

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 17, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 17, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	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 608 19
Approve
Agenda**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of December 10, 2019 were approved by consent.

**Corre-
spondence**

Mr. Moore read correspondence received from the following: Kent-Sussex Industries, Delaware Breast Cancer Coalition, The English as Second Language Program, and Delaware Lions Foundation.

**Public
Comments**

A public comment period was held and the following spoke: Paul Reiger and Dan Kramer.

**Procla-
mation**

The Sussex County Council recognized the Delmar High School Field Hockey Team for winning the 2019 DIAA Division II Championship. The Coach and representatives of the team were in attendance.

**DelDOT
TID
Update**

Mr. Lawson reported on the next steps for the DelDOT TID (Transportation Improvement District). At the November 19, 2019 Council meeting, DelDOT Secretary Cohan and staff provided a detailed update on the work DelDOT has conducted on the proposed Henlopen TID. Mr. Lawson reported that the next steps in the development of the Henlopen

**DelDOT
Update
(continued)**

TID is to host a public workshop in early 2020 and then begin the drafting of the TID agreement between the agency and the County. There was no opposition from Council in regards to moving forward with the TID.

**Admin-
istrator's
Report**

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

1. Christmas and New Year's Holidays

Please note, County offices will be closed on December 23rd, 24th, and 25th to celebrate the Christmas holiday, and January 1st for the New Year's holiday. The next regularly scheduled Council meeting will be held on Tuesday, January 7, 2020, at 10:00 a.m.

2. George J. Collins

It is with sadness that we note the passing of former County Councilman George J. Collins on Saturday, December 14, 2019. Mr. Collins served two terms on County Council, from January 1991 to January 1999. We wish to extend our condolences to the Collins family.

**Quarterly
Pension
Update**

Mrs. Jennings and Michael Shone of Marquette Associates provided a quarterly pension update, including a performance summary, an actuarial update, and a report on the November 21, 2019 Pension Committee meeting. Mrs. Jennings reported that the Pension Committee looked at options to strengthen the performance of the County's pension investments and the Committee made multiple recommendations, including: adding Real Estate Investment Trusts (REITS) to the Pension and OPEB portfolios; moving all funds out of the State of Delaware Investment Pool; and increasing the services provided by Marquette Associates (Consulting Plus). Mr. Shone reported on the Pension and OPEB funds' performance from 2010 to 2019 and discussed the under-performance in the State of Delaware Investment Pool Fund.

**M 609 19
Amend
Investment
Policy
Statements
for Pension
and OPEB**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, that the Sussex County Council accept the recommendation from the Pension Committee to amend the Investment Policy Statements of both the Pension and OPEB funds to include Real Estate Investment Trusts and ultimately removing all funds from the State of Delaware Investment Pool. The Investment Policy Statements of the Pension and OPEB funds will have the following targets: U.S. Stocks – 49%, International Stocks – 16%, Fixed Income – 29%, Real Estate – 5%, and Cash – 1%.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 610 19
Amend
Contract
with
Marquette
Associates**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, that the Sussex County Council accepts the recommendation from the Pension Committee to approve the Finance Director to amend the contract with Marquette Associates to provide Consulting Plus services as explained on this date for a cost not to exceed 4 basis points.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Medic
Station
101 Lease**

Robert Schoonover, Manager of EMS Logistics, presented a request for a lease renewal for Medic Station 101 located in the Lincoln Community Center. The lease is for a five-year period ending on December 31, 2025, with a 6 month opt-out provision.

**M 611 19
Approve
Lease
Agreement/
Medic
Station 101**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Sussex County Council approves the Lease Agreement between Lincoln Community Hall, Inc. and Sussex County, as per the terms and conditions of the written lease agreement.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Draft
Ordinance/
Clarification
of EDU
Assessment**

Hans Medlarz, County Engineer, presented a Draft Ordinance entitled “AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE”.

Mr. Medlarz reported that this Draft Ordinance clarifies and restates the contents of Ordinance No. 2677 adopted on August 20, 2019. The Draft Ordinance’s effective date shall relate back to the August 20, 2019 adoption date of Ordinance No. 2677.

Mr. Medlarz noted that the adopted Ordinance on August 20, 2019 was introduced and voted on in a slightly different format than the one which was posted on the website. The correction pertains to medical facilities (1.0 EDU per overnight bed capacity and treatment room listed under Hospitals).

**Introduction
of Proposed
EDU
Ordinance**

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL

Introduction (continued) SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE”.

The Proposed Ordinance will be advertised for Public Hearing.

