

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE – APRIL 5, 2016

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 5, 2016, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Robert B. Arlett	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 154 16
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of March 15, 2016, were approved by consent.

**Corre-
spondence**

Mr. Moore stated that correspondence was received from the Seaford Community Food Closet, Delaware Technical & Community College Educational Foundation, and Nanticoke Riverfest 2016, each thanking Council for grant funding.

**Public
Comments**

Public Comments

John Welsh, Jr., commented on and submitted photos of what he referred to as a ‘dumping ground’ of debris left behind by the builder/developer and contractors on Pelican Point Place within the community of Heron Bay.

Jeanette Cosgrove commented on the proposed Winding Creek Village Water District. Ms. Cosgrove stated that affidavits have been received from 51 percent of the property owners expressing no interest in the Water District, with additional affidavits expected, and requested that Council consider the affidavits and vote to cancel the Winding Creek Village Water District referendum.

Comments	Dan Kramer commented on the March 15, 2016, Council minutes.
The Freeman Stage at Bayside	Patti Grimes, Executive Director of the Joshua M. Freeman Foundation, presented an update on The Freeman Stage at Bayside and the progress they have made in bringing the arts to Sussex County. As part of the Joshua M. Freeman Foundation, they partner to present memorable performances and inspire arts education for all. Ms. Grimes reported on the 2015 season and the upcoming events planned for the 2016 season, which includes 13 national recording artists, as well as plans for future expansion with a new 4,000-seat venue. Ms. Grimes stated The Freeman Stage is a vessel for presenting a myriad of arts performances throughout the summer, and they could not promote the arts without their many volunteers and funding support. Ms. Grimes thanked the Council for its past partnership and continued financial support for transportation costs for children to attend events at The Freeman Stage.
Proclamation/Service Recognition Day	The Council presented a Proclamation entitled “PROCLAIMING APRIL 5, 2016 AS NATIONAL SERVICE RECOGNITION DAY IN SUSSEX COUNTY” to Sussex County AmeriCorps members and representatives of the Governor’s Council on Community & Volunteer Services.
Wastewater Agreement	Mr. Lawson presented a Wastewater Agreement for the Council’s consideration.
M 155 16 Execute Wastewater Agreement/ Americana Bayside	A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 1015-2, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and CFM Bayside, LLC, for wastewater facilities to be constructed in Americana Bayside – Village C – Phase 1C, located in the Fenwick Island Sanitary Sewer District. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
Legislative Update	Mr. Lawson reported that County staff continues to monitor the activities of the Delaware General Assembly and is in dialogue with Sussex County legislators relative to specific legislation as needed. Mr. Lawson discussed House Substitute No. 1 for House Bill No. 200 entitled “AN ACT TO AMEND TITLES 9, 21, AND 22 OF THE DELAWARE CODE RELATING TO ACCESSIBLE PARKING SPACES.” This legislation adds provisions to Title 21 defining accessible parking spaces, incorporating federal standards for accessible parking spaces found in the Americans with Disabilities Act and applicable regulations. The Act

**Legislative
Update
(continued)**

provides additional requirements that enhance these standards and better reflect the needs of persons with disabilities in Delaware. The Act also adds provisions in Titles 9 and 22 to require county and municipal governments to adopt regulations and ordinances incorporating these requirements for accessible parking spaces.

Mr. Lawson stated that this Act would add significant requirements to all three counties, as well as municipalities, relating to parking space regulations, design, and enforcement, and the understanding is that this legislation will affect both existing and new construction. Senator Gerald Hocker is the only Sussex County legislator that has signed on to sponsor this legislation to date.

Mr. Lawson will keep Council informed as to General Assembly activity relating to this Act, as well as any other legislation affecting Sussex County.

**Adminis-
trator's
Report**

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

1. Robert A. Stuart – Appointment to DEMSOC

Congratulations are in order to Robert A. Stuart, Director of the Sussex County Paramedics, for his recent appointment as Chair of the Delaware Emergency Medical Services Oversight Council (DEMSOC) by Governor Jack Markell. As you know, the DEMSOC is charged with overseeing all aspects of the Delaware EMS system as an advisory council. Director Stuart served previously as Vice Chair for the past five years under Lewis Schiliro, Secretary of Safety and Homeland Security.

2. Appointment Process for Planning and Zoning Commission Vacancy

On March 24, 2016, Mr. Rodney Smith announced his retirement from the Planning and Zoning Commission, effective immediately.

