

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 5, 2017

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 5, 2017 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 615 17
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to amend the Agenda by deleting “Executive Session – Pending/Potential Litigation pursuant to 29 Del. C. §10004(b)” and “Possible Action on Executive Session Items”, and to approve the agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of November 28, 2017 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**READ ALOUD DELAWARE, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of grant.**

**NANTICOKE SENIOR CENTER, SEAFORD, DELAWARE.
RE: Letter in appreciation of grant.**

**NANTICOKE RIVER ARTS COUNCIL, SEAFORD, DELAWARE.
RE: Letter in appreciation of grant.**

**Route 113
Corridor
Presentation**

DelDOT Secretary Jennifer Cohan presented an update on the Route 113 Corridor Improvement Plan, a program that has been relaunched. The Secretary, along with Mark Whiteside, P.E., Project Manager for DelDOT,

**Route 113
Corridor
Presentation
(continued)**

presented the Strategic Implementation Plan for the recommendations of the US 113 North/South Study showing the seventeen locations, as prioritized, and the preferred alternatives for Grade Separated Intersections (GSIs), The Secretary stated that DelDOT is committed to the \$500 million for the Corridor Improvement Project, which will take approximately 20 years from design to construction.

Secretary Cohan reported that DelDOT applied for a Tiger Grant for the Sand Hill Road intersection area and that a response should be received from the federal government in the Spring of 2018.

**Public
Comments**

Public Comments

Dan Kramer commented on the Comprehensive Plan workshops that are ongoing and he questioned how the proposed new plan can be compared to the old plan when there is no underlining or brackets.

Betty R. Breen was present representing the Sussex County League of Women Voters. She reported on the League's Observer Corps' observations and recommendations.

D. J. Hughes commented on (1) DelDOT's lack of adequate funding for road improvements in Sussex County and (2) the Proposed Sussex Sports Center.

**Sussex
Sports
Center
Foundation
Proposal**

Mr. Lawson presented for discussion and consideration the Sussex Sports Center Foundation proposal which was first presented to Council on September 26th. Mr. Lawson reported on the proposed timeline and the proposal terms. He noted that, what is proposed on this date is for Council to discuss the proposal and consider a preliminary decision on the proposal.

Proposal terms include the following:

- **Property donated to the Sports Center Foundation. Deed recorded in Foundation's name.**
- **Foundation to construct Sports Center to include 8 grass fields, 3.1 miles of walking/running trail, 8 pickle ball courts, ancillary facilities, including bathrooms**
- **Property located in the Town of Georgetown**
- **County has the option to take over the property and facility after year 5 and each year thereafter**
- **Public-Private Partnership**
- **Approximately 60% private funding and 40% public funding**
- **Estimated \$4.0 million construction cost**
- **\$2.5 million private funds to be raised; \$1.5 million County loan**
 - **Foundation raises and spends \$1.5 million first**
 - **County funds made available after; County processes payments after invoices received (\$100,000 increments)**

**Sussex
Sports
Center
Foundation
Proposal
(continued)**

- **\$1.5 million County Loan**
 - **40 years @ 0% interest; \$37,500/ year payments; no payments first 5 years**
 - **Loan payments only on years when there are no losses and the contingency fund is at \$400,000. Term of loan extended each year a payment is not received.**
 - **County places a lien on the property. Loan forgiven if County buys Center (\$1)**
 - **Annual financial audits required**
- **Foundation Board responsible for the operations of the facility**
- **County to have two positions on the Board**
- **After year 5, County has option to take over the facility for \$1 and loan forgiven**
- **County to have two positions on the Board**
- **Each subsequent year the County can exercise its option**
- **Formal contract to be drafted, presented and approved by Council**

Mr. Lawson advised that if Council agrees to continue forward with a Memorandum of Understanding, a contract would be drawn up for the Council's consideration.

The Council discussed the proposal and financial terms.

