

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 12, 2017

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 12, 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
Samuel R. Wilson Jr.	Councilman
Robert B. Arlett	Councilman
Irwin G. Burton III	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 640 17
Amend
and
Approve
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to amend the agenda by deleting "Approval of Minutes", "Executive Session – Pending/Potential Litigation" 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

**Corre-
spondence**

BETHEL HELPING HANDS FOOD BANK, FRANKFORD, DELAWARE
RE: Card in appreciation of the food items donated to the food bank from the Caroling on The Circle food drive.

DELAWARE GUIDANCE SERVICES, WILMINGTON, DELAWARE
RE: Thank you in appreciation of their Human Service Grant.

LOVE, INC., SEAFORD, DELAWARE
RE: Thank you in appreciation of their Human Service Grant.

**Public
Comments**

Dan Kramer commented on Council's December 6, 2017 Comprehensive Land Use Plan Workshop.

Hack Jones and Chris Pollinger spoke in regard to the Heron Bay Community and the Memorandum of Understanding between the builder and the County.

(Con't.)	Eric Masten commented on 'Right to Work' and his opposition.
Recognition of the Delmar High School Field Hockey Team and Delmar High School Football Team	<p>Mr. Lawson reported that members and coaches of the Delmar High School Field Hockey Team and the Delmar High School Football Team were in attendance.</p> <p>Council presented the Field Hockey team with a Proclamation recognizing their winning the 2017 Delaware Interscholastic Athletic Association Division II State Championship. Delmar won their title as Division II champions in November defeating Tower Hill 3-2 and ended their season with an impressive 18-0 record. A group photo was taken with Councilman Arlett.</p> <p>Council presented the Football team with a Proclamation recognizing their winning the 2017 Delaware Interscholastic Athletic Association Division II State Championship. Delmar won their title as Division II champions in December defeating Milford 14-7 and ended their season with an impressive 12-1 record. A group photo was taken with Councilman Arlett.</p> <p>Councilman Arlett exited the meeting.</p>
Wastewater Agreement	Mr. Lawson presented a Wastewater Agreement for Council's consideration.
M 641 17 Execute Wastewater Agreement/ Breakwater Beach, LLC	<p>A Motion was made by Mr. Cole, seconded by Mr. Burton, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 53-1 that the Sussex County Council execute a construction administration and construction inspection agreement between Sussex County Council and "Breakwater Beach, LLC" for wastewater facilities to be constructed in "Breakwater Beach (Parcels 421-428)", located in Bethany Beach Sanitary Sewer District.</p> <p>Motion Adopted: 4 Yeas; 1 Absent.</p> <p>Vote by Roll Call: Mr. Arlett, Absent; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea</p>
Administrator's Report	<p>Mr. Lawson read the following information in the Administrator's Report:</p> <ol style="list-style-type: none"><u>Sussex County Comprehensive Land Use Plan Workshop</u> The next Sussex County Council Comprehensive Land Use Plan Workshop will be held on Wednesday, December 13, at 10:00 a.m. in Council Chambers. A copy of the agenda is attached.<u>Projects Receiving Substantial Completion</u> Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Peninsula Lakes –

(Con't.)

Phase 6 (Construction Record), effective December 6; Coastal Station (aka Corrado), effective December 7; and Sussex West – Phase 2, effective December 7.

3. Christmas and New Year's Holidays

Please note, County offices will be closed on December 25 and 26 to celebrate the Christmas holiday, and January 1 for the New Year's holiday. In addition, the Sussex County Council will not meet on December 19 or December 26. The next regularly scheduled Council meeting will be held on Tuesday, January 2, at 10:00 a.m.

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

**Quarterly
Pension
Update and
Recommendation**

Ms. Jennings, Finance Director, presented a quarterly pension update, which included a quarterly performance summary, annual actuarial report and recommendation to change the OPEB funding policy.

The market value of the Pension Fund, as of September 30, 2017, was \$90 million reflecting a third quarter return 2.7 percent, and a one year return of 11.1 percent. The County's assumed rate of return is 7.25 percent for both the Pension and OPEB funds. The market value of the OPEB Fund, as of September 30, 2017, was \$41.6 million reflecting a third quarter return of 3.1 percent, and a one year return of 11.2 percent.