SCRWF Treatment Process Upgrade and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program Upgrade/Award Recommendations Hans Medlarz, County Engineer, presented bid award recommendations for South Coastal WRF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital Improvement Program, Phase 2: General Construction, Project C19-11 and Electrical Construction, Project C19-17. These projects were designed as separate prime contractor bids for the electrical work and the general/structural work items. This approach provided cost saving opportunities for construction contract implementation as well as savings in contract administration and inspection services. After consultation, both the Finance Director and the County Engineer recommend award of the General Construction, Project C19-11 to M. F. Ronca & Sons, Inc. of Bethlehem, Pennsylvania, in the amount of \$39,526,400.00 including allowances and award of the Electrical Construction, Project C19-17 to BW Electric, Inc. of Harrington, Delaware, in the amount of \$22,178,674.00 excluding allowances. In addition, they recommend award of the unit price contingency schedule for each project “as bid” with zero starting quantities to be invoiced as any of the associated construction contingencies arise. This approach allows for only the necessary project components to be bonded, reducing the general condition costs.

M 612 19 SCRWF Capital Improvement Program Phase 2/ General Construction/ Bid Award A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract C19-11, South Coastal Wastewater Treatment Plant, Capital Improvement Program, Phase 2 – General Construction, be awarded to M.F. Ronca & Sons, Inc. for their total bid of \$39,526,400.00 and hereby incorporated are the unit price contingency bid schedules (included in Council and public packets for this meeting).

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

M 613 19 SCRWF Capital Improvement Program/ Phase 2/ Electrical Construction/ Bid Award A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract C19-17, South Coastal Wastewater Treatment Plant, Capital Improvement Program, Phase 2 – General Electric, be awarded to BW Electric, Inc. in the amount of \$22,178,674.00 and hereby incorporated are the unit price contingency bid schedules (included in Council and public packets for this meeting).

Motion Adopted: 5 Yeas.

**M 613 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**DE Coastal
Business
Park/
Phase 1**

Hans Medlarz, County Engineer, presented Final Balancing Change Order No. 3 and a request to grant Substantial Completion for the Delaware Coastal Business Park Phase I Construction, Project C19-15.

**M 614 19
Delaware
Business
Park/
Phase 1/
Balancing
C/O and
Substantial
Completion**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 3 for Contract C19-15, Delaware Coastal Business Park, Phase I, be approved, which increases the contract amount by \$53,667.19, for a new contract total of \$1,706,444.94, and that Substantial Completion be granted effective October 17, 2019, and any held retainage be released in accordance with the contract documents.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Mr. Moore referenced the two Conditional Uses (Conditional Use No. 2176 and Conditional Use No. 2186) that will be reported on in regard to public comments received.

**Report on
Public
Comments
and Close
Record/
CU 2176**

Jamie Whitehouse, Planning and Zoning Manager, reported on Conditional Use No. 2176 filed on behalf of KH Sussex, LLC. At the meeting of the Council on September 17, 2019, the record was left open for Council to ask questions of staff and agencies. At the December 10, 2019 Council meeting, the responses were reported to Council. The 5-day public comment period began when the comments were reported in open session to Council on that date. The record closed for public comments at the end of business on December 16, 2019. Mr. Whitehouse stated that he has copies of the comments received and those comments were distributed to the Council. Mr. Vincent noted that the record is closed and the matter will be placed on a future agenda for action on the application.

**Report on
Public
Comments
and Close
Record/
CU 2186**

Jamie Whitehouse, Planning and Zoning Manager, reported on Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc. At the meeting of November 5th, the Council left the record open for Council to ask questions of staff and agencies. Council gave agencies until the close of business on December 9, 2019 to provide responses to the questions. The responses were reported to Council at their meeting on December 10, 2019. The public had 5 days to provide written responses to the responses from the agencies. During the December 10, 2019 Council meeting, an enclosure to the December 4, 2019 DNREC letter was inadvertently not distributed to the public. As a result, the time period for comments is being extended until the close of business on December 26, 2019. (Both the DNREC letter

(continued) and enclosure were included in the Council and public packets for this meeting.) Responses received from the public will be reported at a future meeting.

Old Business/ CU 2185 Under Old Business, Council considered Conditional Use No. 2185 filed on behalf of Vincent Kinack. The Council held a Public Hearing on this application on September 24, 2019 at which time action was deferred for the Planning and Zoning Commission's recommendation and due to the fact that no one was present on behalf of the application. On October 10, 2019, the Commission recommended approval of the application.

M 615 19 Adopt Proposed Ordinance/ CU 2185 Denied A Motion was made by Mr. Burton, seconded by Mr. Wilson to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.4516 ACRES, MORE OR LESS" (Conditional Use No. 2185) filed on behalf of Vincent Kinack.

Motion Denied: 5 Nays.

Vote by Roll Call: Mr. Hudson, Nay; Mr. Rieley, Nay;
Mr. Wilson, Nay; Mr. Burton, Nay;
Mr. Vincent, Nay

(This application was denied due to the lack of a record; no one was present on behalf of the application at the County Council's Public Hearing.)