**M 616 17
Draft MOU/
Sussex
Sports
Center
Foundation**

A Motion was made by Mr. Cole, seconded by Mr. Burton, that the Sussex County Council authorizes the County Administrator to draft a Memorandum of Understanding with the Sussex Sports Center Foundation for the purposes of the design and construction of a sports facility as described in the presentation on this date; including the County's commitment of \$1.5 million, in the form of a loan, with the terms as described in the presentation on this date, to the Sussex Sports Center Foundation for the same purposes.

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**

**Rules of
Procedure**

Mr. Lawson referenced the Rules of Procedure of the County Council and he noted that the Rules are reviewed and considered for approval at the beginning of each year. Mr. Lawson discussed the possibility of two changes and he noted that the proposed changes will be reviewed by Legal Council for consideration at the January 2, 2018 meeting. Mr. Lawson and Mr. Moore discussed Rule 10 – Ordinances and Rule 16.A – Appointments to the Planning & Zoning Commission and the Board of Adjustment.

**Adminis-
trator's
Report**

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

1. Caroling on The Circle

The Sussex County Council would like to thank the community for participating in the 34th annual Caroling on The Circle on Monday, December 4th. We had a very successful night with hundreds of carolers and thus far have collected nearly 24,000 canned goods and nonperishable food items for our less fortunate neighbors.

We remind everyone that the County is continuing to collect items until the end of the year, and will continue to distribute these goods to our local food pantries. We want to thank all of our volunteers, local businesses, and schools for helping to collect the food over the last month and for making this year's Caroling on The Circle a success!

2. Sussex County Comprehensive Land Use Plan Workshop

The Sussex County Council will begin its deliberation on the Comprehensive Land Use Plan beginning tomorrow, Wednesday, December 6, 2017, at 10:00 a.m. in Council Chambers. A copy of the agenda is attached.

3. Additional Council Meeting – January 16, 2018

The Sussex County Council will schedule an additional meeting on Tuesday, January 16, 2018. Originally, the Council was scheduled to be off that date. However, due to the power failure last week, Council needs to reschedule the hearing for the Proposed Ordinance related to Special Events. January 16th is the first available date. It is anticipated that the public hearing for the proposed ordinance will be scheduled in the morning of the 16th.

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

**Economic
Develop-
ment Loan
Fund
Presentation**

William Pfaff, Economic Development Director, and Gina Jennings, Finance Director, presented the ExciteSussex Loan Program. Mrs. Jennings first discussed the history of the County's current loan program which has not been successful; as of June 30, 2017, the available balance in the program was \$752,621. Mr. Pfaff reported that the proposed loan program will be a partnership with Discover Bank and The National Development Council (NDC), to provide below market interest rates and long term loans to help companies grow their businesses in Sussex County. Loans can range from \$250,000 to \$1,000,000; depending on the use of the loan, payment and terms can range from 10 years to 25 years. It was noted that, through the partnership with Discover Bank, the County's program will grow the fund from \$750,000 to \$4,000,000; if others join, the fund will grow larger. Mr. Pfaff reviewed the formula for the funding of the

Economic Development Loan Fund Presentation (continued)

program; the eligibility requirements for the proposed loan program; and loan program process. Mr. Pfaff noted that the goal is the creation and retention of permanent full-time jobs. He also explained that three zones have been created: the Nanticoke Zone which will be Phase 1, the Broadkill Zone (Phase 2), and the Indian River Zone (Phase 3), with the goal of driving economic development to the western side of the County and then moving east.

M 617 17 Approve Agreement with National Development Fund

A Motion was made by Mr. Arlett, seconded by Mr. Cole, that the Sussex County Council enter into an Agreement with National Development Fund through the Grow America Fund to partner with banks such as Discover Bank to create a Sussex County Loan Fund with a minimum total of a \$4 million value by Sussex County contributing \$750,000 from its previous loan and grant program.

