

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 18, 2020

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 18, 2020, 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

**Call to
Order**

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

Mr. Vincent called the meeting to order.

**M 073 20
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of February 4, 2020, were approved by consent.

**Public
Comments**

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

**Retiree
Donna
Stevenson**

The Council recognized Donna Stevenson, Senior Exemption Coordinator, Finance – Billing Services, who is retiring after 30 years and 7 months of service to Sussex County.

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Peninsula Lakes – Phase 7B (PS#2&FM) received Substantial Completion effective February 7th.

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

2. Common Interest Community Ombudsman – Workshop

On Wednesday, February 26, 2020, the Common Interest Community Ombudsman will host a Community Association Governance Workshop from 5:00 PM to 8:00 PM. The workshop will take place at the Sussex County Association of Realtors, located at 23407 Park Avenue in Georgetown. The workshop is focused on governance issues experienced by Homeowners and/or Community Associations. The workshop is free and the public is welcome but seating is limited. Please register via email at DOJ.Ombudsman@delaware.gov. More information regarding the workshop is attached.

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

**First
Quarter
Employee
Recognition
Awards**

Mrs. Jennings reported on the County's Shining Star Program which recognizes and celebrates employees who demonstrate exceptional performance, service, and/or accomplishments. Employees who have gone above and beyond receive recognition through electronic badges from coworkers, supervisors, and external customers. Each quarter a committee made up of employees selects Honorable Mention winners. Mrs. Jennings announced and Council recognized the four Shining Star Honorable Mention winners for the First Quarter 2020: Sabrina Fite (Mapping and Addressing Department), Sarah Hastings (Assessment Division), Carrie Patterson (Assessment Division), and Christin Headley (Planning and Zoning Department).

**Pension
Committee
Appoint-
ments**

Mrs. Jennings requested Council approval to appoint three members to the Pension Committee; one is a new appointment and two are reappointments. Mrs. Jennings stated that the Pension Committee is made up of seven members, including County employees currently serving in the positions of Finance Director, County Administrator, and County Human Resources Director, two Sussex County community members, a current Sussex County employee, and a retired Sussex County employee. Mrs. Jennings is recommending the reappointment of David Baker (County pensioner) and Kathy Roth (current employee), and one new appointment, Mitchell Rogers, Financial Advisor with Edward Jones Investments. Mrs. Jennings stated that Mr. Rogers has 20 years of investment advisor experience that includes portfolio analysis and retirement planning.

**M 074 20
Approve
Appoint-
ments/
Pension
Committee**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council appoint David Baker (current County pensioner), Kathy Roth (current County employee), and Mitchell Rogers as a community member to serve on the Sussex County Pension Committee for a term of four years, until February 2024.

**M 074 20
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
Cherry
Creek
Valley
Expansion**

A Public Hearing was held on the Cherry Creek Valley Expansion of the Sussex County Unified Sanitary Sewer District (Angola Neck Area). John Ashman, Director of Utility Planning, reported that the expansion includes parcels along Camp Arrowhead Road, north of Waterview Road. The Engineering Department received requests from several property owners interested in having the County extend the sewer district boundary. A polling letter which was created and distributed to the area received mixed results. The current boundary has been prepared based on those requests for service and the requirement to maintain a contiguous boundary. Mr. Ashman reported that the Engineering Department received permission to prepare and post notices for a public hearing on the annexation of the area on January 14, 2020, and to date no responses have been received either in support or opposition to the proposed boundary.

Hans Medlarz, County Engineer, stated that the County is currently in the design stage for the Joy Beach area project, which means that all the terms for Joy Beach would apply to the Cherry Creek Valley Expansion, including the rate cap and sewer connection charge.

Public comments were heard from Mary Lou Joseph, Neil Frock, Jason Batt, Paul Reiger, Keith Steck, Lou Octavio, Dan Kramer, and Eul Lee concerning the necessity for the sewer system to address environmental issues, clarification of the parcels included in the annexation, timeframe of the project, associated costs, road restoration as a result of the project, the federal loan/grant component, and response/receipt of the polling letter which was mailed out previously.

To ensure that all property owners have been contacted and given the opportunity to participate in the Cherry Creek Valley Expansion, it was the consensus of Council that the County Engineering Department re-poll property owners who have not responded previously and/or are contiguous to the proposed annexation to determine their interest, and that those properties with a favorable response be included in a supplemental annexation at a future date.

The Public Hearing and public record were closed.