Ms. Jennings presented the annual actuarial report for the Pension Fund as of June 30, 2017. The FY 2017 recommended contribution was \$3.4 million and \$4.1 million in FY 2018. The County contributed an extra \$5 million in FY 2018, which resulted in a \$9.2 million contribution. The unfunded liability increased from FY 2017 (\$15.7 million) to FY 2018 (\$21 million). The increase was due to the change in the assumed rate of return from 7.5 percent to 7.25 percent, and plan changes for 12 honr employees (40 to 42 hours and added 5 years). The Pension Plan realized an increase in the funded ratio of one percent in FY 2018 to 79 percent. The Pension Plan will be fully funded in 19 years (2036).

Ms. Jennings presented the annual actuarial report for the OPEB Fund as of June 30, 2017. The FY 2017 recommended contribution was \$1.9 million. The County also contributed an additional \$5 million in FY 2018, which resulted in a \$6.9 million contribution. The unfunded liability decreased from \$16,983,000 (FY 2017) to \$16,956,000 (FY 2018), and the funded ratio increased by 3 percentage points to 68 percent in FY 2018. The 20-year projection will result in the OPEB Plan being 98 percent funded in 2037.

Ms. Jennings reviewed the recommendation to change the OPEB Policy as a result of GASB regulations requiring a close period of amortization versus an open period. This change will not have a financial impact on the County.

M 642 17
Adopt
Change/
OPEB Plan/
Adopt
Close
Level
Percent
of Pay

A Motion was made by Mr. Cole, seconded by Mr. Burton, that the Sussex County Council, based on the recommendation of the Pension Committee and the County's actuary, Cheiron, change the OPEB funding policy to state that the Actuarial Determined Contribution will include the amortization of the unfunded actuarial liability over a 30-year close level percent of pay.

Motion Adopted: 4 Yeas; 1 Absent.

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

Mr. Vincent made comment regarding the returns realized by the State of Delaware, as well as the ability of the County to continue Pension funding at current levels.

Heron Bay
Community
MOU
Status
Report

Hans Medlarz, County Engineer, and Mike Brady, Director of Public Works, presented a status update regarding the Memorandum of Understanding (MOU) between Sussex County, Heron Bay Associates and LC Homes Delaware. Council approved the MOU at their February 14, 2017 meeting for the completion of remaining correctional drainage work and the amenities in the Heron Bay Development as was presented. Mr. Medlarz noted that when the MOU was approved, the County was attempting to achieve implementation of the amenities. When the plan was approved, the amenities plan was part of the approval; however, there was no stipulation of when it had to be completed. Discussion as to what was and was not included in the MOU was reviewed.

Mr. Arlett reentered the meeting.

Mr. Medlarz stated that it his hope to receive Council's concurrence on the status of the MOU and, hopefully, close the MOU, short of the area that was shown on the site plan and all the ongoing driveway constructions. In their PowerPoint presentation, an aerial view of the community and a diagram of the amenities area were shown. As individual sections of the MOU are completed, the contractor would be allotted a limited number of building permits. The original approved plan was approved without any specifics to these improvements. The MOU was the vehicle to have these amenities completed. Subsections 3 thru 8 of the MOU were reviewed and discussed at length (sidewalks; swales; drainage; playground relocation; shed; hedgerow; landscaping; jogging trail; tennis, bocce ball and basketball courts; horseshoe pits; walking path, etc.). On many occasions, detailed information was not included in the amenities package so the use and importance of specific language was discussed.

M 643 17
Close Out
MOU/

A Motion was made by Mr. Wilson, seconded by Mr. Burton, based upon the recommendation of the Sussex County Engineering Department, that the Memorandum of Understanding between Sussex County and Heron Bay

**Heron
Bay
Community**

Associates, LLC and LC Homes, dated March 17, 2017, be closed out, given the requirements of the memorandum having been substantially completed.

Motion Adopted: 5 Yeas.

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

**Taxiway C
Pavement
Rehab**

Hans Medlarz, County Engineer, presented a Balancing Change Order and request to grant Substantial Completion for Taxiway C Pavement Rehabilitation, Phase I, Project No. 17-02. Mr. Medlarz noted that these items pertain to the preventive maintenance of the asphalt at the airport. This particular project was awarded in July 2016, with successful completion and under budget.

