that he asked the value of this business to the people in Sussex County.

Mr. Carr spoke in opposition to the application; that he lives near the parcel being discussed; that on East Trap Pond Road, there is a sign that states no vehicles over 15,000 ton; that these trucks are going to be 90,000 or more; that they will be hauling a heavy load; that the entrance way has been changed; that it would be nice to save the farmland.

Ms. Phyllis Lynch spoke in opposition to the application; that she has driven the road for 30 years; that she has watched it being paved and the houses being built; that these trucks go slower; that she believes that it is unsafe; that there is no shoulder; that the traffic has increased; that when you go into the transfer station, the dredge is sinking and all of the equipment is rusting; that she questioned if that will be the same thing here; that she does not believe that this is a good thing for fish and wildlife; that she questioned how the borrow pit fills; that she has an irrigation system on her land that they were not able to get water to that which is pretty much behind the proposed borrow pit location; that they are pumping water from down the street now; that she questioned what would happen if this borrow pit happens; that she questioned what would happen if it goes dry.

Mr. Hunter Price spoke in opposition to the application; that he owns the property located on the four way; that he plans on remodeling the abandoned house; that he won't be allowed to build chicken houses there; that he has property rights; that there have been three people killed on Shiloh Church Road this year; that there are a lot of farmers that use East Trap Pond Road for traveling and there is no shoulder on that road.

Mr. Dee Steen spoke in opposition to the application; that he is a farmer in Sussex County; that he does not believe that Sussex County needs any more borrow pits; that this is a block of land and woods with a lot of wildlife; that if this happens, they will drive all of the wildlife onto his property that will cause problems; that they currently have problems with deer.



**The Public Hearing and public record were closed.**

**M 601 24  
Defer  
Action/  
CU2454**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 ACRES, MORE OR LESS”.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**M 602 24  
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 3:21 p.m.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Respectfully submitted,**

**Tracy N. Torbert  
Clerk of the Council**

*{An audio recording of this meeting is available on the County’s website.}*