Old Business/ CU 2190 Under Old Business, the Council considered Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone. The Council held a Public Hearing on this application on October 29, 2019 at which time action was deferred and the record was left open for a new site plan. Jamie Whitehouse, Planning and Zoning Manager, reported that a new site plan has been submitted and was included in Council packets for this meeting. Mr. Whitehouse also reported that the Planning and Zoning Commission recommended denial of this application on October 10, 2019.

Mr. Burton expressed concern that, if Council approves this application, the Applicant could still submit an application to the Board of Adjustment for a variance. Mr. Moore stated that he would have to look into whether or not the Council can make it a condition that an applicant cannot go the Board of Adjustment for a variance. Additionally, Mr. Moore stated that since the Commission recommended denial, no conditions have been prepared for the Council to consider.

M 616 19 Defer Action on CU 2190 A Motion was made by Mr. Burton, seconded by Mr. Rieley, to defer action for further consideration on Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone.

**M 616 19
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU 2192**

Under Old Business, the Council considered Conditional Use No. 2192 filed on behalf of Thomas and Judy Munce (Napoleon Hernandez). The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2019 at which time the Applicant was not present. Due to the lack of representation, and therefore, the lack of a record at the Public Hearing, the Planning and Zoning Commission recommended denial. The Council held a Public Hearing on this application on October 29, 2019 at which time action was deferred and the public record was closed with the exception of receiving the record and recommendation of the Planning and Zoning Commission. (It was noted that a recommendation from the Commission would be received only if the Applicant is able to reschedule their Public Hearing before the Planning and Zoning Commission.) Mr. Whitehouse noted that a request for re-hearing was not submitted within the required time period.

**M 617 19
Adopt
Proposed
Ordinance/
CU 2192**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1979 TO ALLOW FOR NIGHTCLUB TYPE ACTIVITIES AND AN ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.033 ACRES, MORE OR LESS” (Conditional Use No. 2192) filed on behalf of Thomas and Judy Munce (Napoleon Hernandez).

Denied

Motion Denied: 5 Nays.

**Vote by Roll Call: Mr. Hudson, Nay; Mr. Rieley, Nay;
Mr. Wilson, Nay; Mr. Burton, Nay;
Mr. Vincent, Nay**

(This application was denied due to the lack of a record before the Planning and Zoning Commission; no one was present on behalf of the application at the Commission’s Hearing. Therefore, Council could not receive the record and recommendation of the Commission.)

**Old
Business/
CZ 1895
CU 2195**

Under Old Business, the Council considered Change of Zone No. 1895 and Conditional Use No. 2195 filed on behalf of Gulfstream Development, LLC (Kent Apartments). At their meeting of November 14, 2019, the Planning and Zoning Commission recommended that both applications be approved.

**Old
Business/
CZ 1895
CU 2195
(continued)**

The Commission recommended approval of Change of Zone No. 1895 for the following reasons:

- 1. The project meets the purpose of the Zoning Code in that it promotes the orderly growth of the County.**
- 2. The proposed rezoning is consistent with other zonings and uses in the area; this includes a HR-1 RPC which is adjacent to the site. The property to the west and south is currently zoned GR and there is B-1 zoning in the area.**
- 3. The rezoning is basically infill to make this parcel consistent with the GR and HR zoning that surrounds it.**
- 4. The rezoning will not have a significant impact upon area traffic or roadways. DelDOT has stated that the development on this site will generate less than 50 vehicle trips per hour and less than 500 trips per day. DelDOT has stated that the impact of the proposed development of the property will be negligible.**
- 5. The rezoning will not adversely impact the neighboring properties, community or public facilities in the area.**
- 6. The site is served by central sewer provided by Sussex County and by central water.**
- 7. The rezoning is consistent with the Sussex County Comprehensive Development Plan. The site is in the Coastal Area. According to the Plan, medium and higher densities such as those permitted in the GR District are appropriate in the Coastal Area. According to the Plan, in certain circumstances where the site will be served by central water and sewer, where it is near sufficient commercial uses and employment centers, where it is in keeping with the character of the area and other similar factors, the site meets the Plan's considerations for rezoning to GR in the Coastal Area under the Comprehensive Plan.**

The Commission recommended approval of Conditional Use No. 2195 for the following reasons and with the following conditions:

- 1. The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres.**
- 2. The property is in an area where a variety of development has occurred. Lands to the north of this property are zoned HR-1 RPC with a multi-family residential development. Lands to the west and south are developed under GR zoning and there is a nearby B-1 zoning and other lands with commercial uses. This property is basically an infill development and it is consistent with these nearby uses.**
- 3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this area according to the plan which states that a range of housing types are acceptable here including medium and high density with a site near commercial uses is served by central water and sewer where the key use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.**
- 4. The proposed development will not have an adverse impact on the**