**M 644 17
Approve
Change
Order No. 1/
Substantial
Completion/
Taxiway C
Pavement
Rehab**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract No. 17-02, Taxiway C Pavement Rehabilitation, Phase I be approved, which decreases the contract amount by \$50,383.72, for a new total of \$509,624.28 and that substantial completion be granted effective October 10, 2017 and any held retainage be released in accordance with the contract documents.

Motion Adopted: 5 Yeas.

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

**Sussex
Shores
Subdivision/
Contract
Amendment
No. 2 and
Balancing
Change
Order and
Substantial
Completion**

Mr. Medlarz, County Engineering, presented Contract Amendment No. 2 for Additional Construction Administration and RPR Services, Sussex Shores Subdivision, Chapter 96, Projects 14-13 A, B. Separate contracts were bid and awarded for Utility Relocation, Project No. 14-13A and Roadway Improvements, Project 14-13B. At this time, Amendment No. 2, in an amount of \$16,216.00 is required to complete all services. George, Miles and Buhr (GMB) worked diligently to minimize the extra costs; all costs related to these various contracts, engineering services, etc. will be billed to the property owners as per Chapter 96 requirements.

In addition with the GMB amendment, also included is the Balancing Change Order and Substantial Completion for Project 14-13B, Roadway Improvements, which reduces that contract by \$46,129.64 for a final total of \$318,514.66. The reduction and elimination of contingency items account for most of this decrease, along with reduction of several original items based on actual final measurements.

**M 645 17
Sussex**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the

**Shores/
Approve
Amendment
No. 2/RPR
Services**

Sussex County Council approves Amendment No. 2 for construction administration and resident project representative services with George, Miles & Buhr, for Sussex Shores Community Improvements, in an amount not to exceed \$16,216.00 effective today, December 12, 2017.

Motion Adopted: 4 Yeas; 1 Not Voting.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Not Voting;
Mr. Vincent, Yea**

**M 646 17
Sussex
Shores/
Approve
Change
Order No. 1
and
Substantial
Completion**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract No. 14-13B, Sussex Shores Subdivision – Roadway Improvements, be approved, which decreases the contact amount by \$46,129.64, for a new total of \$318,514.66, and that substantial completion be granted effective June 9, 2017 and any held retainage be released in accordance with the contract documents.

Motion Adopted: 4 Yeas; 1 Not Voting.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Not Voting;
Mr. Vincent, Yea**

**Report on
CU 2102/
Arturo
Grandos-
Gonzalez**

Janelle Cornwell, Planning and Zoning Director, reported on Conditional Use No. 2102 filed on behalf of Arturo Granados-Gonzalez. At the Council meeting on October 31, 2017, action was deferred for a period of 30 days for receipt of the following information: a response from DNREC, a response from the Delaware State Police, and information on limiting the timeframe for the Conditional Use; once the information requested was received, a report would be given to Council in public session, after which time the public would have 30 days to respond to any information received (in writing only).

Ms. Cornwell stated that a response was received from DNREC regarding the septic system which noted there is no septic permit for that parcel on file (records date back to 1985).

Ms. Cornwell noted that a response was received from DelDOT regarding traffic accidents. There have been 4 accidents in the vicinity of the property since November 29, 2014 and November 29, 2017, with no fatalities.

**Sign
Ordinance
Enforce-
ment
Update**

Janelle Cornwell, Planning and Zoning Director, and Steven Hickman, Zoning Inspector II, presented a Sign Ordinance enforcement update. (Council passed the new Sign Ordinance at its October 11, 2016 meeting). Their presentation discussed and reviewed complaints, tracking permits, sign equipment, and customer service and permitting process. Ms. Cornwell

(Con't.)