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

Ecological Extinction Task Force Update

Michael Costello, Government Affairs Manager, provided an update on the Ecological Extinction Task Force which was authorized by Senate Concurrent Resolution No. 20 to study the extinction of plant and animal species in Delaware, identify the contributing factors of the problem locally and make recommendations that would bring beneficial changes to the species of most concern. Mr. Costello reported that following the meetings of the task force, the information provided all led to habitat and the information provided the framework that was used to develop the seven detailed sections identified as the Task Force Findings. Mr. Costello reviewed the findings relating to education, incentivize private landowners, government leads by example, legislation affecting development, funding open space program at statutory level, legislation to prohibit the sale of invasive species, and deer management. Mr. Costello stated that these recommendations are available in the full report which is available at the Delaware General Assembly's website at <http://legis.delaware.gov/>.

Goslee Creek Project

Hans Medlarz, County Engineer, presented a Balancing Change Order and request to grant Substantial Completion for the Goslee Creek Regional Pump Station, Force Main & Gravity Sewer, Project 15-09. Mr. Medlarz reported on the reduced project scope and the savings realized.

M 618 17 Approve C/O and Grant Substantial Completion/ Contract 15-09

A Motion was made by Mr. Wilson, seconded by Mr. Cole, based upon the recommendation of the Engineering Department, that Change Order No. 2 for Contract 15-09, Goslee Creek Regional Pump Station, Force Main & Gravity Interceptor, be approved which decreases the contract amount by \$632,017.59 for a new total of \$3,462,807.41 and that Substantial Completion be granted effective June 2, 2017 and any held retainage be released in accordance with the contract documents.

**M 618 17
(continued)**

Motion Adopted: 5 Yeas.

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

**Western
Sussex
Unified
District**

Hans Medlarz, County Engineer, presented three items under the Western Sussex Unified District.

**M 619 17
Approve
Base
EJCDC
Agreement**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that the Base EJCDC Agreement with George Miles & Buhr be approved for Miscellaneous Engineering Services.

Motion Adopted: 5 Yeas.

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

**M 620 17
Approve
Contract
Amendment
for Trans-
mission
Facilities/
Western
Sussex
Unified
District**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Amendment No. 1 to the Base Engineering Contract for Miscellaneous Engineering Services with George Miles & Buhr, LLC be approved in the amount not to exceed \$1,302,178.00 for transmission facilities for the Western Sussex Unified District.

Motion Adopted: 5 Yeas.

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

**M 621 17
Approve
Second
EJCDC
Contract
Amendment**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that a second EJCDC Contract Amendment with Davis Bowen & Friedel be approved in an amount not to exceed \$266,000.00 for transmission facilities for the Western Sussex Unified District – Bridgeville Portion.

Motion Adopted: 5 Yeas.

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

**Carillon
Woods/
Agreement**

John Ashman, Director of Utility Planning, presented a Proposed Use of Existing Infrastructure Agreement between Sussex County and Carillon Woods, LLC. Under this arrangement, Carillon Woods development will construct an onsite pump station and gravity collection system that will

Carillon Woods/ Agreement (continued)

connect to existing regional infrastructure. In return for utilization of said infrastructure, Carillon Woods, LLC will contribute \$31,780.00 for the perpetual use of these transmission facilities to serve 209 Equivalent Dwelling Units.

M 622 17 Approve Use of Existing Infrastructure Agreement/ Carillon Woods

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that the Sussex County Council approves the use of Existing Infrastructure Agreement between Sussex County and Carillon Woods, LLC for capacity allocation and the regional transmission system, as presented.

Motion Adopted: 5 Yeas.

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

Old Business/ CU 2099

The Council considered Conditional Use No. 2099 filed on behalf of Richard and Dawn Jamison.