**M 075 20
Adopt
R 003 20**

A Motion was made by Mr. Hudson, seconded by Mr. Wilson, to Adopt Resolution No. R 003 20 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) ANGOLA NECK AREA, TO INCLUDE THE CHERRY CREEK VALLEY AREA AND SEVERAL PARCELS OF

**M 075 20
(continued)**

LAND ALONG THE EAST SIDE OF CAMP ARROWHEAD ROAD LOCATED IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”, as amended to include one additional parcel.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Delaware
Coastal
Business
Park
Lease
Addendum**

William Pfaff, Economic Development Director, presented a Lease Addendum for Jaykal LED Solutions, Inc., at the Delaware Coastal Business Park. The purpose of the Addendum is to allow Jaykal LED Solutions, Inc. (Lessee), the right, without the County’s consent, to collaterally assign, pledge, and/or mortgage all the Lessee’s rights and interests in the improvements only constructed or to be constructed on the Leased Premises under the Lease (and not to the real estate upon which improvements are situated).

**M 076 20
Approve
Addendum/
Commercial
Lease
Agreement/
Jaykal LED
Solutions,
Inc.**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council approves the Addendum to the Commercial Lease Agreement dated August 1, 2019, between Sussex County and Jaykal LED Solutions, Inc., located at the Delaware Coastal Business Park, Lot 3, 21499 Baltimore Avenue, Georgetown, Delaware, as presented.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Burton joined the meeting.

**Old
Business/
CZ 1901/
Mary and
Victor
Rico**

Under Old Business, the Council considered Change of Zone No. 1901 filed on behalf of Mary and Victor Rico.

The Planning and Zoning Commission held a Public Hearing on this application on December 12, 2019, at which time action was deferred; on January 9, 2020, the Commission recommended denial of the Change of Zone.

Council held a Public Hearing on this application on January 28, 2020, at which time action was deferred.

**M 077 20
Adopt
Proposed
Ordinance/
CZ 1901
(Denied)**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.927 ACRES, MORE OR LESS” (Change of Zone No. 1901) filed on behalf of Mary and Victor Rico.

Motion Denied: 5 Nays.

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

**Old
Business/
CU 2200/
Mary and
Victor
Rico**

The Council considered Conditional Use No. 2200 filed on behalf of Mary and Victor Rico.

The Planning and Zoning Commission held a Public Hearing on this application on December 12, 2019, at which time action was deferred; on January 9, 2020, the Commission recommended denial of the Conditional Use.

Council held a Public Hearing on this application on January 28, 2020, at which time action was deferred.

**M 078 20
Adopt
Proposed
Ordinance/
CU 2200
(Denied)**

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 A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (7 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.927 ACRES, MORE OR LESS” (Conditional Use No. 2200) filed on behalf of Mary and Victor Rico.

Motion Denied: 5 Nays.

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

As per the Planning and Zoning Commission’s recommendation, Council concurred that the County is not to take any enforcement action to remove the illegal units until July 1, 2020, to allow the people occupying the units plenty of time to find other housing and not disrupt families with school-age children during the school year.

**Old
Business/
CU 2186/
Mountaire
Farms of
Delaware,
Inc.**

The Council considered Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on October 10, 2019, at which time action was deferred; on October 24, 2019, the Commission recommended approval of the Conditional Use with conditions.

The Council held a Public Hearing on this application on November 5, 2019, at which time action was deferred and the record left 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 five days to provide written comments 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, at the December 17, 2019, Council meeting, the time period for comments was extended until the close of business on December 26, 2019. On January 7, 2020, the record was officially closed.

**M 079 20
Adopt
Ordinance
No. 2706/
CU 2186**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2706 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT FOR SLUDGE AND WASTEWATER SPRAY IRRIGATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 351.86 ACRES, MORE OR LESS” (Conditional Use No. 2186) filed on behalf of Mountaire Farms of Delaware, Inc., with the following conditions:

- 1. The application of sludge and wastewater spray irrigation shall be subject to DNREC and other state and federal regulatory approvals.**
- 2. The application of sludge and wastewater shall be limited to sludge and wastewater from Mountaire Farms.**
- 3. There shall not be any stockpiling of sludge materials or wastewater on-site.**
- 4. The maximum number of sludge and wastewater applications on the property shall be subject to the approval of DNREC and other regulatory agencies with jurisdiction over this use.**
- 5. This Conditional Use shall be valid concurrent with DNREC’s permits for this use. If the DNREC permits shall be terminated or expire, this Conditional Use shall also terminate and expire.**
- 6. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**

