

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 2, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 2, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Call to Order	The Invocation and Pledge of Allegiance were led by Mr. Vincent. Mr. Vincent called the meeting to order.
M 548 14 Approve Agenda	A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to approve the Agenda, as posted. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
Minutes	The minutes of November 18, 2014 were approved by consent.
Corre- spondence	Mr. Moore read the following correspondence: THE WAY HOME, GEORGETOWN, DELAWARE. RE: Letter in appreciation of Human Service Grant.
Procla- mation/ Young Marines	The Council presented to Young Marine 1st Sgt. Richard Pope a Proclamation entitled "A PROCLAMATION RECOGNIZING THE RED RIBBON CAMPAIGN OF THE YOUNG MARINES OF THE MARINE CORPS LEAGUE".
Tribute/ King	The Council presented a Tribute to Richard King, Sussex County Employee of the Fourth Quarter.
Proposed Schedule	Mr. Lawson presented the proposed 2015 Holiday Schedule:

Proposed 2015 Holiday Schedule (continued)	New Year's Day	January 1 (Thursday)
	Martin Luther King, Jr. Day	January 19 (Monday)
	Good Friday	April 3 (Friday)
	Memorial Day	May 25 (Monday)
	Independence Day	July 3 (Friday)
	Labor Day	September 7 (Monday)
	Veterans Day	November 11 (Wednesday)
	Thanksgiving Day	November 26 (Thursday)
	Day After Thanksgiving	November 27 (Friday)
	Christmas	December 24 (Thursday) December 25 (Friday)

The County grants two floating holidays to eligible employees per calendar year in accordance with the Floating Holiday Policy.

M 549 14
Adopt
2015
Holiday
Schedule

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council adopts the 2015 County Holiday Schedule, as presented.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Wastewater
Agreement

Mr. Lawson presented a Wastewater Agreement for the Council's consideration.

M 550 14
Execute
Wastewater
Agreement/
Dozer, LLC

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 1016, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Dozer, LLC for wastewater facilities to be constructed in Dozer, LLC, located in the Miller Creek Sanitary Sewer District.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Further
Consider-
ation of
CU 1992
and
CU 1994**

Mr. Lawson presented information on the agenda items entitled “Further consideration of Conditional Use No. 1992 filed on behalf of W. Ralph Brumbley” and “Further Consideration of Conditional Use No. 1994 filed on behalf of Robert Wilkerson”. On October 7, 2014, the Council voted to deny Conditional Use No. 1992 for the failure to appear by the applicant, and on October 14, 2014, the Council voted to deny Conditional Use No. 1994 for the failure to appear by the applicant.

The County Code is clear and gives no option to the Council when an applicant does not appear during the public hearing process. County Code § 115-216 F. states:

Failure to appear. If a petitioner, applicant or appellant fails to appear, or appear by agent, or fails to withdraw his application as provided for in Subsection E hereof, a petition requesting an amendment, supplement or change substantially similar shall not be reconsidered sooner than one year after the previous failure to appear or failure to withdraw.”

Mr. Lawson reported that there are extenuating circumstances involving both applications. In the case of Conditional Use No. 1992, inaccurate information was provided to Mr. Brumbley causing him to miss the public hearing. In the case of Conditional Use No. 1994, the original hearing was rescheduled and the yard sign placed on the applicant’s property was not updated. Mr. Lawson stated that after considering these circumstances, it is his recommendation that the Council rescind the previous vote denying each of the respective applications. Mr. Lawson reviewed the process of rescinding a Motion.

Mr. Lawson advised that he asked legal staff to review the Council’s rules and Mason’s Manual – which governs the process for County Council – to provide a recommendation to reconsider the applications. Legal staff agreed that a Motion to Rescind the vote(s) is appropriate in this case; Motions to Rescind are applied to actions which have been taken and are already in effect. Mr. Lawson noted that legal staff believes that Motions to Rescind should only be used in very limited situations, since they run contrary to the desire for finality in all actions taken by County Council. As a result, they should be used sparingly, and very clear reasons should be given when making them.

**M 551 14
Rescind
Vote of
Denial on
CU 1992**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council rescinds the vote of denial made on October 7, 2014 for Conditional Use No. 1992 filed on behalf of W. Ralph Brumbley because the County provided inaccurate information to the Applicant that caused him to miss the Public Hearing.