noted that they had received 52 public complaints regarding signage, the majority of which included billboards and electronic message center (EMC) signs; the complaints were primarily in regard to brightness. Mr. Hickman made inspection for all complaints that resulted in 39 violation letters, with only 6 still outstanding. It was noted that he has inspected every billboard and EMC sign within the County to ensure compliance. Included in their PowerPoint presentation were examples of signage not in compliance, as well as before and after pictures. When noncompliance is found, a violation letter is mailed; it was noted that most individuals are very eager to rectify and address any issues. Mr. Hickman is also responsible for sending out the annual invoices for all signage in the County, which averages between 80 to 150 invoices per month. When sending out site plan review letters, a note is also included as to the need for a permit if signage will be included. Mr. Hickman has access to a phone app that allows a picture to be taken of a sign which, in turn, computes the square footage and height of the sign to allow compliance to be immediately known; a light meter also has the ability to measure brightness. It was reported that customer service and the permitting process has been improved. Typically, a person would have to bring the required paperwork into the Planning and Zoning Office, but the sign permit application has been revamped and applicants can now email their paperwork. Once approval has been given and payment for the permit has been received, the permit is emailed back to the applicant. If an unresolved issue is turned over to the Constable's Office, a fee of up to \$100 is possible for noncompliance; this action has not been needed at this point.

Council expressed their appreciation for a job well done and acknowledged the work involved in the enforcement of the County's sign ordinance.

Old
Business/
C/Z 1827 &
C/U 2098
Fenwick
Commons

Under Old Business, the Council discussed the Proposed Ordinances 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 13.33 ACRES, MORE OR LESS" (Change of Zone No. 1827) and 'AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY (62 DUPLEX UNITS) STRUCTURE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS" (Conditional Use No. 2098) both filed on behalf of Fenwick Commons, LLC.

Ms. Cornwell noted that the Planning and Zoning Commission held a Public Hearing on these applications on October 12, 2017 at which time action was deferred on both applications; the Commission again deferred action on both applications on October 26, 2017. On November 16, 2017, the Commission recommended that C/Z 1827 be approved and that C/U 2098 be approved with 9 conditions.

(Con't.) The Council held a Public Hearing on these applications on November 14, 2017, at which time action was deferred (Public Hearing and public record were closed).

Mr. Arlett requested that action be deferred on both C/Z 1827 and C/U 2098 to allow further review of Planning & Zoning's record.

M 647 17 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to defer action
C/Z 1827 on C/Z 1827 filed on behalf of Fenwick Commons, LLC.
Fenwick

Commons Motion Adopted: 5 Yeas.
Defer Action

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

M 648 17 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to defer action
C/U 2098 on C/U 2098 filed on behalf of Fenwick Commons, LLC.
Fenwick

Commons Motion Adopted: 5 Yeas.
Defer Action

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

Grant Ms. Jennings presented the following grant requests for the Council's
Requests consideration.

M 649 17 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$250.00
Council- from Mr. Vincent's Councilmanic Grant Account to the Nanticoke Health
manic Foundation for their prescription drug fund.
Grant/

Nanticoke Motion Adopted: 5 Yeas.
Health

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

M 650 17 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$2,500
Council- from Mr. Cole's Councilmanic Grant Account to the Rehoboth Beach
manic Historical Society for their capital campaign.
Grant/

Rehoboth Motion Adopted: 5 Yeas.
Historical

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

Introduction of Proposed Zoning Ordinance	Mr. Cole introduced the Proposed Ordinance entitled, "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RV/PARK MODEL/TRAILER REPAIR AND REFURBISHMENT BUSINESS WITH OUTDOOR STORAGE AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS, OF A 32.16-ACRE PARCEL OF LAND" (Conditional Use No. 2111) filed on behalf of Michael Moutzalias [Tax I.D. No. 134-8.00-5.00 (portion of)] (911 Address: 30190 Whites Neck Road, Dagsboro).
Council Comments	<p>Mr. Arlett, again, congratulated the Delmar High School Field Hockey and Football teams, and extended his wishes for a Merry Christmas and Happy New Year.</p> <p>Mr. Burton stated that he would not be in attendance at Council's afternoon session.</p> <p>Mr. Vincent made comment regarding Council's busy 2018 schedule, which begins in January with the public hearing on "Right to Work" to be held on January 2, 2018; January 16 for the public hearing on the "Special Events Ordinance"; and a Comprehensive Land Use Plan Workshop on January 3.</p>
M 651 17 Recess	<p>At 11:41 a.m., a Motion was made by Mr. Arlett, seconded by Mr. Burton, to recess until 1:30 p.m.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea</p>
M 652 17 Reconvene	<p>At 1:30 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to reconvene.</p> <p>Motion Adopted: 4 Yeas; 1 Absent.</p> <p>Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea</p>
Rules of Procedure	<p>Mr. Moore read the rules of procedure for public hearings.</p>
Public Hearing/ C/Z 1834 Colonial East, L.P.	<p>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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6.98</p>

(Con't.)