**M 079 20
(continued)**

- 7. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to apply the sludge and wastewater spray irrigation on this property.**
- 8. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- 9. The Applicant shall submit a Final Site Plan, which 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**

**EMS 200/
Medic 110
Station**

Hans Medlarz, County Engineer, presented Amendment No. 2 to EMS 200/Medic 110 Station, Project C19-08. Amendment No. 2 covers the cost for a traffic analysis on Swain Road as well as site entrance redesign in an amount not to exceed \$15,000.00. It was noted that the County Information Technology Department has also proposed an idea to co-locate a County data center on the site, which is being evaluated by County Administration. If implemented, it would trigger additional site design modifications. Therefore, the Engineering Department recommends approval of Amendment No. 2 in an increased amount not to exceed \$25,000.00, which would allow for possible design modifications.

Mr. Wilson commented on the potential increase in impervious area, if additional site design modifications are necessary.

**M 080 20
Approve
Amendment
No. 2/
EMS
Architect-
tural
Services
Contract**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Amendment No. 2 to the EMS Architectural Services Contract with George, Miles & Buhr in the amount not to exceed \$25,000.00 for traffic analysis and resultant site design modifications for EMS 200/Medic 110 Station, Project C19-08, as presented.

Motion Adopted: 4 Yeas, 1 Nay.

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

**Love Creek
Woods/
Plumber
Services**

Hans Medlarz, County Engineer, presented a Balancing Change Order and request to grant Substantial Completion for Love Creek Woods, Master Plumber Services. On April 17, 2018, Council awarded a Sewer Participation Agreement for the Love Creek Woods – Master Plumber

Love Creek Woods/Plumber Services (continued) **Services contract to WM Water & Sewer, LLC, in the amount of \$101,180.00, covering the base bid and two bid alternates as needed. The Engineering Department recommends approval of the balancing Change Order No. 1, reducing the contract value by \$6,452.99, and granting Substantial Completion for Project No. 14-10.**

M 081 20 Approve Change Order No. 1/ Love Creek Woods – Master Plumber Services Contract **A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for the Love Creek Woods – Master Plumber Services Contract, be approved, decreasing the contract amount by \$6,452.99, for a new contract total of \$94,727.01, and that Substantial Completion be granted effective October 11, 2019, and any held retainage be released in accordance with the contract documents, as well as the release of all third party funds to the Love Creek Woods Homeowners Association.**

Motion Adopted: 5 Yeas.

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

Use of Existing Infrastructure Agreement/ Walden Project **John Ashman, Director of Utility Planning, presented a Use of Existing Infrastructure Agreement between Sussex County and Burton’s Pond, LLC, for the Walden project in the Herring Creek Area. Under the proposed arrangement, the Walden project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure, Burton’s Pond, LLC, will contribute \$74,524.00 for the financial catch-up contribution of the existing infrastructure to serve 270 additional Equivalent Dwelling Units.**

M 082 20 Approve Use of Existing Infrastructure Agreement/ Walden Project **A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Burton’s Pond, LLC, for a Capacity Allocation in the Regional Transmission System for the Walden project, as presented.**

Motion Adopted: 5 Yeas.

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

Infrastructure Agreement/ Villas at Walden **John Ashman, Director of Utility Planning, presented a Use of Existing Infrastructure Agreement between Sussex County and Burton’s Pond, LLC, for the Villas at Walden project in the Herring Creek Area. Under the proposed arrangement, the Villas at Walden project will connect to the**

Infra-structure Agreement (continued)

existing County owned infrastructure. In return for utilization of said infrastructure, Burton's Pond, LLC, will contribute \$28,429.00 for the financial catch-up contribution of the existing infrastructure to serve 103 additional Equivalent Dwelling Units.

M 083 20 Approve Use of Existing Infra-structure Agreement/ Villas at Walden Project

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Burton's Pond, LLC, for a Capacity Allocation in the Regional Transmission System for the Villas at Walden project, as presented.

Motion Adopted: 5 Yeas.

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

Use of Existing Infra-structure Agreement/ Robert & Deborah Reed

John Ashman, Director of Utility Planning, presented a Use of Existing Infrastructure Agreement between Sussex County and Robert M. and Deborah A. Reed for the Lands of Robert M. and Deborah A. Reed project in the West Rehoboth Area. Under the proposed arrangement, the Lands of Robert M. and Deborah A. Reed project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure, Robert M. and Deborah A. Reed will contribute \$17,206.00 for the financial catch-up contribution of the existing infrastructure to serve 24 additional Equivalent Dwelling Units.