Motion Adopted: 5 Yeas.

**M 551 14
(continued)**

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**M 552 14
Rescind
Vote of
Denial on
CU 1994**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council rescinds the vote of denial made on October 14, 2014 for Conditional Use No. 1994 filed on behalf of Robert Wilkerson because the County failed to update the new Public Hearing date listed on the notice posted on the Applicant's property causing him to miss the Public Hearing.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Discussion/
Draft
Ordinance
Relating to
Failure
to Appear/
Withdraw**

Mr. Lawson reported that legal staff has drafted an ordinance that amends Sussex County Code, Chapter 115, Article XXVIII, § 216D. and F. to provide that, in the event an applicant fails to appear or fails to withdraw its application in accordance with the Code for reasons beyond the applicant's control, if the failure to appear occurred before the Planning and Zoning Commission or, if the failure to appear occurred before the Sussex County Council, the Planning and Zoning Commission or the Sussex County Council, as applicable, shall have discretion to reconsider the application upon an affirmative vote of the body following applicant's submission of a Petition for Reconsideration within fifteen (15) days of the scheduled public hearing containing facts sufficient to demonstrate the failure to appear was beyond applicant's control. Upon affirmative vote to reconsider the application, the public hearing shall be rescheduled.

It was noted that the draft ordinance was not included in the packet nor was it previously distributed to Council members. It was decided that the draft ordinance would be copied and distributed to Council members for review and discussion later in the meeting on this date.

**Adminis-
trator's
Report**

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

1. Caroling on The Circle

A reminder that the annual Caroling on The Circle program will take place on Monday, December 8th, at 6:30 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. Hot chocolate and cookies will be served at the Georgetown Fire Hall after the program. The "Pack the POD" campaign will remain in full swing until the end of December.

**Administrator's
Report
(continued)**

2. Mildred King Luncheon

Sussex County offices will close for a two-hour period on Friday, December 5th, to allow employees to attend the annual Mildred King Luncheon. County offices will close from 11:00 a.m. to 1:00 p.m. on that date. Members of the public with business to conduct are asked to plan accordingly. County offices will reopen promptly at 1:00 p.m.

3. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Forest Landing – Remainder of Phase 2D received Substantial Completion effective November 17, 2014.

4. William Siegmund, Jr.

It is with sadness that we inform you that pensioner William “Bill” Siegmund, Jr., passed away on Friday, November 28, 2014. Mr. Siegmund worked as a Utility Construction Tech III in the Engineering Department. He was employed with the County for 22 years, from September 1984 until his retirement in October 2006.

A memorial service will be held on Thursday, December 4th, at the Chapel of Short Funeral Services, 416 Federal Street, Milton, where friends may call at 12:30 p.m. and services will begin at 1:00 p.m. In lieu of flowers, memorial contributions may be made to the Delaware Hospice Center, 100 Patriots Way, Milford, or any local SPCA.

We would like to express our condolences to the Siegmund family.

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

Rules

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

**Public
Hearing/
CU 2000**

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 FACILITY FOR WEDDING CEREMONIES AND RECEPTIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.683 ACRES, MORE OR LESS” (Conditional Use No. 2000) filed on behalf of Jovid Venture, LLC (Tax I.D. No. 334-12.00-121.01) (911 Address: 35060 Warrington Road, Rehoboth Beach).

**Public
Hearing/
CU 2000
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2014 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 13, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Planning and Zoning Commission's Public Hearing on this application.

The Council found that Tim Willard, Attorney, was present with Joe Brinton and David Sterner, innkeepers and owners of The Homestead Bed & Breakfast, were present on behalf of the application.

Mr. Lank distributed Exhibit Packets, including photos, which were previously provided by the Applicant.