According to the Sussex County Council Rules of Procedure, the Council member in whose district the vacancy has occurred shall submit the name and resumé of a nominee to the County Administrator within two weeks of the vacancy.

Subsequently, the Administrator shall forward copies of the nominee's resumé to all Council members. The Administrator shall provide interview questions, with Council's input, to the nominee for written responses. Then the Administrator will schedule the matter on a Council agenda for public session, at which point the nominee shall be in attendance for a public interview.

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

**Planning
and Zoning
Commission
Nominee**

Mr. Cole announced that he is submitting the name of Douglas B. Hudson of Dagsboro to fill the vacancy on the Planning and Zoning Commission left by Mr. Rodney Smith's retirement. Mr. Lawson distributed copies of Mr. Hudson's resumé to members of Council. Mr. Cole stated that Mr. Hudson is a very well-rounded individual, and his professional experience and background as a retired state trooper, realtor, and home repair and construction consultant will be beneficial in serving as a member of the Planning and Zoning Commission.

Mrs. Deaver noted that as a realtor, Mr. Hudson may encounter conflicts with Planning and Zoning Commission issues. Mr. Moore was asked to address conflicts of interest from a legal standpoint and provide Council a summary of definitions for discussion at a later date.

Mr. Lawson will provide interview questions, with Council's input, to Mr. Hudson for written responses, and thereafter schedule the matter on a Council agenda for public session.

Rules

Mr. Moore read the Rules of Procedure for Public Hearings.

**Public
Hearing/
CZ 1795**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR THE PURPOSE OF CORRECTING THE NUMBER OF UNITS FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 385.00 ACRES, MORE OR LESS" (Change of Zone No. 1795) filed on behalf of Bay Forest Club, LLC c/o Natelli Communities, Inc. (Tax Map I.D. No. 134-8.00-15.02 and numerous other parcels) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on February 25, 2016, at which time action was deferred. On March 10, 2016, the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated February 25 and March 10, 2016.)

Lawrence Lank, Director of Planning and Zoning, reported on the Planning and Zoning Commission's public hearing and recommendation of approval.

Mr. Lank stated the intent of the application is to improve the design and layout of the project.

Tom Natelli of Natelli Communities was present on behalf of the application with Tim Willard, Esquire, of Fuqua, Yori and Willard, P.A., and Kenneth Usab and Steve Hutchins with Morris & Ritchie Associates, Inc. They stated the application is a request to increase the number of permitted units in the Bay Forest Residential Planned Community by the addition of 21 villa units; that the project was approved in 2004 for 808 units on 385 acres of land; that in 2008 the site plan for the project was amended to incorporate the boundaries of the Byewood Subdivision and that the access to the Byewood Subdivision was relocated internally into the project; that in 2014 a rezoning application was filed and approved incorporating the Jim's Hideaway Campground property and the Mitchell property into the project for an additional 84 units and a relocated entrance design creating a total of 892 units; that in redesigning the layout of the project there were several enclaves of small areas found that could be converted to additional lots; that this proposal is intended to correct and improve those areas with 21 additional units for a total of 913 units overall; that the County Engineering Department has confirmed that 913 units are within sewer capacity allocations; that originally buffers existed between the project and the Jim's Hideaway and Mitchell properties; that by incorporating those properties the buffers were removed; that the requested 21 additional units will be a part of the project and will have a minimal impact on the overall density of the RPC, increasing it from 892 to 913; that the 21 units will be a part of the existing RPC which is already in place and has approval for all of the infrastructure and site design requirements for a development including sewer, central water, wetlands delineation, DelDOT entrance and road improvements, and stormwater management; and that the residents of the community fully support the proposal.

Questions were raised by Council as to the need for 21 additional units in light of the current infrastructure issues in the area and the fact that the original project is not sold out.

There were no public comments.

The Public Hearing and public record were closed.

M 156 16
Defer
Action/
CZ 1795

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to defer action on Change of Zone No. 1795, filed on behalf of Bay Forest Club, LLC c/o Natelli Communities, Inc.

Motion Adopted: 5 Yeas.