**Old
Business/
CZ 1895
CU 2195
(continued)**

- neighboring properties or communities.
5. The project will not have an adverse impact on traffic or roadways. DelDOT has stated it will generate less than 50 vehicle trips per hour and less than 500 trips per day, leading that agency to conclude that the traffic impact will be negligible.
 6. The project is located in an area of opportunity as defined by the Delaware State Housing Opportunity Maps. The Delaware State Housing Authority has strongly recommended this application.
 7. The development will be served by central sewer provided by Sussex County.
 8. This application is essentially an infill development that is consistent with adjacent residential development in the area.
 9. The development will be served by central water.
 10. This recommendation is subject to the following conditions:
 - a. A maximum number of residential units shall be 45.
 - b. The Applicant or its successor, as landlord shall be responsible for perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion and sediment control facilities, and other common areas.
 - c. All entrance intersections, roadways, and multi-modal improvements shall be completed by the Developer in accordance with DelDOT's requirements.
 - d. The project shall be served by County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide service to the project.
 - e. The project shall be served by central water to provide drinking water and fire protection.
 - f. There shall be vegetated or forested buffer at least ten feet in width.
 - g. The Applicant shall submit as part of the final plan a landscape plan showing the proposed tree and shrub landscape design including the buffer areas.
 - h. Construction activities including site work and deliveries shall occur only between 7:30 a.m. and 7:00 p.m. Monday to Friday and between 8:00 a.m. and 5:00 p.m. on Saturdays. There shall be no construction activities on the site on Sunday.
 - i. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - j. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - k. All street lights shall be shielded and downward screened so they do not shine on neighboring properties or roadways.
 - l. The interior street designs shall meet or exceed Sussex County street design requirements.
 - m. If required by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final

- Old Business/
CZ 1895
CU 2195
(continued)**
- Site Plan.**
- n. **Recreational amenities including the outdoor swimming pool and bathhouse shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family dwelling.**
 - o. **The Final Site Plan shall be subject to the review and approval by the Sussex County Planning and Zoning Commission.**

The County Council held a consolidated Public Hearing on both applications on December 10, 2019, at which time action was deferred.

Mr. Hudson commented on the proposed density of the project and stated that he is recommending that the number of multi-family units be limited to 16. Mr. Hudson also asked that the conditions include a requirement that the Applicant clean-out the ditch and maintain that ditch to insure sufficient water flow from the property and the adjacent property.

**M 618 19
Adopt
Ordinance
No. 2694/
CZ 1895**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2694 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS”(Change of Zone No. 1895) filed on behalf of Gulfstream Development, LLC (Kent Apartments).

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 619 19
Amend
Finding/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to amend the Planning and Zoning Commission’s Finding No. 1 (for Conditional Use No. 2195) to read as follows: “The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres, but is being amended as set forth below (in the conditions), which is “16 units on the entire property”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 620 19
Amend
Finding/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to amend the Planning and Zoning Commission’s Finding No. 4 (for Conditional Use No. 2195) to read as follows: “The proposed development will not have an adverse impact on the neighboring properties or communities with the

**M 620 19
(continued)**

conditions attached.”

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 621 19
Amend
Finding/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to strike the Planning and Zoning Commission’s Finding No. 5 (for Conditional Use No. 2195).

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Nay;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 622 19
Amend
Condition/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, that Condition No. 10a (recommended by the Planning and Zoning Commission for Conditional Use No. 2195) be amended as follows: “A maximum number of residential units shall be 16.”

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 623 19
Amend
Condition/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that Condition No. 10b (recommended by the Planning and Zoning Commission for Conditional Use No. 2195) be amended to read as follows: “The Applicant or its successor, as landlord shall be responsible for perpetual maintenance of the development roadway, buffers, stormwater management, facilities, erosion and sediment control facilities, and other common areas. The ditch on the property shall be cleaned and maintained and not be filled in. If it is relocated, it must be with the approval of the Sussex County Soil Conservation District and maintained pursuant to their requirements.”

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 624 19
Adopt
Ordinance**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to Adopt Ordinance No. 2695 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL

**M 624 19
Adopt
Ordinance
No. 2695/
CU 2195
(continued)**

DISTRICT FOR MULTI-FAMILY (45 APARTMENT UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS” (Conditional Use No. 2195) filed on behalf of Gulfstream Development, LLC (Kent Apartments), with the Findings and Conditions, as amended:

- 1. The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres, but is being amended as set forth below, which is “16 units on the entire property”.**
- 2. The property is in an area where a variety of development has occurred. Lands to the north of this property are zoned HR-1 RPC with a multi-family residential development. Lands to the west and south are developed under GR zoning and there is a nearby B-1 zoning and other lands with commercial uses. This property is basically an infill development and it is consistent with these nearby uses.**
- 3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This of type of development is appropriate in this area according to the plan which states that a range of housing types are acceptable here including medium and high density with a ite near commercial uses is served by central water and sewer where the key use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.**
- 4. The proposed development will not have an adverse impact on the neighboring properties or communities with the conditions attached.**
- 5. The project is located in an area of opportunity as defined by the Delaware State Housing Opportunity Maps. The Delaware State Housing Authority has strongly recommended this application.**
- 6. The development will be served by central sewer provided by Sussex County.**
- 7. This application is essentially an infill development that is consistent with adjacent residential development in the area.**
- 8. The development will be served by central water.**
- 9. This recommendation is subject to the following conditions.**
 - a. A maximum number of residential units shall be 16.**
 - b. The Applicant or its successor, as landlord shall be responsible for perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion and sediment control facilities, and other common areas. The ditch on the property shall be cleaned and maintained and not be filled in. If it is relocated, it must be with the approval of the Sussex County Soil Conservation District and maintained pursuant to their requirements.**
 - c. All entrance intersections, roadways, and multi-modal improvements shall be completed by the Developer in accordance with DelDOT’s requirements.**
 - d. The project shall be served by County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide**