ACRES, MORE OR LESS" filed on behalf of Colonial East, L.P. (Change of Zone No. 1834) [Tax I.D. No. 334-5.00-165.00 (portion of) and 334-5.00-166.00 (portion of)] (911 Address: 30769 Lewes-Georgetown Highway, Lewes).

Janelle Cornwell, Planning and Zoning Director, presented the Change of Zone application.

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2017, at which time the Commission recommended approval.

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

Ms. Cornwell noted that one additional letter had been received in support of the application and one additional letter had been received in opposition of the application; the letters were read into the record.

The Council found that David Hutt, Attorney with Morris James Halbrook and Bayard; Ken Christenbury, Project Engineer with Axiom Engineering; Steve Class, owner of Colonial East L.P.; and DJ Hughes, Traffic Engineer with Davis Bowen and Friedel, were present on behalf of the application.

Mr. Hutt noted the property was located on Route 9, near the intersection of Minos Conaway Road, directly in front of the Sussex East and Sussex West manufactured home communities. Both communities began with conditional uses, the first of which was approved in 1981, the second in 1997, and the third in 2007; between the 3 conditional uses, there are a total of 350 units within the communities. At the present time, 96 percent of the units are occupied by 55 plus individuals, and 80 percent of the community are year-round residents. The exhibit notebooks given to Council contain the application, survey of the property, as well as the deeds of the property showing ownership in Colonial East. This particular application is for the front 7 acres of the property and the project is intended to be rezoned to B-1 neighborhood business.

Mr. Christenbury reviewed the site plan. He reiterated that the change of zone does not apply to the entire manufactured home park, only the front 7 acres. The property is located within a low density environmentally sensitive development overlay zone that does allow for commercial areas in proximity to residential communities. Mr. Christenbury stated there is quite a bit of commercial zoning on the Route 9 corridor and further into the Rehoboth area. The area is mapped by the State's Strategies as a Level 2 for State spending, which is an area that does encourage growth and development of this nature. Although a site plan has been prepared, it is nonbinding at a zoning hearing.

(Con't.)

Mr. Hughes noted that he has met with DelDOT and a traffic impact study (TIS) is required. Based on projected trips, two intersections are required. The recommendations for the TIS will be that Route 9 and Sheffield Drive will have to be improved to meet DelDOT standards (a bike lane will be included and the right turn lane will be extended, etc.); an additional lane will be added exiting Sheffield Drive. Requirements for bike lanes were explained. DelDOT approvals will be required for the TIS, as well as a letter of no objection, and entrance plan approvals. The roads are privately owned by Mr. Class; signage could be posted that would encourage traffic from entering the residential community.

Mr. Cole expressed concern that the traffic impact study has not been completed. Mr. Hughes noted that DelDOT does not typically make comment on the approval or denial of an application, but makes recommendations as to traffic requirements. Mr. Moore stated that the applicant would have to comply with the final site plan, which would include recommendations from DelDOT. Mr. Hutt explained that final site plan approval would not be awarded by the Planning Commission until the developer has shown how it can comply with the requirements of DelDOT.

Mr. Class spoke in regard to the master plan and goals for this parcel to be known as Sussex Square, as well as survey results. Both Sussex East and Sussex West are 55 plus communities; the average age is approximately 75 or older. The residents are looking for amenities that would allow them not to have to access Coastal Highway, and is the reason for the B-1 zoning. All development will be low key; there will be no drive-ins, gas stations, Wawa-type of establishments, or drive thru banks, etc. Mr. Class discussed the letter and survey that were sent to the residents; it was noted that residents were informed that lot rents would not be impacted. The survey results reflected that residents wanted amenities that would allow a café with food and a bakery, a farmer's type of market, etc. Currently, golf carts are not permitted within the Sussex East and Sussex West communities.

Mr. Cole again expressed concern regarding the Traffic Impact Study and the precedent that could be set if Council makes a recommendation without the results of the TIS. Mr. Hutt noted that the reason a traffic impact study was required by DelDOT in this matter was because the applicant chose to submit a conceptual site plan with the change of zone request, and the Council does, in fact, rule on change of zone requests without a traffic impact study. Ms. Cornwell noted it is rare for the County to have a TIS for a change of zone application as DelDOT does not complete a TIS on a change of zone application.