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

Sheriff's Department/ Constable Certification **Mr. Lawson presented a Proposed Resolution requesting that the Sheriff and Sheriff Deputies receive their Constable certification from the State Board of Examiners of Constables. Constable certification was discussed in June 2015 and Council approved a motion at that time to request that the Board provide Constable certification for the Sussex County Sheriff and Sheriff Deputies. However, State Code requires that said request be made "by resolution of the appropriate county council or Levy Court for such sheriff and deputy sheriff to be commissioned as a constable." Sheriff Lee was present to answer questions from Council.**

M 157 16 Adopt R 004 16/ Constable Certification **A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to adopt Resolution No. R 004 16 entitled "REQUEST FOR SUSSEX COUNTY SHERIFF AND SHERIFF DEPUTIES TO BE COMMISSIONED AS A CONSTABLE AND AUTHORIZING TODD F. LAWSON, COUNTY ADMINISTRATOR, TO SUBMIT REQUEST."**

Motion Adopted: 5 Yeas.

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

Update/ Wolfe Neck Regional Wastewater Treatment and Spray Irrigation Facility **Hans Medlarz, County Engineer, presented an update on the Wolfe Neck Regional Wastewater Treatment and Spray Irrigation Facility. Mr. Medlarz stated that as a result of the Delaware Department of Natural Resources & Environmental Control issuing a notice of violation on March 18, 2016, for an unauthorized flow concentration runoff of groundwater, rain water, and treated effluent which ran into the marsh on Field 2, the County was ordered to make certain improvements. Mr. Medlarz emphasized that at no time did the County have raw wastewater or raw sewage spill from the facility or have any breach or leaks. Mr. Medlarz reported that the spray rig on Field 2 has been modified as required by the State, and the County is in the process of expanding sediment and erosion control measures not only for Field 2 but for the entire facility, due to be completed by the end of the week. Additional testing has been performed by the County to ensure low nitrogen levels as well.**

Mr. Medlarz explained that the weather conditions have been difficult over the winter, with rainfall approximately 20 percent above average for the period for the area, combined with a weekend rainfall event of 2.8 inches in 24 hours. Long-term efforts include a modification of the layout of the spray rigs, as well as modification of the buffers and the non-sprayed areas to roll them into a non-agricultural use.

Mr. Arlett stated that the suggestion was presented to him by a County employee that the dirt be tilled deeper so it would absorb quicker and better. Mr. Medlarz advised some ripping activities and contour farming techniques in the buffer zone have been taken up to do just that.

**Request
to Petition
Tidewater
Utilities/
PS 210**

Hans Medlarz, County Engineer, presented for Council's approval a request to petition Tidewater Utilities, Inc., for inclusion in their water service territory. The request is for water service to be extended to Sussex County Pump Station 210 located NE/S Route 1 and Road 12 intersection, Lewes, Delaware. Council authorization of a petition is necessary for Tidewater Utilities, Inc., to apply for a Certificate of Public Convenience and Necessity (CPCN) in order to provide water service to the property.

**M 158 16
Authorize
Request to
Petition
Tidewater
Utilities/
PS 210**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorizes the request to petition Tidewater Utilities, Inc., for inclusion in their water service territory, for water service to be extended to Sussex County Pump Station 210 located at NE/S Route 1 and Road 12 intersection, Lewes, Delaware.

Motion Adopted: 5 Yeas.

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

**Update/
Proposed
Herring
Creek
Sanitary
Sewer
District and
Winding
Creek
Village
Water
District**

John Ashman, Director of Utility Planning, provided an update on the Proposed Herring Creek Sanitary Sewer District and Winding Creek Village Water District.

On March 1, 2016, Mr. Ashman provided Council with a status update on the Public Hearing for the Herring Creek Sanitary Sewer District and the Winding Creek Village Water District which was held on February 13, 2016. Since the County has received significant requests for additional information and general comments, it was felt that it was in the best interest of the communities to postpone the referendum vote and host an additional public meeting. Letters were mailed out to property owners advising them of the County's decision to postpone the referendum.

Mr. Ashman stated that a second public meeting has been scheduled on May 7, 2016, at the Beacon Middle School on Route 24 (John J. Williams Highway) starting at 10:00 a.m. Letters notifying the property owners/residents will be mailed, the meeting will be advertised locally, and notifications posted online and in the community.

Mr. Ashman also reported that 171 affidavits have been received from the property owners/residents in Winding Creek Village requesting that the referendum for the proposed water district be canceled. The County Engineering Department is currently analyzing the affidavits to ensure their validity and the percentage of eligible voters they may represent prior to making a recommendation to Council.