Mr. Willard and Mr. Sterner stated that the site of The Homestead Bed & Breakfast is at the corner of Warrington Road and Old Landing Road; that the site is an historic site; that if Council approves this application, the site plan will have to go to DelDOT for approval; that since the entrance is located so close to Old Landing, it may have to be adjusted; that the site is almost a 2 acre parcel; that approximately ten years ago, the site was approved for a special use to run a Bed & Breakfast; that recently, the cottage in the back was approved for two more bedrooms for a Bed & Breakfast; that Mr. Brinton and Mr. Sterner purchased the property approximately two years ago and the business has been successful and is growing; that their customers have requested to have wedding ceremonies and receptions on the grounds of the property; that to be able to charge for this service, they need approval from the County Council; that the proposed use is a semi-public use and it will provide for the general convenience of the public; that it would provide an alternative venue for weddings and wedding receptions; that they would agree to conditions limiting the number of events, people, and hours; that the site is located in a Developing Area and in a Level 2 or 3 Area according to State Strategies; that the site plan depicts temporary tent locations and ceremony areas with landscaping features; that in regard to the submitted site plan it was noted that the two parking spaces closest to the open area would not be included and the proposed temporary tent would have to be moved – the tent area would be moved to the northeast corner; that 4 parking spaces are available in a garage and parking would be made available in the large field (northeast corner); that the size of the site is adequate for the use intended; that no permanent construction is contemplated in this application – everything would be temporary; that DelDOT did not require a Traffic Impact Study; and that The Homestead Breakfast has been rated No. 1 in the area by Trip Advisors.

Mr. Willard referenced letters of support that he read into the record during the Public Hearing before the Planning and Zoning Commission.

**Public
Hearing/
CU 2000
(continued)**

Mr. Cole raised questions regarding adequate parking places and he stated that the site is totally inadequate for 125 people; that the site is located at a tricky intersection; and that there is concern that cars would park along the shoulders of public roads.

Mr. Cole commented on conditions relating to number of people attending, number of cars parked, and hours of operation since the County does not have the ability to enforce these types of conditions, especially during evening hours and on weekends.

Mr. Willard responded to the comments regarding parking and he stated that these events are planned; that parking will be limited; and that a shuttle to the site will be planned during events and attendees will be dropped off, thereby reducing the number of people parking their vehicles.

There were no public comments in support of or in opposition to the application.

The Public Hearing and public record were closed.

**M 553 14
Defer
Action on
CU 2000**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to defer action on Conditional Use No. 2000 filed on behalf of Jovid Ventures, LLC.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Public
Hearing/
CU 2001**

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 VETERINARY PRACTICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 32,671 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2001) filed on behalf of Christina Abramowicz (Tax I.D. No. 334-1.00-23.00) (911 Address: 16403 Old Mill Road, Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2014 at which time action was deferred.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 13, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

**Public
Hearing/
CU 2001
(continued)**

Mr. Lank distributed a survey/site plan previously provided by the Applicant.

The Council found that Dr. Christina Abramowicz was present on behalf of her application for a veterinary practice and she stated that she is the owner/operator of Veterinary Alternative Care, LLC; that she is a Doctor of Veterinary Medicine; that she has earned a Certified Acupuncture Certificate; that she operates a holistic practice focusing on Chinese and alternative medicine, including acupuncture, massage, herbal therapy, etc.; that she offers equine chiropractic services; that she is one of two acupuncturists in Sussex County; that she currently has no employees and one intern; that the main purpose of being able to see dogs, cats, and other small animal patients in her home is to eliminate the additional charge of a call fee associated with her making home visits; that pet owners have advised her that cost is a concern when she has to travel to the site of the pet owner; that she will only see one animal at a time; that sufficient parking is available for overlapping appointments; that she does not propose any kennels or overnight stays even as her business grows; that there will be no drop-offs; that appointments can last from 1 hour to 3 hours; that she does not perform any surgeries; that emergencies are referred to other veterinary clinics; that she has adequate room in her house for this use; and that this proposal is just a stepping-stone in her business as she hopes to move to another, larger site in the future.

Public comments were heard.

The Council found that Lori Farrell, an adjacent property owner, spoke in support of the application and stated that she supports what the Applicant is proposing.