Mr. Hughes noted that the total proposed site, without the mobile homes, would generate 1,379 new trips per day and 318 pass-by trips. There would be a total of 2,736 trips added when the existing community trips are included.

(Con't.)

Mr. Class commented that he had received two objections in response to the survey.

Mr. Hutt summarized the presentation, as well as the ways in which the application meets the requirements of B-1 Neighborhood Business zoning and warrants approval by Council.

There were no public comments in favor of this application.

Six persons spoke in opposition of this application noting concerns regarding traffic; access roads; road congestion; safety; impact of lighting required for retail parking; lot rent is used for maintenance of the roads within the community so the question was raised as to who would ultimately pay for the maintenance of the roads if the retail space is open to the public; Route 9 is already a heavily signaled roadway; close proximity of retail space to residential area; only 42 residents responded to the survey; neighboring businesses generate traffic and add to an already heavily traveled Route 9; lack of shoulders along roadway; and the need for additional retail space was questioned considering other endeavors have not been successful in the same area.

The Public Hearing was closed. The public record was left open to allow receipt of the Traffic Impact Study report only.

M 653 17
C/Z 1834
Colonial
East, L.P.
Defer Action

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on C/Z 1834 filed on behalf of Colonial East, L.P. and to leave the record open until January 30, 2018 to allow receipt of the Traffic Impact Study only; once the report is received and reported to Council, to then allow a 15-day period for persons to respond in writing only.

Motion Adopted: 4 Yeas; 1 Absent.

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

Public
Hearing/
C/Z 1838
Two Farms,
Inc.

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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.85 ACRES, MORE OR LESS" filed on behalf of Two Farms, Inc. (Change of Zone No. 1838) (Tax I.D. No. 135-11.00-78.00) (911 Address: 24616 Lewes-Georgetown Highway, Georgetown).

Although having no vote, Mr. Moore noted that he is an acquaintance with the sellers of this property.

(Con't.)

Janelle Cornwell, Planning and Zoning Director, presented the Change of Zone application.

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2017, at which time the Commission recommended approval.

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

The Council found that William Scott, Attorney with Scott and Shuman; Mike Riemann, Engineer from Becker Morgan Group; Randy Bendler, representing Two Farms; and Mr. Harold and Richard Dodd were present on behalf of the application.

Mr. Scott presented a brief overview of the application. This is an application to rezone a 2.85-acre property from AR-1 Agricultural Residential to B-1 Neighborhood Business. The applicant intends to develop the property into a small retail center with approximately 15,000 square feet of leasable space. The property is located at the southeast corner of Route 9, at the intersection with Route 30/Gravel Hill Road. Two Farms is currently pursuing another site – located approximately 2 miles to the east from this property – for the purpose of building a Royal Farms Store.

Mr. Reimann noted that the site is currently a vacant residential property; he reviewed the surrounding properties and current uses along Route 9. The intersection was recently upgraded by DelDOT. It was reported that a Traffic Impact Study has been completed and is included in the booklet given to Council, including the recommendation that access to the property not be located on Route 9. Other items contained in the booklet were also reviewed that included water and sewer, stormwater management, screening and landscaping, etc. He again, reiterated, that it is not their intent to build a Royal Farms store on the property.

Mr. Scott summarized the presentation, including its compatibility with the Comprehensive Land Use Plan and that it is located in a low density rural area; the land designation does permit commercial development including retail and office use that are contemplated for this site; the property is in the Investment Level 3 and 4 for State spending, but with recent updates to the intersection, no additional State spending will be needed for the infrastructure to support the proposed development; the proposed rezoning would not having any adverse impact on the surrounding properties; Planning and Zoning recommended approval to B-1 and they would hope to obtain the same approval from Council; and the contemplated rezoning is compatible with the surrounding uses.

There were no public comments in favor of this application.

(Con't.) **One person spoke in opposition of this application citing traffic concerns.**

The Public Hearing and public record were closed.

M 654 17 **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to defer action on**
C/Z 1838 **C/Z 1838 (filed on behalf of Two Farms, Inc.) until January 9, 2018.**

Two Farms

Defer Action **Motion Adopted: 4 Yeas; 1 Absent.**

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

**Public
Hearing/
C/U 2107
Galbraith
Develop-
ment**

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 MINI-STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.21 ACRES, MORE OR LESS" filed on behalf of Galbraith Development Group (Conditional Use No. 2107) (Tax I.D. No. 134-17.00-8.09) (911 Address: None Available).