Update (continued)	<p>Mr. Ashman presented the following schedule for moving forward with the proposed Herring Creek Sanitary Sewer District:</p> <ul style="list-style-type: none">• Post Public Meeting – Week of April 18th• Second Public Meeting – May 7, 2016• Update to County Council – May 10, 2016
Bid Results/ Sussex Shores Roadway Improvements	<p>Joe Wright, Assistant County Engineer, presented the bid results for Sussex Shores Subdivision – Chapter 96 – Roadway Improvements (Sussex County Project 14-13B). Two bids were received; the apparent low bidder, George & Lynch, Inc., submitted a bid of \$376,405.50. Mr. Wright reported that the bid form submitted by George & Lynch, Inc., had an error in Item A-6 whereby there was a discrepancy between the multiplication of units of work and the unit price that lowered the price nearly \$12,000 more. Section 14.02 of the EJD CD documents incorporated in the bidding documents states that discrepancies are resolved in favor of the unit price. Therefore, the total of Item A-6 was adjusted and the total bid price was adjusted to \$364,644.30. Mr. Wright stated that George & Lynch, Inc., acknowledged the adjusted bid price, indicated they were still interested in the contract, and with the adjustment remained as the low bidder.</p>
M 159 1 6 Award Bid/ Sussex Shores Roadway Improvements	<p>A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the total base bid for Sussex County Project 14-13B, Sussex Shores Subdivision – Chapter 96 – Roadway Improvements be awarded to George & Lynch, Inc., of Dover, Delaware, in the amount of \$364,644.30.</p> <p>Motion Adopted: 4 Yeas; 1 Not Voting.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Not Voting; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
Proposed Pinetown Street- lighting District	<p>Patti Deptula, Director of Special Projects, reported on the status of the proposed Pinetown Streetlighting Project. On January 26, 2016, Council approved the circulation of petitions to the improvement owners in the community of Pinetown for the purpose of establishing a streetlighting district, as required by Chapter 95 of the Sussex County Streetlighting Code. The written request for petitions came from the Pinetown Civic Association and community members who were asking to form a streetlighting district in their subdivision, with eight (8) street lights to be installed. Ms. Deptula stated that petition forms were mailed on January 26, 2016, and as of February 11th five valid forms have been returned, enough to satisfy the Chapter 95 Code requirements. The proposed streetlighting district was discussed at the March 14th Pinetown Civic Association meeting, and no objections were heard. An annual billing rate of \$66.20 per residential or commercial improvement is estimated, based on 25 assessable improvements.</p>

**M 160 16
Approve
Estimated
Billing
Rate/
Proposed
Pinetown
Street-
lighting
District**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves an estimated annual billing rate of \$66.20 per residential or commercial improvement within the Pinetown Proposed Streetlighting District, if an election passes and the District is formed; the annual billing rate will be adjusted each year thereafter, based upon the actual number of assessable units and all streetlighting costs.

Motion Adopted: 5 Yeas.

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

**M 161 16
Adopt
R 005 16/
Proposed
Pinetown
Street-
lighting
District**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to adopt Resolution No. R 005 16 entitled "A RESOLUTION ESTABLISHING THE DATE, TIME, AND PLACE OF AN ELECTION TO BE HELD TO CONSIDER THE QUESTION OF ESTABLISHING THE PROPOSED PINETOWN STREETLIGHTING DISTRICT."

Motion Adopted: 5 Yeas.

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

Old Business

**Old
Business/
CU 2036**

Under Old Business, the Council considered Conditional Use No. 2036 filed on behalf of Jimi Kellogg.

The Planning and Zoning Commission held a Public Hearing on this application on December 10, 2015, at which time action was deferred. On January 14, 2016, the Commission recommended denial.

The County Council held a Public Hearing on this application on March 15, 2016, at which time action was deferred to allow time for the preparation of Findings of Fact and conditions of approval by Legal Counsel for Council's consideration.

Mr. Moore read proposed Findings of Fact and conditions of approval, as follows:

- A. This is the application of Jimi Kellogg for the Conditional Use of land in a GR (General Residential District) for parking of employee vehicles and vans for a cleaning service business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,323 square feet, more or less. The property is located