The Planning and Zoning Commission held a Public Hearing on this application on September 14, 2017 at which time the Commission deferred action. On September 28, 2017, the Commission recommended approval for the following reasons and with the following conditions:

- 1. The site is a 49.12 acre parcel of land owned by the applicants. The applicants intend to use a 1930s barn for the wedding events. This is an appropriate location for a wedding venue.**
- 2. The use is an innovative re-use of the large historic barn on the property, and it promotes Sussex County's agricultural heritage.**
- 3. The use will be limited in scope, and will not require any significant additional permanent structures on the property.**
- 4. With the conditions and limitations placed upon the Conditional Use, it will not adversely affect neighboring or adjacent properties or area roadways.**
- 5. The parking area proposed by the Applicant is approximately 24,000 acres in size, which is adequate for this use.**
- 6. The Applicants will reside on the property and maintain close control over the use and the site at all times.**
 - A. All events shall no later than 10:00 p.m.**
 - B. Food and beverage service and music or similar entertainment is permitted.**
 - C. No noise from the use shall be audible from the State Road right-of-way.**
 - D. Portable toilet facilities may be permitted during any event as needed.**
 - E. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County Roads.**
 - F. The interior drive and parking area shall contain sufficient space**

**Old
Business/
CU 2099
(continued)**

- for vehicles and shuttle buses to turn around completely on the site.**
- G. All entrance locations shall be subject to the review and approval of DelDOT.**
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

The County Council held a Public Hearing on this application on October 3, 2017 at which time action was deferred.

The Council discussed the application for a “wedding venue within an existing barn” and whether or not receptions are permitted as part of the wedding venue application, and whether or not the Applicant can have parties in the barn, such as anniversary and birthday parties. Mr. Moore stated that receptions would be permitted as part of the “wedding venue”; however, anniversary and birthday parties would not be permitted as they were not included in the title of the ordinance (per the application).

Mr. Moore reviewed several proposed changes to the Planning and Zoning Commission’s recommended reasons and conditions for the Council to consider, as follows:

Reason No. 1 – after the word “wedding” and before the word “venue”, add the words “and reception”

Reason No. 5 – 24,000 “square feet”, not “acres”

Reason/Condition 6A – after the word shall, add the word “end”

Delete Reason/Condition #6C relating to noise (the County does not have a noise ordinance; the State of Delaware DNREC is the enforcement agency)

**M 623 17
Modify
Reason for
Approval/
CU 2099**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to modify the Planning and Zoning Commission’s Reason No. 1 to read as follows: “The site is a 49.12 acre parcel of land owned by the applicants. The applicants intend to use a 1930s barn for the wedding events. This is an appropriate location for a wedding and reception venue.”

Motion Adopted: 5 Yeas.

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

**M 624 17
Amend
Reason for
Approval/
CU 2099**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to amend the Planning and Zoning Commission’s Reason No. 5 to read as follows “The parking area proposed by the Applicant is approximately 24,000 square feet in size, which is adequate for this use.”

Motion Adopted: 5 Yeas.

**M 624 17
(continued)**

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

**M 625 17
Amend
Condition/
CU 2099**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to amend the Planning and Zoning Commission's Condition No. 6A to read as follows: "All events shall end no later than 10:00 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**

**M 626 17
Delete
Condition/
CU 2099**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to delete Condition "6C" and to renumber the conditions.

Motion Adopted: 5 Yeas.

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

**M 627 17
Adopt
Ordinance
No. 2536/
CU 2099**

A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2536 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WEDDING VENUE WITHIN AN EXISTING BARN ON APPROXIMATELY 2 ACRES AROUND THE BARN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 49.12 ACRES, MORE OR LESS" (Conditional Use No. 2099) filed on behalf of Richard and Dawn Jamison, for the following reasons and with the following conditions, as amended:

- 1. The site is a 49.12 acre parcel of land owned by the applicants. The applicants intend to use a 1930s barn for the wedding events. This is an appropriate location for a wedding and reception venue.**
- 2. The use is an innovative re-use of the large historic barn on the property, and it promotes Sussex County's agricultural heritage.**
- 3. The use will be limited in scope, and will not require any significant additional permanent structures on the property.**
- 4. With the conditions and limitations placed upon the Conditional Use, it will not adversely affect neighboring or adjacent properties or area roadways.**
- 5. The parking area proposed by the Applicant is approximately 24,000 square feet in size, which is adequate for this use.**
- 6. The Applicants will reside on the property and maintain close control over the use and the site at all times.**
 - A. All events shall end no later than 10:00 p.m.**

**M 627 17
Adopt
Ordinance
No. 2536/
CU 2099
(continued)**

- B. Food and beverage service and music or similar entertainment is permitted.**
- C. Portable toilet facilities may be permitted during any event as needed.**
- D. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County Roads.**
- E. The interior drive and parking area shall contain sufficient space for vehicles and shuttle buses to turn around completely on the site.**
- F. All entrance locations shall be subject to the review and approval of DelDOT.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

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**

**Old
Business/
CU 2104**

The Council considered Conditional Use No. 2104 filed on behalf of Grace-N-Mercy Ministries, Inc.

The Planning and Zoning Commission held a Public Hearing on August 24, 2017 at which time action was deferred; on September 14, 2017, the Commission recommended that the application be denied due to the lack of a record.

The County Council held a Public Hearing on October 3, 2017 at which time action was deferred.

**M 628 17
Adopt
Ordinance
No. 2537/
CU 2104**

A Motion was made by Mr. Burton, seconded by Mr. Cole, to Adopt Ordinance No. 2537 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CEMETERY ON A HALF ACRE OF THE 9.8 ACRES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 9.98 ACRES, MORE OR LESS" (Conditional Use No. 2104) filed on behalf Grace-N-Mercy Ministries, Inc., for the following reasons and with the following conditions:

- A. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Mr. Brian Tinley was present on behalf of the application at the Planning & Zoning Commission hearing and Joyce L. Mizzelle, Pastor of the Applicant, was present on behalf of the application at the Sussex County Council hearing; that Applicant owns the property where the cemetery will be located and intends to construct a church on the property; that the cemetery is intended for members of the church; that the cemetery plots would be for sale to the members of the church; that**

**M 628 17
Adopt
Ordinance
No. 2537/
CU 2104
(continued)**

there will be an access road back to the cemetery site which will be located on a half-acre at the rear corner of the parcel away from Route 113 and Woodyard Road and away from adjacent residences; that the church has created a cemetery fund for maintenance purposes; that the cemetery shall be maintained and kept neat in appearance; and that the area will be fenced to help block the view from any neighboring residences.

- B. Council also found that the proposed use is limited in scope and will have little or no impact on traffic, area roadways, neighboring properties or the community; and that the proposed use promotes the health, safety, welfare and general convenience of Sussex County and its residents.**
- C. Based on the record created before the Sussex County Council, the Conditional Use is approved subject to the following conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties:**
 - a. The cemetery shall be limited to a half-acre portion of the entire parcel located at the rear corner of the parcel away from Route 113 and Woodyard Road.**
 - b. The use will not encroach on the setback of the soil conservation tax ditch which shall be shown on the Final Site Plan.**
 - c. The half-acre portion of the parcel designated for the cemetery shall be surrounded by a fence.**
 - d. No lighted signs shall be permitted on the property.**
 - e. Any security lighting shall be limited to security lighting that is customary in residential areas and shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - f. The Applicant shall comply with all DelDOT requirements regarding entrances to the property.**
 - g. The Applicant shall comply with all requirements of other state agencies when establishing and maintaining the cemetery. The Applicant shall establish a method for permanently maintaining the cemetery grounds.**
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Old
Business/
CU 2105**

The Council considered Conditional Use No. 2105 filed on behalf of Thomas Engel.