**M 624 19
Adopt
Ordinance
No. 2695/
CU 2195
(continued)**

- service to the project.
- e. The project shall be served by central water to provide drinking water and fire protection.
 - f. There shall be vegetated or forested buffer at least ten feet in width.
 - g. The Applicant shall submit as part of the final plan a landscape plan showing the proposed tree and shrub landscape design including the buffer areas.
 - h. Construction activities including site work and deliveries shall occur only between 7:30 a.m. and 7:00 p.m. Monday to Friday and between 8:00 a.m. and 5:00 p.m. on Saturdays. There shall be no construction activities on the site on Sunday.
 - i. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - j. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - k. All street lights shall be shielded and downward screened so they do not shine on neighboring properties or roadways.
 - l. The interior street designs shall meet or exceed Sussex County street design requirements.
 - m. If required by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.
 - n. Recreational amenities including the outdoor swimming pool and bathhouse shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family dwelling.
 - o. The Final Site Plan shall be subject to the review and approval by the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

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

**M 625 19
Council-
manic
Grant**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent's Councilmanic Grant Account to the City of Seaford for the Police Department's Citizen's Police Academy.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 626 19
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to give \$1,800.00 (\$600.00 each from Mr. Wilson's, Mr. Rieley's and Mr. Vincent's Councilmanic Grant Accounts) to Grace-N-Mercy Ministries for their Community Dinner.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 627 19
Go Into
Executive
Session**

At 11:39 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending litigation and land acquisition.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Executive
Session**

At 11:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending litigation and land acquisition. The Executive Session concluded at 12:18 p.m.

**M 628 19
Reconvene
Regular
Session**

At 12:21 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 629 19
Authorize
Settlement
Agreement/
Blessing**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the President on behalf of Council be authorized to execute a stipulation of settlement regarding Conditional Use No. 2071 and to settle a lawsuit filed by Blessing on April 4, 2018, and filed by the County on May 18, 2018, more fully known as Civil Action No. 2018-0250-SG and Civil Action No. 2019-0354-SG. As part of this settlement, it is acknowledged by the parties that the pre-compost pile on the slab of concrete has been removed in its entirety. Further, this stipulation shall dismiss both lawsuits referenced herein, and reinstates Conditional Use No. 2071, as amended herein as follows:

- 1. Within 5 business days of the execution of this Agreement, each of the Lawsuits shall be dismissed with prejudice.**

**M 629 19
Authorize
Settlement
Agreement/
Blessing
(continued)**

2. **The Permit is hereby reinstated as modified herein and the Commission's vote on February 22, 2018 is hereby declared null and void and of no effect.**
3. **There is modification of permit conditions as follows:**
 - A. **The Applicant shall comply with all requirements established by DNREC and any other regulatory agency having jurisdiction over this use. Failure to comply with DNREC or other agency requirements shall result in the termination of this Conditional Use.**
 - B. **Until the new facility is constructed and ready for operation, no new pre-compost storage, blending or wind-rowing activities will be conducted on any place onsite except on the concrete pad. This condition excludes any pre-compost material stored on the polyethylene-lined bunkers already onsite. Materials may be loaded for shipping from either the pad or the existing bunkers in accordance with DNREC regulations and the ASO. Screening of finished composted materials, as well as wood and yard waste, may take place in designated areas other than the concrete pad.**
 - C. **Blessing shall comply with all applicable DNREC and Sussex Conservation District requirements for the site. Failure to comply with any of these requirements will result in the termination of the use.**
 - D. **Material processing hours, including the use of heavy equipment, will be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday.**
 - E. **Material acceptance hours will be limited to 7:00 a.m. - 6:00 p.m., Monday through Saturday.**
 - F. **Blessing shall provide for a landscaped buffer of at least 25 feet around the entire property. The existing berm on the property, as shown on the Concept Plan attached, shall be maintained in the same or approximately the same location. A landscape plan showing the landscaping within the proposed buffer shall be shown on the Final Site Plan.**
 - G. **Following completion of construction of the new facility, all composting operations including pre-compost staging, wind-rowing, blending, stockpiling and actual composting operations shall be conducted under roof on a concrete floor within the building(s) designated for said purpose. No pre-compost storage or composting operations shall be conducted outside the facility building(s). Composting does not include stockpiling and/or shredding of wood, leaf, or yard waste, stockpiling of sand or lime, and other unregulated materials that may be stored/utilized onsite.**
 - H. **A water truck shall be available to control dust within the site.**
 - I. **Blessing is specifically permitted to receive waste streams from poultry operations, including but not limited to: hatchery waste, poultry processing wastes, and any other waste streams for which Blessing facility is permitted by DNREC under the biosolids program, except for waste streams from municipal sanitary waste**