**Old
Business/
CU 2036
(continued)**

- northeast of Field Lane, a subdivision street, 200 feet southeast of Munchy Branch Road (Road 270-A) (911 Address: 36181 Field Lane, Rehoboth Beach) Tax Map I.D. 334-13.00-873.00.
- B. Council found that DelDOT commented that a Traffic Impact Study was not required, and the current Level of Service “B” of Munchy Branch Road will not change as a result of this application.**
 - C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available if the proposed use does not exceed approximately 1.0 Equivalent Dwelling Unit (EDU) of sewer assessment; that the parcel was provided with a 6-inch sanitary sewer lateral located along the parcel’s frontage on Field Lane and the existing home is connected to the sewer system; that conformity to the West Rehoboth Expansion Area Planning Study will be required; and that a concept plan is not required.**
 - D. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvement will be required; and that it is not likely that any on-site drainage improvements will be required.**
 - E. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Applicant, Jimi Kellogg, and Jennifer Kellogg were present and stated that they own a cleaning business; that they cannot afford to lease a store front for their small business; that they have twelve (12) full-time employees, but that the work occurs off-site; that they have extended their driveway; that they have three (3) work vans and two (2) family vehicles; that they live on the premises; that across the road from their property, within 200 feet, is a store front with three (3) business uses; that their normal workdays are Monday through Friday, with an occasional Saturday and Sunday during the summer months; that currently there are no regular deliveries, but they do receive deliveries from FedEx and UPS; and that the Applicant is not aware of any deed restrictions against commercial activities.**
 - F. Council found that the proposed use is limited in scope and will have little or no impact on traffic, area roadways, neighboring properties or the community.**
 - G. Council found that the proposed use promotes the health, safety, welfare and general convenience of Sussex County and its residents.**
 - H. Council found that the proposed use is akin to a home occupation because the Applicant resides on the property and will continue to reside there throughout the use.**
 - I. Council also found that, other than the Applicant and his wife, there were no parties present in support of or in opposition to the application at the Council hearing.**
 - J. Based on the record created before the Sussex County Council, the Conditional Use is approved subject to the following conditions which**

**Old
Business/
CU 2036
(continued)**

will serve to minimize any potential impacts on the surrounding area and adjoining properties:

- 1. Parking shall be limited solely within the boundaries of the Applicant's driveway and parking pad in compliance with the Sussex County Zoning Code parking requirements and any property restrictions for the site.**
- 2. At all times, the property shall maintain the appearance of a single family residence and not of a business/commercial venture in a residential neighborhood.**
- 3. No lighted signs shall be permitted on the property.**
- 4. No dumpsters shall be permitted on the property.**
- 5. Any security lighting shall be limited to security lighting that is customary in residential areas and shall be downward screened so that it does not shine on neighboring properties or roadways.**
- 6. The Applicant shall comply with all DelDOT requirements regarding entrances to the property.**
- 7. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Concerns were expressed that the business has outgrown the location and is no longer compatible with the residential neighborhood.

Mr. Arlett voiced concern with Condition No. 3 in that unlit signs would be permitted on the property.

**M 162 16
Amend
Condition
No. 3**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to amend Condition No. 3 to read as follows: "No signs shall be permitted on the property."

Motion Adopted: 5 Yeas.

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

**M 163 16
Adopt
Proposed
Ordinance/
CU 2036
(Defeated)**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR PARKING OF EMPLOYEE VEHICLES AND VANS FOR A CLEANING SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 22,323 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2036) filed on behalf of Jimi Kellogg, with findings and conditions, as amended, as follows:

A. This is the application of Jimi Kellogg for the Conditional Use of land in a GR (General Residential District) for parking of employee vehicles and vans for a cleaning service business to be located on a certain parcel of

**M 163 16
(continued)**

- land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,323 square feet, more or less. The property is located northeast of Field Lane, a subdivision street, 200 feet southeast of Munchy Branch Road (Road 270-A) (911 Address: 36181 Field Lane, Rehoboth Beach) Tax Map I.D. 334-13.00-873.00.
- B. Council found that DelDOT commented that a Traffic Impact Study was not required, and that the current Level of Service “B” of Munchy Branch Road will not change as a result of this application.**
 - C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the West Rehoboth Expansion Area; that wastewater capacity is available if the proposed use does not exceed approximately 1.0 Equivalent Dwelling Unit (EDU) of sewer assessment; that the parcel was provided with a 6-inch sanitary sewer lateral located along the parcel’s frontage on Field Lane and the existing home is connected to the sewer system; that conformity to the West Rehoboth Expansion Area Planning Study will be required; and that a concept plan is not required.**
 - D. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be required; and that it is not likely that any on-site drainage improvements will be required.**
 - E. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Applicant, Jimi Kellogg, and Jennifer Kellogg were present and stated that they own a cleaning business; that they cannot afford to lease a store front for their small business; that they have twelve (12) full-time employees, but that the work occurs off-site; that they have extended their driveway; that they have three (3) work vans and two (2) family vehicles; that they live on the premises; that across the road from their property, within 200 feet, is a store front with three (3) business uses; that their normal workdays are Monday through Friday, with an occasional Saturday and Sunday during the summer months; that currently there are no regular deliveries, but they do receive deliveries from FedEx and UPS; and that the Applicant is not aware of any deed restrictions against commercial activities.**
 - F. Council found that the proposed use is limited in scope and will have little or no impact on traffic, area roadways, neighboring properties or the community.**
 - G. Council found that the proposed use promotes the health, safety, welfare and general convenience of Sussex County and its residents.**
 - H. Council found that the proposed use is akin to a home occupation because the Applicant resides on the property and will continue to reside there throughout the use.**
 - I. Council also found that, other than the Applicant and his wife, there were no parties present in support of or in opposition to the application at the Council hearing.**