The Council found that Mary Groome, Vince Brady, Ellen Carta, Suzanne Hain, George Dellinger, Michael Carta, George Nason, Robert Head, and Linda Brady spoke in opposition to the application. They stated that they have been misinformed by the Applicant; that the application was presented as a harmless occupation and they have since found out differently; that there was no visible public notice posted on the Applicant's property until a call was made to the Planning and Zoning Department; that they have learned a lot more about what is or can be involved in a veterinarian practice and it is more than the Applicant outlined in her letter to the neighbors; that there are concerns about environmental and health issues, such as the drainage field from her septic system which could be polluted due to toxic wastes which could affect the quality of the groundwater in the area; that a sign on her property and a sign on Coastal Highway would suggest that Old Landing Road is a commercial road; that a conditional variance for a commercial use can be renewed every 5 years; that they are concerned about the present and future use of the property with a conditional use approval; that the Council should consider the other people in the community versus the Applicant's needs and wants; that the Applicant proposes to see six animals per day which is not low volume; that

**Public
Hearing/
CU 2001
(continued)**

there is concern that the practice could expand and develop into a full-service veterinarian office; that the proposed use is inappropriate for AR-1 zoning and they recommend that the Applicant find a facility elsewhere; that the Applicant has not maintained the property since she purchased it; that the front yard has been turned into plantings and different types of gardening with a plastic covering over it; that the yard was never mowed; that there is a crude work structure in the front yard; that the Applicant has already been seeing patients since living there; that the use would be a detriment to other properties in the area; that it would negatively affect property values; that they worry about sick animals in the area, possibly getting loose and leaving discharge on the ground which could affect their well water; that if the application is approved, the following conditions should be imposed: fencing, the separation of the office for the vet practice and the living areas by doors, a two year limit on the use, alternative services only, affiliation with a veterinary hospital, no boarding, no signage for the business, and no other business to be permitted in the Old Mill neighborhood; that the application is a blatant attempt to misuse the AR-1 process and ignores existing AR-1 codes; that it would expose the neighborhood and the Applicant to wide-ranging health and safety risks; that at least 120 sick animals will visit the facility each month (per the Applicant's testimony); that there are concerns about the health risks of urine and feces on the ground from the 120 animal-patients per month; that sick animals can contaminate all properties within 100 yards of the property; that there are risks that animals could get loose and chase and/or bite neighborhood pets or residents; that a commercial business of any nature would be inappropriate in the neighborhood; that it is offensive that the applicant purchased the property, expecting to run a business that is clearly not allowed by the current zoning without obtaining a conditional use approval; that a veterinary practice is specifically limited to properties of 5 acres or more in AR-1 zones with specific restrictions on setbacks, etc.; that there is concern about infection hazards; that mixing a home, a veterinary practice, and a residential neighborhood is not a practice designed to minimize the potential for disease transmission; and that the area residents request that the application be denied.

Written comments were submitted by Mary Groome, Vince Brady (with attachments), Ellen Carta, Suzanne Hain, George Dellinger (with attachments), Michael Carta, George Nason, and Robert Head (with attachments).

The Public Hearing and public record were closed.

**M 554 14
Defer
Action/
CU2001**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to defer action on Conditional Use No. 2001 filed on behalf of Christina Abramowicz.

Motion Adopted: 5 Yeas.

**M 554 14
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

**Old
Business/
Proposed
Ordinance
Relating to
Definitions**

Under Old Business, the Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I BY AMENDING THE DEFINITIONS OF “DWELLING”, DWELLING, SINGLE FAMILY”, DWELLING, MULTI-FAMILY”, AND “FAMILY”.

This Ordinance amends the definitions of Family, Single Family Dwellings and Multifamily Dwellings to avoid unintended discrimination under State and Federal Law. It confirms that a family may include one or two people living together and not only their natural or adopted children but also step-children and foster children. It also clarifies that children are permitted to reside with legally appointed guardians. It permits licensed and approved residential houses or no more than ten persons with disabilities as defined in the Delaware Fair Housing Act. Lastly, it recognizes that it is appropriate for 2 families to reside in a single unit when the owner(s) of the unit are elderly and/or disabled.

The Planning and Zoning Commission held a Public Hearing on this application on August 7, 2014 at which time action was deferred. On August 21, 2014, the Commission deferred action again. On September 11, 2014, the Commission recommended that the Proposed Ordinance be approved.

The County Council held a Public Hearing on this application on October 21, 2014 at which time action was deferred.

The Council discussed the Proposed Ordinance. Lawrence Lank, Director of Planning and Zoning, and Vince Robertson, Assistant County Attorney, participated in the discussion.

It was noted that legal staff agree that the Proposed Ordinance would make the definitions consistent with State and Federal laws.