**M 629 19
Authorize
Settlement
Agreement/
Blessing
(continued)**

- treatment facilities and sewage from onsite wastewater disposal systems (i.e. residential septic systems).
- J. Blessing may bag and blend materials properly accepted and composted at the site pursuant to this approval.**
 - K. The application of compost to any agricultural land shall comply with applicable DNREC regulations. The application of compost shall be made in a manner that minimizes odors, including incorporation and other best management practices as appropriate.**
 - L. A Preliminary Conceptual Site Plan has been attached and in conjunction with this Settlement Agreement, a Preliminary Site Plan based upon the Conceptual Site Plan shall forthwith be submitted to the Planning and Zoning Office for review and approval as part of the Preliminary Site Plan process. A Final Site Plan including all buildings, buffers, site improvements and a landscaping plan (with types, heights, and/or diameter of plantings shown and signed by a licensed Landscape Architect or Certified Nursery Professional) and stormwater management facilities shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall comply with Sections 115-220 and 115-221 of the Sussex County Zoning Code. The Final Site Plan may include phasing whereby different areas may be submitted for Final Site Plan approval separately. If the Site Plan is phased, a Master Plan shall be submitted. The Final Site Plan with all applicable permitting shall be completed and approved by County Council and its agencies no later than three (3) years from the date of this Settlement Agreement unless extensions are granted by County Council.**
 - M. Failure to comply with any condition contained herein shall invalidate this Conditional Use.**
 - N. Upon execution of this Settlement Agreement, Applicant shall begin processing the southernmost bunker on the westerly side of the site through windrowing or other composting on the concrete pad or removal of the material from the site or any combination thereof and diligently pursue such operations in accordance with DNREC regulations.**
 - O. Notwithstanding any conditions pursuant to Ordinance 2514, any activities and operations permitted by the underlying agricultural zoning shall be exempt from the Ordinance and CU 2071.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

Mr. Burton thanked Mr. Moore for his efforts which have resulted in the finalization of the Settlement Agreement with Blessing.

**M 630 19
Recess** At 12:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until 1:30 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea

**M 631 19
Reconvene** At 1:35 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Wilson, to reconvene at 1:35 p.m.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Rules Mr. Moore read the rules of procedure for Public Hearings.

**Public Hearing/
CU 2196** 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 TO ALLOW FOR AMENDMENTS TO CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2127 (ORDINANCE NO. 2600) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25.60 ACRES, MORE OR LESS” (Conditional Use No. 2196) filed on behalf of Wine Worx, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on November 14, 2019 at which time the Commission recommended approval for the following reasons:

1. As part of Conditional Use No. 2127, the Commission recommended six conditions of approval that were all reasonable given the proposed use and because no parties appeared in opposition to the application.
2. County Council substantially revised the recommended conditions as part of Ordinance No. 2600.
3. The conditions included on Ordinance No. 2600 appear difficult to enforce.
4. Where the conditions imposed by Ordinance No. 2600 appear to have been drafted to protect the neighboring property owners, all of the property owners have signed a petition supporting conditions nearly identical to the Planning and Zoning Commission’s original recommended conditions, not the more restrictive conditions imposed by County Council.
5. No parties appeared in opposition to this request.
6. For these reasons, the Commission recommended that the conditions of

**Public
Hearing/
CU 2196
(continued)**

approval for Conditional Use No. 2196 and Conditional Use No. 2127 revert back to what the Planning and Zoning Commission originally recommended in its decision of May 24, 2018 for this site as part of Conditional Use No. 2127.

(See the minutes of the Planning and Zoning Commission dated November 14, 2019.)

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

The Council found that David Hutt, Attorney, was present with Adrian Mobilia, one of the principals of Wine Worx, LLC. Mr. Hutt referenced the conditions imposed by Council in September 2018 on the approval of Conditional Use No. 2127 and stated that this application is to seek amendments to those (10) conditions which are as follows:

- A. Events shall be strictly limited to the front portion of the parcel commencing at Blackwater Road (County Road 384) and running approximately 1228.94 feet. No events shall be permitted in the back portion of the parcel.**
- B. Concert type events for which there is charged admission shall be limited to Fridays, Saturdays and Sundays and shall end no later than 10:30 p.m. on Fridays and Saturdays and 6:00 p.m. on Sundays.**
- C. Food and beverage service and music or similar entertainment is permitted in conjunction with permissible agritourism activities and in compliance with the Sussex County Code.**
- D. Other events such as weddings, showers, parties, and benefits may be conducted on the premises and shall end no later than 9:00 p.m. except on Fridays and Saturdays when they must end by 10:30 p.m., and Sundays when they must end by 6:00 p.m.**
- E. Certain agritourism activities such as “barn parties and farm festivals” as set forth in 9 Del. C. §306(a) are permitted.**
- F. All activities on the premises shall comply with Fire Marshal, parking capacity and general permitting requirements.**
- G. Applicant shall be required to obtain a Fire Marshal rating for the building in which the events are held. Applicant shall comply with the Fire Marshal’s determination of the maximum number of persons allowed on the premises at any given time, but, in no event shall there be more than 200 people at any event.**
- H. Parking shall be in compliance with the Sussex County Code. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- I. All entrance locations shall be subject to the review and approval of DelDOT.**
- J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Mr. Hutt stated that Salted Vines Vineyard and Winery (Vineyard) is experiencing growth; that some of the conditions imposed by Council have

**Public
Hearing/
CU 2196
(continued)**

created multiple questions, issues and concerns; that allowing this business to operate efficiently and to grow would require the refinement of some of the conditions; that some of the conditions need to be made clear for the Applicant, the Planning and Zoning Office and the public; that the difference between certain types of events and activities needs to be clarified as well as what constitutes an event and other activities; and that some of the conditions would be difficult for the Planning and Zoning Department to enforce. Mr. Hutt reviewed several examples of issues and questions that have arisen, i.e. limiting events to the first 1,284 feet of the site and limiting the number of people attending an event. Mr. Hutt stated that some specific questions that have come up is whether or not a hay ride can occur on the back portion of the property and whether or not a tent can be erected on the back portion of the property. Mr. Hutt stated that the eventual plan is for the Vineyard to extend into the back portion of the property for educational tours and tastings. Mr. Hutt stated that the time limits established by the Council's conditions limit the business' opportunity to have an evening wedding on a Sunday. Mr. Hutt also referenced the condition that restates the law regarding agritourism activities and commented on interaction between the Delaware Code, the farm winery license, and Conditional Use No. 2127. Mr. Hutt outlined a history of the approval process for Conditional Use No. 2127. It was noted that no one appeared in opposition during the public hearings on either of the applications; that there have been no objections from any neighbors regarding the use of the property; and that a petition was submitted with signatures of the Applicant's neighbors in agreement to the modification of the conditions. It was noted that the Applicant has been in compliance with all the various agency regulations. Mr. Hutt noted that there are some changes being sought to the site plan for the Vineyard and he reviewed those proposed changes and stated that, with the proposed changes, the Applicant could potentially use the entire property including to construct a home for the Applicants on the back portion of the property. Mr. Hutt stated that the Applicant asks that the Council adopt the Planning and Zoning Commission's recommendation; and that the original six (6) conditions (recommended by the Commission) for Conditional Use No. 2127 be adopted and inserted in place of those conditions found in Ordinance No. 2600.

There were no public comments.

The Public Hearing and public record were closed.

Ms. Cornwell read the six (6) conditions recommended by the Planning and Zoning Commission, as follows:

- A. All events shall end no later than 10:30 p.m. and clean up after 10:30 p.m.**
- B. Food and beverage service and music or similar entertainment is permitted.**
- C. As stated by the Applicant, there shall be no more than 200 people at**

**Public
Hearing/
CU 2196
(continued)**

any event.

- D. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- E. All entrance locations shall be subject to the review and approval of DeIDOT.**
- F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**M 632 19
Strike
Condition**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to strike Condition 8C.

Motion Adopted: 3 Yeas, 2 Nays.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Nay;
Mr. Vincent, Nay**

**M 633 19
Adopt
Ordinance
No. 2696/
CU 2196**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2696 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AMENDMENTS TO CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2127 (ORDINANCE NO. 2600) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25.60 ACRES, MORE OR LESS" (Conditional Use No. 2196) filed on behalf of Wine Worx, LLC, with the following conditions:

- A. All events shall end no later than 10:30 p.m. and clean up after 10:30 p.m.**
- B. Food and beverage service and music or similar entertainment is permitted.**
- C. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- D. All entrance locations shall be subject to the review and approval of DeIDOT.**
- E. 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. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1896
CU 2197**

A combined 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 DISTRICT TO A MR MEDIUM DENSITY

**Public
Hearing/
CZ 1896
CU 2197
(continued)**

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. 1896) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (62 DUPLEX UNITS) 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. 2197) filed on behalf of Fenwick Commons, LLC (Tax I.D. No. 533-19.00-52.00) (911 Address: None Available).

The Planning and Zoning Commission held a combined Public Hearing on these applications on November 14, 2019 at which time action was deferred. On December 12, 2019, the Commission recommended approval of the Change of Zone and recommended approval of the Conditional Use with conditions.