The Planning and Zoning Commission held a Public Hearing on this application on October 26, 2017 at which time action was deferred; on November 16, 2017, the Commission recommended that the application be approved with the following conditions:

**Old
Business/
CU 2105
(continued)**

- A. The use shall be limited to a landscaping business with vehicle and equipment storage. No other businesses shall be conducted on the site, and no vehicles associated with any other business shall be parked on the site. No retail sales shall be conducted from the site.**
- B. There shall not be any Conex-type metal storage containers, metal shipping containers, roll-off containers or dumpsters brought to the site or stored on the site, other than one dumpster to be used for refuse associated with the business.**
- C. No manufacturing shall occur on the site. This prohibition includes the chipping, shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.**
- D. As stated by the Applicant, no sign shall be permitted.**
- E. The hours of operation shall be limited to 6:30 a.m. through 5:00 p.m., Monday through Saturday.**
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- G. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- H. No trucks with more than two axles shall be permitted on the site for any use. This includes business vehicles, employee vehicles, and deliveries.**
- I. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**
- J. As stated by the Applicant, there shall be no dumping on the site, and the single dumpster permitted on the site shall be screened from the view of neighboring properties and roadways.**
- K. No more than 10 employee vehicles shall be permitted on the site at any one time, and no more than 12 commercial vehicles, including trailers, shall be permitted on the site at any one time. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.**
- L. All equipment and vehicle maintenance and repair shall occur indoors.**
- M. Visual screening in the form of fencing or landscaping shall be installed in any place where the roadway providing access to the conditional use area is within 20 feet of a neighboring property. These areas, along with the method of screening, shall be shown on the Final Site Plan.**
- N. This Conditional Use is not permitted on the entire 25-acre parcel. It shall be limited to the cleared area immediately adjacent to the existing pole buildings and the roadway providing access to this area. The Final Site Plan shall contain boundaries clearly depicting the Conditional Use area for the review and approval of the Commission.**
- O. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- P. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Old Business/
CU 2105
(continued)** **The County Council held a Public Hearing on this application on November 28, 2017 at which time action was deferred.**

Mr. Burton recommended adding additional conditions and he presented his recommendations and reasons for them.

**M 629 17
Amend
Recom-
mended
Conditions/
CU 2105** **A Motion was made by Mr. Burton, seconded by Mr. Wilson, to add a new Condition P, as follows: “The Applicant shall be prohibited from widening the road leading to the back portion of the site. The Applicant shall only be permitted to widen the road toward the interior 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**

**M 630 17
Amend
Recom-
mended
Conditions/
CU 2105** **A Motion was made by Mr. Burton, seconded by Mr. Wilson, to add Condition Q, as follows: “The forested buffer shall not be altered. Clearcutting and thinning of the forested buffer shall be strictly prohibited.”**

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 17
Amend
Recom-
mended
Conditions/
CU 2105** **A Motion was made by Mr. Burton, seconded by Mr. Arlett, to add Condition R, as follows: “This Conditional Use is limited in geographical scope and applies only to the back portion of the property as identified by Applicant comprising of that cleared area of ground adjacent to and surrounding the buildings. No additional trees are to be cut. The portion of the property subject to the Conditional Use shall be depicted on the Final Site Plan.”**

Motion Adopted: 3 Yeas, 2 Nays.

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

**M 632 17
Amend
Recom-
mended
Conditions/
CU 2105** **A Motion was made by Mr. Burton, seconded by Mr. Arlett, to modify Condition K, as follows: “No more than 10 employee vehicles shall be permitted on the site at any one time, and no more than 12 commercial vehicles, including trailers, shall be permitted on the site at any one time. There shall be no more than 12 vehicles on the site at any time. A truck and trailer shall be counted as two vehicles. A trailer with a skid loader on it**

**M 632 17
(continued)**

shall be counted as one vehicle. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks."

Motion Adopted: 5 Yeas.