**M 555 14
Adopt
Ordinance
No. 2374**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2374 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I BY AMENDING THE DEFINITIONS OF “DWELLING”, DWELLINGS, SINGLE FAMILY”, DWELLING, MULTI-FAMILY”, AND “FAMILY”, based upon the information presented and the recommendation of the Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Abstention.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea; Mr. Wilson, Abstained;
 Mr. Vincent, Yea**

**Grant
Requests**

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

**M 556 14
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$800.00 (\$500.00 from Mrs. Deaver's Councilmanic Grant Account and \$300.00 from Mr. Cole's Councilmanic Grant Account) to the Cape Henlopen Food Basket for operating costs.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 557 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$400.00 (\$200.00 each from Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts) to the Cape Henlopen High School for the Boys Basketball Boosters for program costs.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

The grant request from Delmarva Teen Challenge was deferred.

**M 558 14
Countywide
Youth
Grant**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to give \$2,500.00 from Countywide Youth Grants to the Delaware Community Foundation for the MERIT Program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 559 14
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,000.00 from Mr. Phillips' Councilmanic Grant Account to the Delaware Community Foundation for the MERIT Program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

M 560 14
Council-
manic
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$2,000.00 (\$1,000.00 each from Mr. Phillips' and Mr. Vincent's Councilmanic Grant Accounts) to the Delaware Community Foundation for the Plus 3 Network.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Mr. Lawson explained the Plus 3 Network.

M 561 14
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 (\$500.00 each from Mrs. Deaver's and Mr. Wilson's Councilmanic Grant Accounts) to Delmarva Clergy United in Social Action Foundation for their Christmas gift program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Additional
Business

Paul Reiger and Dan Kramer addressed Council under Additional Business.

Draft
Ordinance/
Failure to
Appear

Mr. Lawson distributed copies of the Draft Ordinance to amend the County Code relating to the failure of an applicant to appear. Mr. Vincent asked the members of Council to review the draft during the recess for possible introduction on this date during the p.m. session.

M 562 14
Recess

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess until 1:30 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

M 563 14
Reconvene

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to reconvene at 1:39 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Mr. Phillips joined the meeting.

Introduction of Proposed Ordinance **Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND THE PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL”. The Proposed Ordinance will be advertised for Public Hearing.**

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

Public Hearing/ CU 1996 **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 15,285 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1996) filed on behalf of Hector Patraca Carmona (Tax I.D. No. 533-4.00-13.00) (911 Address: 34892 DuPont Boulevard, Frankford).**

The Planning and Zoning Commission held a Public Hearing on this application on September 25, 2014 at which time action was deferred. On October 9, 2014, the Commission recommended that the application be approved, subject to the following conditions:

- A. The use shall comply with all setback and parking requirements, or obtaining appropriate approvals from the Sussex County Board of Adjustment.**
- B. The Applicant shall comply with all DelDOT requirements, including entrances to and from U.S. Route 113.**
- C. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.**
- D. There shall be permitted one lighted sign, not to exceed 32 square feet in size.**
- E. Bathroom/sanitation facilities shall be provided on the site.**
- F. The Applicant shall obtain all agency approvals for the food service operations prior to Final Site Plan approval.**
- G. The Final Site Plan for this use including the location of the food truck, any bathroom/sanitation facilities, driveways, entrances, and parking and picnic tables shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated September 25 and October 9, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

**Public
Hearing/
CU 1996
(continued)**

The Council found that Hector Patraca Carmona was present with Holly Carmack and Raul Perez. They stated that a taco / seafood stand is proposed; that they propose to sell the food out of a mobile food truck; and that there will be wood decking which can be taken up.

Mr. Lank explained to the Applicant that DelDOT's approval of the entrance will be required prior to receiving any approval from Planning and Zoning; that the decking and the mobile truck are too close to the road and have to be moved back; that a variance from the Board of Adjustment may be required; and that the driveway is going to have to be installed but relocated, subject to DelDOT.

There were no public comments.

The Public Hearing and public record were closed.