M 084 20 Approve Use of Existing Infra-structure Agreement/ Robert & Deborah Reed

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Robert M. and Deborah A. Reed for a Capacity Allocation in the Regional Transmission System, as presented.

Motion Adopted: 4 Yeas, 1 Nay.

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

Grant Requests

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

M 085 20 Council-manic Grant

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to give \$500.00 from Mr. Hudson's Councilmanic Grant Account to Stronger After Cancer for free physical therapy for cancer survivors.

Motion Adopted: 5 Yeas.

**M 085 20
(continued)**

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

**M 086 20
Council-
manic
Grant**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$1,500.00 (\$1,000.00 from Mr. Hudson's Councilmanic Grant Account and \$500.00 from Mr. Rieley's Councilmanic Grant Account) to the Ocean View Historical Society for the Hall's Store Visitors and Education Center.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Zoning
Ordinances**

Mr. Rieley introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL AUTO REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 0.75 ACRES, MORE OR LESS"(Conditional Use No. 2221) filed on behalf of Dominic Lombardi (Tax I.D. No. 133-16.00-73.04) (911 Address: 24169 Godwin School Road, Millsboro).

Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR AN OUTDOOR MINIATURE GOLF COURSE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.46 ACRES, MORE OR LESS" (Conditional Use No. 2222) filed on behalf of Jessica Peake (Tax I.D. No. 134-17.11-40.00) (911 Address: 32967 Coastal Highway, Bethany Beach).

Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOAT & RV STORAGE 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. 2223) filed on behalf of A&W Burbage, LLC (Tax I.D. No. 134-14.00-36.00 (part of) (911 Address: 32855 Jones Road, Frankford).

Mr. Rieley introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REAL ESTATE OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.75 ACRES, MORE OR LESS" (Conditional Use No.

Introduction of Proposed Zoning Ordinances (continued) 2224) filed on behalf of Pamela Price (Tax I.D. No. 332-7.00-22.00) (911 Address: 34590 Sussex Highway, Laurel).

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 23.7021 ACRES, MORE OR LESS” (Change of Zone No. 1919) filed on behalf of Newton Farms, LLC (Tax I.D. No. 131-6.00-8.00) (911 Address: None Available).

Mr. Burton introduced 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 CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 10.88 ACRES, MORE OR LESS” (Change of Zone No. 1904) filed on behalf of Dry Acres, LLC (Jill Cicierski) (Tax I.D. No. 235-30.00-51.00) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

Council Member Comments Mr. Rieley commented on the Quarterly Financial Updates provided by Gina Jennings, Finance Director.

Mr. Wilson commented on stormwater management and the jurisdiction of land use in Sussex County.

M 087 20 Go Into Executive Session At 11:47 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess and go into Executive Session for the purpose of discussing matters relating to personnel 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 11:57 a.m., an Executive Session of the Sussex County Council was held for the purpose of discussing matters relating to personnel and land acquisition. The Executive Session concluded at 12:11 p.m.

M 088 20 Reconvene Regular Session At 12:14 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 3 Yeas, 2 Absent.

**M 088 20
(continued)** **Vote by Roll Call:** **Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Absent;
Mr. Vincent, Yea**

E/S Action **There was no action on Executive Session items.**

**M 089 20
Recess** **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until
1:30 p.m.**

Motion Adopted: **3 Yeas, 2 Absent.**

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

**M 090 20
Reconvene** **At 1:34 p.m., a Motion was made by Mr. Burton, seconded by Mr. Rieley, to
reconvene.**

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**

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

**Public
Hearing/
CU 2205** **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 AUTO-
MOTORCYCLE REPAIR TO BE LOCATED ON A CERTAIN PARCEL
OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX
COUNTY, CONTAINING 1.8711 ACRES, MORE OR LESS” (Conditional
Use No. 2205) filed on behalf of Frank Passwaters.**

**The Planning and Zoning Commission held a Public Hearing on this
application on January 9, 2020, at which time action was deferred. On
January 23, 2020, the Commission recommended approval of the
Conditional Use with conditions.**