(See the minutes of the Planning and Zoning Commission dated November 14 and December 12, 2019.)

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

The Council found that Gene Bayard, Attorney, was present with Ken Christenbury of Axiom Engineering on behalf of the Applicant. Mr. Bayard stated that similar applications (Conditional Use No. 2098 and Change of Zone No. 1827) were previously recommended for approval by the Planning and Zoning Commission in November 2017; that these new applications were also recommended for approval with conditions; that they ask that the record of all of the other public hearings be made a part of this record; that what the Commission recommended on December 12, 2019 and in 2017 was construction of 52 duplex type residential structures on the 13.33 acre property with a density of approximately 3.9 units to the acre; that the project has 41 percent open space; that the project has tree preservation of 65% of the existing trees on the property; that a perimeter fence, parking and access for the Hudson Family Cemetery on the site is proposed; that a landscaped buffer will be provided along Route 54; that in January 2018, Council denied the applications (CU 2098 and CZ 1827) without articulating any particular reasons for rejecting the recommendation of the Commission and ignored the zoning classifications in the immediate area; that one articulate reason did come from Councilman George Cole – that the Environmentally Sensitive Developing District Overlay Zone should have a western demarcation or boundary line and that this property was it, and that the property should be limited to AR density of not more than 2 units per acre; that Councilman Cole’s Motion to deny carried with a vote of 3-2; that since that time, two things have changed: the project immediately to the east of this property (Bayside – Phase 7) is under construction with 48 multi-family units (density of 4.86 units per acre); that the second change is that two out-parcels north of this

**Public
Hearing/
CZ 1896
CU 2197
(continued)**

property are planned for commercial development – one is already zoned B-1; that, additionally, with certification by the Governor of the County’s Comprehensive Plan Update, the Environmentally Sensitive Developing District Overlay Zone was eliminated and replaced by the new Coastal Area classification; that the subject property is within the Coastal Area and that classification makes clear that where central sewer and water are available, a range of housing types should be permitted and that medium and higher density development is appropriate in certain locations; that DelDOT has issued a letter of no objection; and that the Applicant is requesting that the Conditional Use and Change of Zone with the same density as previously proposed be approved.

There were no public comments in support of the application.

Christopher Magee spoke in opposition to the applications. He stated that there is no forest land; that it is only scrub-brush; that there is someone currently taking care of the cemetery; that water is a problem with the density they are proposing and that water goes into a pond that then goes into a tax ditch; that in the past, there has been flooding in the area including washing a road out; that adding water to the ditch will increase flooding; and that the Council would be setting a precedent by changing density.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 634 19
Defer
Action on
CZ 1896**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, to defer action on Change of Zone No. 1896 filed on behalf of Fenwick Commons, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 635 19
Defer
Action on
CU 2197**

A Motion was made by Mr. Rieley, seconded Mr. Wilson, to defer action on Conditional Use No. 2197 filed on behalf of Fenwick Commons, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1897**

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 C-2 MEDIUM COMMERCIAL DISTRICT FOR A

**Public
Hearing/
CZ 1897
(continued)**

CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.97 ACRES, MORE OR LESS” (Change of Zone No. 1897) filed on behalf of Preston Dyer (Tax I.D. No. 334-4.00-37.01) (911 Address: 28855 Lewes Georgetown Highway (Route 9), Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on November 14, 2019 at which time action was deferred. On December 12, 2019, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated November 14 and December 12, 2019.)

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

The Council found that Preston Dyer, Managing Member of Capstone Office, LLC, the Developer of the project was present. Also present were Joe Reed and Jake Booth, members of Capstone Office, LLC and Capstone Homes, along with a representative of Pennoni. Mr. Dyer stated that the project fronts on Route 9; that the intended use of the property is for a professional office for Capstone Homes; that there would be no outside sales or storage; that the existing historic home on the property would serve as an office; and that a new structure would be added to the front portion of the property and would be utilized by Capstone Homes for offices of a professional nature, sales center, and a design and model center. Mr. Dyer noted the other commercially zoned properties and uses in the area and stated that the proposed Change of Zone will not diminish or impair property values in the area, stating that the C-2 zoning is consistent with the existing commercial uses. They reviewed the application and noted that a site plan was provided. They discussed the proposed use of the property, the layout of the site; stormwater management; and the property’s location near Rails and Trails. They also discussed the application’s compliance with the Zoning Ordinance.

There were no public comments.

The Public Hearing and public record were closed.

**M 636 19
Adopt
Ordinance
No. 2697/
CZ 1897**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2697 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.97 ACRES, MORE OR LESS” (Change of Zone No. 1897) filed on behalf of Preston Dyer.

Motion Adopted: 5 Yeas.

**M 636 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 637 19
Adjourn**

**A Motion was made by Mr. Burton, seconded by Mr. Rieley, to adjourn at
3:00 p.m.**

Motion Adopted: 5 Yeas.

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