**M 564 14
Adopt
Ordinance
No. 2375/
CU 1996**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to Adopt Ordinance No. 2375 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 15,285 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1996) filed on behalf of Hector Patraca Carmona, with the following conditions:

- A. The use shall comply with all setback and parking requirements, or obtaining appropriate approvals from the Sussex County Board of Adjustment.
- B. The Applicant shall comply with all DelDOT requirements, including entrances to and from U.S. Route 113.
- C. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.
- D. There shall be permitted one lighted sign, not to exceed 32 square feet in size.
- E. Bathroom/sanitation facilities shall be provided on the site.
- F. The Applicant shall obtain all agency approvals for the food service operations prior to Final Site Plan approval.
- G. The Final Site Plan for this use including the location of the food truck, any bathroom/sanitation facilities, driveways, entrances, and parking and picnic tables shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1758**

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 MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2035 ACRES, MORE OR LESS” (Change of Zone No. 1758) filed on behalf of Dozer, LLC, c/o Hal Dukes (Tax I.D. No. 134-19.00-19.00 (Part of) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on September 25, 2014 at which time the Commission deferred action. On October 9, 2014, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated September 25 and October 9, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank distributed project books which were previously provided by the Applicant.

The Council found that Harold Dukes, Esq., was present with Ken Christenbury of Axiom Engineering. Mr. Dukes stated that the property was purchased by the LLC over ten years ago; that the property was an open field at the time; that the highway department didn’t get some ditches cleared and over the years, water flowed into the area and wetlands became an issue; that several years ago, the County contacted them and wanted to put a pump station in the area and they offered to give the County the land, and the pump station was built; that when they started to develop the land they subsequently discovered that, over the last few years, the wetlands vegetation had taken hold; that they decided to go to the high ground and build a small community to get their money back out of the purchase of the land; that the neighbors are supportive of the proposal; and that the significant amount of open space, including the wetlands, will be given to the community.

Mr. Christenbury stated that Dozer LLC is proposing a major subdivision consisting of 14 lots; that the property is located in the Miller Creek Sanitary Sewer District; that the property is located in a Mixed Residential Area according to the Comprehensive Plan Update of 2008; that the property is located in the Environmentally Sensitive Developing District Overlay Zone, which allows for the subdivision of 7,500 square foot lots served by central sewer and central water; that the applicants have dedicated a portion of the property to the County for the installation of Pump Station #286 for the Sewer District; that the Public Service Commission has issued a Certificate of Public Convenience and Necessity to Artesian Water Company to provide central water to the property; that subsequent to the addition of these lands to the Sewer District, no extensions

**Public
Hearing/
CZ 1758
(continued)**

of central water have been made in the vicinity of the property; that Artesian Water Company has issued a statement to the State DNREC's Well Permitting Branch indicating that individual wells would be appropriate for the property; that when the applicants dedicated the land for the pump station, it was with the anticipation that the land could be developed in similar fashion to the surrounding GR zoned lands; that AR-1 lands without central water have a minimum lot size of 20,000 square feet; that approval of this application would allow for a MR subdivision with 10,000 square foot lots that are served by central sewer and individual wells, in character with the existing subdivision in the area; that the applicants own 14.6 acres, the entire parcel; that this request for rezoning only includes approximately half of that acreage (7.2 acres); that the residual acreage will remain AR-1; that plans to construct a sanitary sewer extension from Pump Station #286 to the property have been approved by the Engineering Department; that portions of the sanitary sewer are to be installed under 404 Wetlands regulated by the U.S. Army Corps. of Engineers; that the Corps. have issued a Nationwide Permit permitting said installation from Pump Station #286 to the property; that no additional wetland impact permits are anticipated for the construction of the subdivision; that the general trend of development in the area is GR General Residential zoning with 10,000 square foot lots improved with manufactured homes and dwellings; that 5 minor subdivision lots have been approved by DelDOT and the Planning Department staff; and that sewer is being made available to the 5 lots and the proposed subdivision, if approved.

There were no public comments.

The Public Hearing and public record were closed.

**M 565 14
Adopt
Ordinance
No. 2376/
CZ 1758**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2376 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2035 ACRES, MORE OR LESS" (Change of Zone No. 1758) filed on behalf of Dozer, LLC, c/o Hal Dukes.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

**M 566 14
Adjourn**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to adjourn at 2:14 p.m.

Motion Adopted: 5 Yeas.

**M 566 14
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**