**(See the minutes of the Planning and Zoning Commission dated January 9
and January 23, 2020.)**

**Jamie Whitehouse, Acting Director of Planning and Zoning, presented the
application.**

**Mr. Whitehouse noted that one letter has been received in opposition to the
application.**

**Public
Hearing/
CU 2205
(continued)**

The Council found that Frank Passwaters was present on behalf of the application. Mr. Passwaters stated that he has been in business for over 30 years, but not at that location; that his shop was located on Calhoun Road for 14 years and is now in another facility in Milford; that he purchased five acres of land two years ago which has one deed showing two different parcels, but they are together as one unit; that there is a roadway on the property that divides the parcels; that he would like to have his business on his property; that the Conditional Use is needed to allow his business to operate on the 1.87-acre parcel; that he has renovated the house and erected a pole barn; that parking is available and there is access to the property; that he would like to bring in two employees at some point in the future; and that he would like to erect a sign at the driveway entrance.

There were no public comments.

The public record and Public Hearing were closed.

**M 091 20
Adopt
Ordinance
No. 2707/
CU 2205**

A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2707 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO-MOTORCYCLE REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.8711 ACRES, MORE OR LESS” (Conditional Use No. 2205) filed on behalf of Frank Passwaters with the following conditions:

- 1. One lighted sign, not to exceed 32 square feet per side, shall be permitted.**
- 2. Security lighting shall be downward screened and shall be directed away from the neighboring properties and roadways.**
- 3. Any dumpsters shall be screened from view of the neighbors and roadway. The dumpster locations shall be shown on the Final Site Plan.**
- 4. All repairs shall be performed indoors. No automobile parts shall be stored outside.**
- 5. No junked, unregistered or permanently inoperable vehicles, motorcycles or trailers shall be stored on the site.**
- 6. There shall not be any parking in the front yard setback.**
- 7. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these designated areas.**
- 8. As stated by the Applicant, any tow trucks associated with the business shall be stored indoors when not in use.**
- 9. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with the state and federal requirements for the disposal of these fluids.**

**M 091 20
(continued)**

- 10. The site shall be subject to all DelDOT entrance and roadway requirements.**
- 11. The hours of operation shall be 7:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. until 5:00 p.m. on Saturdays. There shall not be any Sunday hours.**
- 12. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- 13. The Final Site Plan shall be subject to the review and approval of the 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 1902**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 15 ACRES, MORE OR LESS” (Change of Zone No. 1902) filed on behalf of John C. Stamato c/o Ribera Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 9, 2020, at which time action was deferred. On January 23, 2020, the Commission recommended approval of the Change of Zone, contingent upon an amendment to the Sussex County Future Land Use Map, for the following reasons:

- 1. This site is on a property that has frontage along Route 9, although the area to be rezoned to HI-1 is set back from Route 9 approximately 1,000 feet. Route 9 is classified as a major arterial roadway. While the proposed HI-1 area does not have direct frontage on Route 9, Route 9 is an appropriate entrance location for vehicular access to the site.**
- 2. The entire site is currently zoned as C-1 and CR-1. Properties on either side of the entire site are zoned C-1. The proposed HI-1 area is compatible with the surrounding zoning and uses.**
- 3. The site is bounded on the south by an active railroad. The railroad separates the property and any potential uses on it from properties south of the railroad.**
- 4. The adjacent railroad is operated by the Delmarva Central Railroad Company, which connects to other rail service providers. Delmarva Central has submitted a letter in support of the application and indicates that the rezoning to HI-1 will promote further economic opportunities for rail service in Sussex County.**

**Public
Hearing
CZ 1902
(continued)**

5. This rezoning to HI-1 promotes transportation goals in the Sussex County Land Use Plan, which states in Section 13.2.2 that “The County’s goods movement (freight) network is an integral component of the transportation network as well as the economy.” However, “the main element of the freight network is the roadway system, which carries trucks (motor freight).” One means of reducing truck impacts is to shift more freight to rail, although opportunities to do that are limited. This site presents an opportunity to achieve this goal.
6. The rezoning will not have an adverse impact on the area. And, if anyone seeks to start a “potentially hazardous use” on the property, the Sussex County Zoning Code provides an additional layer of protection by requiring a public hearing and approval of the use by the Board of Adjustment.
7. No parties appeared in direct opposition to the rezoning.
8. The rezoning promotes the health, safety, morale, welfare, convenience, order and prosperity of present and future residents of Sussex County by establishing an HI-1 zoned property at an appropriate location with access to a major arterial road and rail service.
9. This recommendation is contingent on an amendment to the Future Land Use Map as currently shown in the Comprehensive Plan. According to the Future Land Use Map, the site is within a “Commercial Area” which does not permit HI- 1 zoning. However, this site should be amended to a “Developing Area” which does permit HI-1 zoning. Because of the active rail line, the Map should not have precluded HI-1 zoning from being one of the possible zoning districts for this area.