**M 163 16
(continued)**

J. Based on the record created before the Sussex County Council, the Conditional Use is approved subject to the following conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties:

- 1. Parking shall be limited solely within the boundaries of the Applicant's driveway and parking pad in compliance with the Sussex County Zoning Code parking requirements and any property restrictions for the site.**
- 2. At all times, the property shall maintain the appearance of a single family residence and not of a business/commercial venture in a residential neighborhood.**
- 3. No signs shall be permitted on the property.**
- 4. No dumpsters shall be permitted on the property.**
- 5. Any security lighting shall be limited to security lighting that is customary in residential areas and shall be downward screened so that it does not shine on neighboring properties or roadways.**
- 6. The Applicant shall comply with all DelDOT requirements regarding entrances to the property.**
- 7. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Defeated: 3 Nays; 2 Yeas.

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

**Old
Business/
CU 2037**

The Council considered Conditional Use No. 2037 filed on behalf of Gilbert J. Bernoski, Jr.

The Planning and Zoning Commission held a Public Hearing on this application on December 10, 2015, at which time action was deferred. On January 14, 2016, the Commission recommended denial.

The County Council held a Public Hearing on this application on March 15, 2016, at which time action was deferred and the record left open until April 5, 2016, to allow staff to check the property and to take pictures (public comment closed).

Mr. Lank reported that staff inspected the site on March 16, 2016, took several pictures, spoke to the gentleman operating the auto repair shop, and made the following observations: there were seven (7) unlicensed vehicles on the site, including two (2) that are for sale and three (3) vehicles belonging to the property owner, not the business; there was one RV that does not appear to be occupied as a residence; there were no junk tires laying around the site and no oil or other fluids visible on the outside of the site; and there was no trash visible on the site.

**CU 2037
(continued)** **Mr. Cole expressed concern regarding the number of unlicensed vehicles on the site.**

**M 164 16
Adopt
Proposed
Ordinance/
CU 2037
(Defeated)** **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.101 ACRES, MORE OR LESS” (Conditional Use No. 2037) filed on behalf of Gilbert J. Bernoski, Jr.**

Motion Defeated: 4 Nays; 1 Yea.

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

Grants **Mrs. Jennings presented grant requests for the Council’s consideration.**

**M 165 16
Council-
manic
Grant** **A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$2,000.00 (\$1,500.00 from Mr. Arlett’s Councilmanic Grant Account and \$500.00 from Mr. Cole’s Councilmanic Grant Account) to Indian River School District for the student mentoring program at John M. Clayton Elementary School.**

Motion Adopted: 5 Yeas.

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

**M 166 16
Council-
manic
Grant** **A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to give \$2,000.00 (from Mrs. Deaver’s Councilmanic Grant Account) to Lewes Senior Citizens Center, Inc., for building addition costs.**

Motion Adopted: 5 Yeas.

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

**M 167 16
Council-
manic
Grant** **A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to give \$500.00 (\$250.00 from Mr. Vincent’s Councilmanic Grant Account and \$250.00 from Mr. Arlett’s Councilmanic Grant Account) to Paul Laurence Dunbar Elementary School for the Dunbar Dash 5K/Wellness Walk.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Zoning Ordinances

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EQUIPMENT STORAGE AND REPAIR FOR A CONTRACTING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.972 ACRES, MORE OR LESS” (Conditional Use No. 2047) filed on behalf of Delmarva Petroleum Service (Tax Map I.D. No. 230-13.00-148.00) (911 Address: 9483 Clendaniel Pond Road, Lincoln).

Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WAREHOUSE AND OFFICE TO RECEIVE AND STORE HVAC EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.457 ACRES, MORE OR LESS” (Conditional Use No. 2048) filed on behalf of Delaware Shore Equity, LLC (Tax Map I.D. No. 234-11.00-502.00) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

Council Members' Comments

Council Members' Comments

Mrs. Deaver commented on the tremendous improvements that have taken place within the County to make information available to the public.