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

**Renumber
Condition**

Mr. Moore noted that Condition P recommended by the Planning and Zoning Commission will need to be renumbered as Condition S.

**M 633 17
Adopt
Ordinance
No. 2538/
CU 2105**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, to Adopt Ordinance No. 2538 entitled AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL LANDSCAPING BUSINESS WITH OUTDOOR PARKING, STORAGE OF VEHICLES, EQUIPMENT AND OTHER ANCILLARY STORAGE RELATED TO THE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 25.156 ACRES, MORE OR LESS" (Conditional Use No. 2105) filed on behalf of Thomas R. Engel, with the following conditions, as amended, including the renumbering of the conditions, as follows:

- A. The use shall be limited to a landscaping business with vehicle and equipment storage. No other businesses shall be conducted on the site, and no vehicles associated with any other business shall be parked on the site. No retail sales shall be conducted from the site.
- B. There shall not be any Conex-type metal storage containers, metal shipping containers, roll-off containers or dumpsters brought to the site or stored on the site, other than one dumpster to be used for refuse associated with the business.
- C. No manufacturing shall occur on the site. This prohibition includes the chipping, shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.
- D. As stated by the Applicant, no sign shall be permitted.
- E. The hours of operation shall be limited to 6:30 a.m. through 5:00 p.m., Monday through Saturday.
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- G. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- H. No trucks with more than two axles shall be permitted on the site for any use. This includes business vehicles, employee vehicles, and deliveries.
- I. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall

**M 633 17
(continued)**

- include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
- J.** As stated by the Applicant, there shall be no dumping on the site, and the single dumpster permitted on the site shall be screened from the view of neighboring properties and roadways.
 - K.** No more than 10 employee vehicles shall be permitted on the site at any one time, and no more than 12 commercial vehicles, including trailers, shall be permitted on the site at any one time. There shall be no more than 12 vehicles on the site at any time. A truck and trailer shall be counted as two vehicles. A trailer with a skid loader on it shall be counted as one vehicle. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
 - L.** All equipment and vehicle maintenance and repair shall occur indoors.
 - M.** Visual screening in the form of fencing or landscaping shall be installed in any place where the roadway providing access to the conditional use area is within 20 feet of a neighboring property. These areas, along with the method of screening, shall be shown on the Final Site Plan.
 - N.** This Conditional Use is not permitted on the entire 25-acre parcel. It shall be limited to the cleared area immediately adjacent to the existing pole buildings and the roadway providing access to this area. The Final Site Plan shall contain boundaries clearly depicting the Conditional Use area for the review and approval of the Commission.
 - O.** Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
 - P.** The Applicant shall be prohibited from widening the road leading to the back portion of the site. The Applicant shall only be permitted to widen the road toward the interior of the property.
 - Q.** The forested buffer shall not be altered. Clearcutting and thinning of the forested buffer shall be strictly prohibited.
 - R.** This Conditional Use is limited in geographical scope and applies only to the back portion of the property as identified by Applicant comprising of that cleared area of ground adjacent to and surrounding the buildings. No additional trees are to be cut. The portion of the property subject to the Conditional Use shall be depicted on the Final Site Plan.
 - S.** The Final Site Plan shall be subject to the review and approval of the Sussex County 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**

**Old
Business/
CZ 1831**

The Council considered Change of Zone No. 1831 filed on behalf of East Gate Farm.

**Old
Business/
CZ 1831
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on October 26, 2017 at which time action was deferred; on November 16, 2017, the Commission recommended approval.

The County Council held a Public Hearing on this application on November 28, 2017, at which time action was deferred.

Mr. Burton stated that he would like to defer action for further consideration.

**M 634 17
Defer
Action/
CZ 1831**

A Motion was made by Mr. Burton, seconded by Mr. Cole, to defer action on Change of Zone No. 1831.

Motion Adopted: 5 Yeas.

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

**Council
Members'
Comments**

Council Members' Comments

Mr. Arlett commented on the upcoming Army-Navy game – “Go Navy!”