(See the minutes of the Planning and Zoning Commission dated January 9 and January 23, 2020.)

Jamie Whitehouse, Acting Director of Planning and Zoning, presented the application.

Mr. Whitehouse noted that an Exhibit Booklet was previously submitted by the Applicant, and that one letter in support and one letter in opposition of the application have been received.

The Council found that James Fuqua, Attorney, was present on behalf of the application along with the Applicant, John C. Stamato, and Mark Davidson with Pennoni Associates, Inc. They discussed (1) the rezoning request from CR-1 Commercial Residential to HI-1 Heavy Industrial for an undeveloped 15-acre parcel of land; (2) the location of the land being two miles east of the Town of Georgetown near the intersection of Route 9 and Steiner Road; (3) HI-1 zoning as contained in Section 115-109 of the Zoning Code and its purpose and use; (4) the convenience and benefits of the proposed rezoning and economic opportunities it would create; (5) zoning

**Public
Hearing/
CZ 1902
(continued)**

classifications in the surrounding area where retail, storage, and commercial uses are already permitted; (6) history of the Delmarva Central Railroad adjacent to the 15-acre parcel and the Applicant's commitment to utilization of the rail line; (7) plans to subdivide the parcel into three parcels and locate a spur track from the main track to serve the three parcels; (8) sewer and water; (9) DelDOT's response that a Traffic Impact Study is not required at this time; (10) intersection improvements which may be needed at Route 9 and Steiner Road; (11) stormwater management; (12) Environmental Assessment report prepared by Pennoni Associates; and (13) location of the parcel as appropriate for HI-1 zoning to service the types of businesses that would utilize rail transportation.

Public comments were heard.

Michael Johnson stated that he is in favor of the application, but has some concerns regarding the stormwater management of the parcel; that he is co-owner of the property on Shingle Point Road and Route 9; that the Environmental Assessment shows the flow of water from their property to Route 9 and across; that there is currently an issue with water collection at Steiner Road and Route 9; and that there is further concern with the runoff of water due to water backing up on the south side of Route 9.

Keith Steck, Vice President, Delaware Coalition for Open Government, spoke in opposition to the application stating that the zoning change from CR-1 Commercial Residential to HI-1 Heavy Industrial is substantial; that it is inconsistent with the Comprehensive Plan; that the project will be in competition with the Delaware Coastal Airport and Industrial Park, and the rail line there; that it is not compatible and may set a precedent for other changes in use of land along the railroad; and that there is basically no information available to substantiate the use, condition, or capacity of the railroad, or any long-term plan.

Council expressed concerns regarding the amount of activity of the rail line, interaction of the rail spur with the Georgetown-Lewes Rails to Trails bike trail, changing the recently adopted Comprehensive Land Use Plan, road improvements, stormwater management, and that a precedent could be set for future applications. Clarification of the process to amend the Land Use Map was requested and provided by Mr. Whitehouse.

Mr. Moore reminded Council that the Land Use Map is a tool and that zoning decisions are to be made based on the record and merit of the application, along with the appropriateness of the location.

There were no additional public comments.

The public record and Public Hearing were closed.

**M 092 20
Amend
No. 9/
Planning
and Zoning
Commission
Reasons for
Approval/
CZ 1902**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to amend the first sentence of number 9 of the Planning and Zoning Commission's reasons to recommend approval of Change of Zone No. 1902 to read as follows: "9. This approval is contingent on an amendment to the Future Land Use Map as currently shown in the Comprehensive Plan"; and that the remainder of the verbiage in number 9 remain the same.

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 093 20
Adopt
Ordinance
No. 2708/
CZ 1902**

A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to Adopt Ordinance No. 2708 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 15 ACRES, MORE OR LESS" (Change of Zone No. 1902) filed on behalf of John C. Stamato c/o Ribera Development, for the reasons given by the Planning and Zoning Commission numbered 1 through 8, and number 9 as amended.

Motion Adopted: 4 Yeas, 1 Nay.

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

**M 094 20
Adjourn**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn at 2:58 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,

**Susan W. Webb
Administrative Secretary**

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