Mr. Cole commented on receiving correspondence from the Delaware SeaSide Railroad Club located in Dagsboro, which included a Certificate of Appreciation for Council's support and a flyer announcing their summer hours during which they are open to the public on Wednesdays from 5:00 to 8:00 p.m. and Saturdays 10:00 a.m. to 3:00 p.m., with free admission.

M 168 16
Go Into
Executive
Session

At 12:35 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to go into Executive Session to discuss matters relating to job applicants' qualifications, personnel, and land acquisition.

Motion Adopted: 5 Yeas.

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

- Executive Session** At 12:40 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to job applicants' qualifications, personnel, and land acquisition. The Executive Session concluded at 1:47 p.m.
- M 169 16 Reconvene Regular Session** At 1:52 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to come out of Executive Session and to reconvene the Regular Session.
- Motion Adopted: 3 Yeas; 2 Absent.
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Absent;
Mr. Arlett, Yea; Mr. Wilson, Absent;
Mr. Vincent, Yea
- E/S Action** There was no action on Executive Session matters.
- Rules** Mr. Moore read the Rules of Procedure for Public Hearings.
- Public Hearing/
CU 2039** 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 MANUFACTURING AND INSTALLATION OF PERFORMANCE AUTOMOTIVE PARTS AND ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 34,740 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2039) filed on behalf of Performance Injection Equipment Co., LLC (Tax Map I.D. No. 133-6.00-110.00) (911 Address: 24994 Betts Lane, Georgetown).
- The Planning and Zoning Commission held a Public Hearing on this application on December 10, 2015, at which time action was deferred. On January 14, 2016, the Commission recommended that the application be approved with the following conditions:
- A. No outside repair work shall be performed on the site.
 - B. Any fluids removed from vehicles shall be placed in approved containers and removed by licensed handlers of those materials.
 - C. All used or junked parts, equipment, etc. shall be stored from view from neighboring properties and roadways and shall be appropriately discarded or recycled.
 - D. The chassis dynamometer shall be operated with the doors to its building closed. It shall also only be operated between 10:00 a.m. and 5:00 p.m., Monday through Friday.
 - E. The property shall have security lighting that is downward screened so that it does not project onto neighboring properties or roadways.
 - F. One lighted sign, not to exceed 32 square feet per side, shall be permitted.

**Public
Hearing/
CU 2039
(continued)**

- G. The applicant shall comply with all DelDOT requirements concerning access and roadway improvements.**
- H. All dumpsters or trash disposal containers shall be screened from view from neighboring and adjacent properties and roadways.**
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated December 10, 2015, and January 14, 2016.)

Lawrence Lank, Director of Planning and Zoning, reported on the Planning and Zoning Commission's public hearing and recommendation of approval.

Mr. Lank distributed Exhibit Booklets which were previously provided by the applicant, as well as copies of the survey showing the existing improvements on the property.

Chris Hitchens of Performance Injection Equipment Co., Inc. was present with Aaron Baker, Attorney with Baird Mandalas Brockstedt, LLC, and Mr. Baker stated that the property contains a 3,000 square foot metal building; that the previous business, a heating and air conditioning business, moved out in 2013; that they manufacture, research, test, and install performance automobile parts and accessories; that the use is not a general repair shop; that they sell performance parts through their website; that the applicant has applied for the Conditional Use to bring the business into compliance with the Zoning Code and to continue its business which has been operating since 2013; that there are many established business and commercial uses in the area, referencing Kruger Trailers, Georgetown Speedway, Ad-Art, a hair salon, Infinity Choppers, Classic Auto Tire and Wheel, Pep-Up, Stockley Materials, BFW Restoration, Iron Source, and M.L. Joseph Construction; and that the use is not inconsistent with the Comprehensive Land Use Plan.

Mr. Baker acknowledged that there is an accounting issue relating to the payment of 2015 property taxes, which the applicant intends to resolve immediately upon conclusion of the public hearing.

There were no public comments.

The Public Hearing and public record were closed, with the exception of accepting evidence that the financial obligation owed the County has been resolved.

**M 170 16
Defer
Action/
CU 2039**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 2039, filed on behalf of Performance Injection Equipment Co., LLC.

Motion Adopted: 5 Yeas.