Mr. Arlett congratulated the Delmar High School Field Hockey Team and the Delmar High School Football Team upon winning State Championships.

**M 635 17
Recess**

At 12:28 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Wilson, to recess until 1:30 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**

**M 636 17
Reconvene**

At 1:36 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to reconvene.

Motion Adopted: 5 Yeas.

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

Rules

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

**Public
Hearing**

A Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL

**Public
Hearing/
CZ 1832
and
CU 2106
(continued)**

DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.86 ACRES, MORE OR LESS” (Change of Zone No. 1832) filed on behalf of MDI Investment Group, LLC and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (52 TOWNHOMES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.86 ACRES, MORE OR LESS” (Conditional Use No. 2106) filed on behalf of MDI Investment Group, LLC (Tax I.D. No. 334-6.00-511.00 and 334-6.00-512.00) (911 Address: Not Available).

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

The Planning and Zoning Commission held a Public Hearing on both applications on November 16, 2017 at which time action was deferred.

(See the minutes of the Planning and Zoning Commission dated November 16, 2017.)

Ms. Cornwell reported that six additional letters were received in opposition to the application.

An Exhibit Book was previously provided to Council members.

Mr. Moore announced that the two applications would be considered in a combined public hearing.

The Council found that Hal Dukes, Attorney, was present on behalf of prospective purchaser of this tract of land with Doug Compher of MDI Investment Group, LLC, and John Murray of The Kercher Group. They discussed the proposed project - a 52 unit multi-family dwelling project, the layout of the site and the site plan, the surrounding land uses including high density developments and medical offices, the property’s proximity to the Lewes Wellness Center and other multi-family residential developments, sidewalks, open space (60%), soils, the availability of infrastructure and transit services, soils, and stormwater management. They stated that the units are to be moderately priced; that the project will be in character with the area; that a transportation hub is located across the street from the site; that the entrance-way will be moved away from the medical center, which is close to the intersection, and it will become a common entrance; that the entrance will be off of Shady Road; that no amenities are planned; that the density would be 7.58 units per acre; that the adjacent development was approved for a density of 9.29 units per acre; that the project went through the PLUS process and was identified as a Level 1 Investment Area, an area designated for this type of use; and that the County’s Comprehensive Plan Future Land Use Map identifies this parcel as being located within the Environmentally Sensitive Developing Area and partially within the Mixed

**Public
Hearing/
CZ 1832
and
CU 2106
(continued)**

Residential and the Highway Commercial Areas. They also discussed transportation matters including no requirement for a Traffic Impact Study; a request for a Letter of No Objection from DelDOT; and DelDOT's required improvements. It was noted that a Traffic Impact Study was not required. They stated that this application proposes the closure of the entrance for Lewes Wellness Center and this project's entrance will provide a perpetual cross access easement for ingress and egress to the Center.

Public comments were heard.

There were no public comments in support of the application.

Steven Smith, Diana O'Hagan, Ray Grabiak, Fred Strobel, William Lockman, Pat Campbell-White, and Claire Grabiak spoke in opposition to the application referencing traffic, the proposed entrance, high density, lack of buffers, berms and fencing, drainage and sewer concerns, public safety access concerns, pedestrian safety, closeness of the buildings, inadequate storm management, and fire hazards. They stated that the proposed project is out of character with the area.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 637 17
Defer
Action on
CZ 1832**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on Change of Zone No. 1832 filed on behalf of MDI Investment Group, LLC

Motion Adopted: 5 Yeas.

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

**M 638 17
Defer
Action on
CU 2106**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on Conditional Use No. 2106 filed on behalf of MDI Investment Group, LLC

Motion Adopted: 5 Yeas.

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

**M 639 17
Adjourn**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to adjourn at 3:09 p.m.

Motion Adopted: 5 Yeas.

**M 639 17
(continued)**

**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.}