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

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2017, at which time the Commission deferred action. Since their public hearing, Ms. Cornwell reported that 24 additional letters have been received in opposition to the application.

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

The Council found that David Hutt, Attorney with Morris James Wilson Halbrook and Bayard; Ken Christenbury, with Axiom Engineering; and Mark Galbraith, with Galbraith Development Group, were present on behalf of the application.

Mr. Hutt made opening remarks. He noted that the property is located along Muddy Neck Road between Parker House Road and Beaver Dam Road. The application is for an approximately 40,000 square foot mini-storage facility. No storage of boats and recreational vehicles would be included in the open-air storage of the site. It was stated that the applicant lives on Muddy Neck Road, and the self-imposed conditions submitted by Mr. Galbraith address most of the concerns expressed in the letters of opposition.

Mr. Christenbury made note of the project books presented to Council, as well as a handout showing traffic projections. The 2008 Comprehensive Land Use Plan and future land use map does identify this as a developing

(Con't.)

area. Although an expired conditional use, the property adjacent to the application was approved by Council for a conditional use (C/U 1552), and the area is a mixture of both residential and commercial uses. Conditional Use No. 1552 was an approval for 9,344 square feet of medical and dental offices; the average weekday traffic generated by that application would have been 325. Using a similar formula, the proposed site would generate 69 trips. It was noted that almost any other use, with the exception of farming, would generate more traffic than a mini-storage facility. In reviewing the site plan, it was noted 15 foot buffers, included in the landscaping plan, are proposed around the site. Mr. Christenbury addressed each concern contained in the letters that were submitted in opposition to the application; he noted that the conditions offered by the applicant – prior to knowing the concerns – were, in fact, already addressed by the conditions included in the application.

To address environmentally sensitive issues, the application would have use of central utilities and avoid the use of on-site wastewater disposal systems. The perimeter of the project does have undisturbed areas which would be left intact, and stormwater management best practices would be required.

Mr. Christenbury stated that 4 units to the acre generates slightly more traffic, and 2 units to the acre would generate slightly less traffic than the proposed use. In comparison, the medical office approved by Council would have generated five times the traffic than that of the mini-storage facility. There would be a total of 19 buildings with each building have multiple units.

Mr. Hutt stated several of the letters of opposition referenced that Council should deny the current application based on the fact they had denied a self-storage facility near the Nassau Bridge in 2014/2015. He noted the points as to how the current application is not similar to the one denied.

Mr. Christenbury referenced a DelDOT functional classification map and discussed the various types of roadways; Route 26 is a minor arterial; Route 17, Route 20, Route 361, and Route 54 are major collectors, with Route 113 being a principal arterial.

There were no public comments in favor of this application.

Fourteen persons spoke in opposition of this application citing traffic concerns; the area is heavily residential and would have a negative impact on neighboring property values; location is not suitable to this type of use; located on a dangerous blind curve; the proposed use is not compatible with residential area; warehousing is not appropriate for the area; crime and safety issues; lighting and fencing concerns; environmental concerns and possible impact to surrounding roadways, wells, septic systems and habitat destruction; the use is out of character for the area and road classification; concern expressed as to the precedent that would be set if this application is

(Con't.)

approved; there are 7 storage facilities located within a 10 minute drive of the proposed site and all have open units; and reference was made to Council's unanimous denial of Conditional Use No. 1998 for a mini-storage facility in an AR-1 Residential district; a petition with 115 signatures (the 6 points contained in the petition were reviewed individually), as well as photographs were presented.

The Public Hearing and public record were closed.

**M 655 17
C/U 2107
Galbraith
Develop-
ment
Group
Defer Action**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to defer action on C/U 2107 filed on behalf Galbraith Development Group.

Motion Denied: 4 Yeas; 1 Absent

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

**M 656 17
Adjourn**

At 4:24 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to adjourn.

Motion Adopted: 4 Yeas; 1 Absent

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

Respectfully submitted,

**Nancy J. Cordrey
Assistant Clerk of the Council**

{An audio recording of this meeting is available on the County's website}