**M 170 16
(continued)**

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

**Public
Hearing/
CZ 1789
and
CU 2038**

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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.17 ACRES, MORE OR LESS” (Change of Zone No. 1789) filed on behalf of Good Earth Market, LLC (Tax Map I.D. No. 134-11.00-181.00, 181.01, 181.02, and 181.03) and the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.75 ACRES, MORE OR LESS” (Conditional Use No. 2038) filed on behalf of Good Earth Market, LLC (Tax Map I.D. No. 134-11.00-181.03) (911 Address: 31806 Good Earth Lane, Ocean View).

Mr. Lank noted that the application for Conditional Use No. 2038 is for a portion of the property, as the remaining portion is already zoned commercial or has a conditional use in place.

The Planning and Zoning Commission held a Public Hearing on these applications on December 10, 2015, at which time action the Commission recommended that Change of Zone No. 1789 be approved, and that Conditional Use No. 2038 be approved with the following conditions:

- A. There shall be no more than three (3) units on the site.**
- B. The units shall be served by County sewer.**
- C. These units are being approved as part of an overall redevelopment of this site as a wedding venue and tourist venue, and are considered part of the overall use. Should that use as a wedding venue and tourist venue terminate or expire, this conditional use shall also automatically expire.**
- D. Stormwater management and erosion and sedimentation control shall be constructed using best management practices in accordance with all State and County requirements.**
- E. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated December 10, 2015.)

Lawrence Lank, Director of Planning and Zoning, reported on the Planning and Zoning Commission’s public hearing and recommendation of approval.

**Public
Hearing/
CZ 1789
and
CU 2038
(continued)**

Mr. Lank distributed copies of Exhibit Books which were previously submitted by the Applicant.

David and Susan Ryan were present on behalf of the applications with Mark Davidson, Principal Land Planner of Pennoni Associates, LLC. Mr. Davidson referred to the Exhibit Book and stated in his presentation that the property is owned by the applicants and/or family members; that the property is 10.71 acres and is currently zoned Agricultural-Residential and does have a conditional use; that the site is located in an Environmentally Sensitive Developing District Overlay Zone; that the expansion of the existing facilities includes growth of the theme of the property with the Good Earth Market, the chicken coops, gardens for vegetables and flowers, and a brewpub and restaurant including on-premise sales of alcoholic beverages, not off-premise sales; that the applicants live on the premises; that there is a one-room tourist house that is rented out; that an 84 Lumber store and yard are in close proximity to the east; that the site is adjacent to a Conditional Use for a future Beebe Medical facility; that the site is located in an Investment Level 2 and 3 according to the Strategies for State Policies and Spending; that the conditional use portion of the applications is to allow three 600 square foot cottage/cabin type buildings on the premises for rentals; that they intend to maintain the open appearance of the site; that the stormwater management pond already exists and is intended as an attraction; that outdoor wedding venues are intended, with no permanent structures; that the new sewer lines and improvements to Route 26 will be a benefit to the existing and proposed uses on the site; that no traffic impact was required by DelDOT; that currently there are three wells on the site; that in the future, Tidewater Utilities will be providing central drinking water and water for fire protection; that the Good Earth Market has been operational for 11 years and is supported as an agri-tourism use; that they currently employ 12 employees and look to double that figure in the future as part of their proposal; and that CR-1 Commercial Residential zoning was chosen since the CR-1 zoning has more flexibility for the uses on the site.

There were no public comments.

The Public Hearing and public record were closed.

**M 171 16
Adopt
Ordinance
No. 2439/
CZ 1789**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2439 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.17 ACRES, MORE OR LESS" (Change of Zone No. 1789) filed on behalf of Good Earth Market, LLC.

Motion Adopted: 5 Yeas.

M 171 16
(continued)

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

M 172 16
Adopt
Ordinance
No. 2440/
CU 2038

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2440 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.75 ACRES, MORE OR LESS” (Conditional Use No. 2038) filed on behalf of Good Earth Market, LLC, with the following conditions:

- A. There shall be no more than three (3) units on the site.**
- B. The units shall be served by County sewer.**
- C. These units are being approved as part of an overall redevelopment of this site as a wedding venue and tourist venue, and are considered part of the overall use. Should that use as a wedding venue and tourist venue terminate or expire, this conditional use shall also automatically expire.**
- D. Stormwater management and erosion and sedimentation control shall be constructed using best management practices in accordance with all State and County requirements.**
- 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: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

M 173 16
Adjourn

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 2:45 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

Susan W. Webb
Administrative Secretary

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