

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 14, 2016

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 14, 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
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 282 16
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of June 7, 2016 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

DELAWARE ENVIROTHON, DOVER, DELAWARE.

RE: Letter in appreciation of grant.

GIRL SCOUT TROOP 1482, LEWES, DELAWARE.

RE: Letter in appreciation of grant.

**FIRST STATE COMMUNITY ACTION AGENCY, GEORGETOWN,
DELAWARE.**

RE: Letter in appreciation of grant.

**Public
Comments**

Public Comments

Paul Reiger commented on a Motion made at the June 7th Council meeting to defer an appointment to the Planning and Zoning Commission. Mr. Reiger also commented on fence regulations and the definition of a farm.

**Public
Comments
(continued)**

Dan Kramer commented on a Motion at the June 7th Council meeting to defer an appointment to the Planning and Zoning Commission.

Jean Ward stated that she is seeking clarification on a referendum, i.e. is the County Council bound by law to abide by the people's vote in a referendum or does the County Council have final say regardless of a vote.

Susan Harrison commented on information presented and received at the June 7th Council meeting regarding the Proposed Herring Creek Expansion and she commented on the request to release Winding Creek Village residents from participation in the proposed sewer district.

Chris Pollinger and Hack Jones thanked Councilman Rob Arlett and County staff for assistance with matters in Herring Bay.

Mary Ellen Vitsorek commented on the scheduled referendum for the Proposed Herring Creek Expansion and the inclusion of Winding Creek Village in the proposed boundaries.

**League of
Women
Voters
Annual
Report**

B.R. Breen of the League of Women Voters of Sussex County presented the League's Annual Report (Sunshine Day Report) to the Sussex County Council. As part of the League of Women Voters' support for openness in government, its Observer Corps monitors the activities of governmental bodies for issues of importance to the League and to the County. The Observer Corps has completed its seventh year of activity; observers attended County Council and Planning and Zoning Commission meetings.

Highlights and observations include the following: water quality; Transportation Improvement District for the Lewes/Rehoboth area; road standards; increased staffing for planning services; Carrying Capacity Study; time extensions for expiring land use applications; development of new Comprehensive Plan; agenda matters; accessibility/amplification equipment; technology upgrades to Council Chambers; enhancements to the County's website; Planning and Zoning Commission process; grants; and complimenting staff.

Ms. Breen presented copies of the report to the Council.

**Order of
Agenda**

Mr. Lawson asked and Mr. Vincent agreed to change the order of the Agenda and the Administrator's Report due to the number of people present for one of the items in the Report.

**Adminis-
trator's
Report**

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

1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County Subcommittee Meeting

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County Conference Planning Subcommittee

Adminis-
trator's
Report
(continued)

will meet on Monday, June 20th, at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard in Georgetown. During the meeting, the Committee will continue to discuss planning for their annual conference scheduled for October 19th.

2. Director of Planning & Zoning

Regretfully, I must announce that Sussex County Planning & Zoning Director Lawrence B. Lank has informed me of his intention to retire on December 1, 2016.

Mr. Lank has been the Director since 1985, and with 47 years and two months of service, he is the longest-tenured employee in the history of County government in the modern era.

A native of Seaford, Mr. Lank began his service with Sussex County as a draftsman in 1969 – the year after Delaware shifted land use authority to the counties, creating the need for a local zoning code and a department dedicated to implementation of the rules and regulations governing development. Since then, he has risen through the ranks to planning technician, then assistant planning director, and finally planning director, the post he has held now for 31 years. As the Director, he oversees a staff of nearly a dozen employees in one of the County's highest-profile departments.

I jokingly refer to Lawrence as the 'dean of Sussex County,' a title that is very fitting because it reflects his many years of service and the level of respect and esteem he has earned in a lifetime career.

On behalf of all of the citizens of Sussex County and the many colleagues and coworkers, both past and present, you have impacted, we want to wish you the best of luck in retirement. You certainly have earned it.

Legislative
Update

Mr. Lawson and Mrs. Jennings provided the following Legislative Update:

House Bill No. 396 entitled "AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO ZONING".

Un-numbered House Bill entitled "AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MANUFACTURED HOUSING".

[Chris Keeler, Director of Assessment, explained assessments on manufactured homes.]

Un-numbered House Bill entitled "AN ACT TO AMEND TITLES 9 AND 22 OF THE DELAWARE CODE RELATING TO TAXES ON MOBILE HOMES".

**Legislative
Update
(continued)**

Mrs. Jennings reported on the recent meeting of the Clean Water and Flood Abatement Task Force and the drafting of legislation entitled “AN ACT TO AMEND THE DELAWARE CODE RELATING TO THE CLEAN WATER FOR DELAWARE ACT”. The draft legislation, which has not yet been introduced, supports a Clean Water Fund supported by a dedicated revenue source and a proposed new Clean Water fee.

Mrs. Jennings submitted and reviewed the Findings of the Task Force, its recommendations, and Scope of Challenges. Mrs. Jennings announced that the Task Force is meeting again on this date to review these documents.

The drafting of the legislation will be monitored and any action reported to Council.

Mr. Lawson reported that there has been talk in the General Assembly about the State and County relationship as it relates to finances and that the Joint Finance Committee is circulating language relating to forming the State/County Finance and Revenue Committee. The information provided states that:

“Recognizing that the State has assumed programs that were once funded by the Counties, the General Assembly hereby establishes the State/County Finance and Revenue Committee. The Committee shall suggest efficiencies, improvements and cost savings to the State, including but not limited to, the Realty Transfer Tax, the Register of Wills, and the operations and training associated with the County Paramedics Program. The Committee shall include the following membership: one public member appointed by the Co-Chairs of the Joint Finance Committee who shall serve as Chair; two members appointed by the Speaker of the House with one member from each caucus; two members appointed by the President Pro Tempore with one member from each caucus; the Director of the Office of Management and Budget; the Secretary of Finance; the Controller General; the County Executive of New Castle County; the County Administrators for Kent and Sussex County; and a Representative of Delaware League of Local Governments. Staff assistance shall be provided by the Office of Management and Budget and the Controller General’s Office. The Committee shall recommend appropriate funding and policy changes to the General Assembly and the Office of the Governor by January 15, 2017.”

Mr. Vincent noted that this will probably pass in epilogue language by the General Assembly.

**Proposed
Amendment
to
Ordinance
No. 2414/
Sign
Moratorium**

Mr. Lawson suggested a Proposed Amendment to Ordinance No. 2414 entitled “AN ORDINANCE TO ESTABLISH A MORATORIUM UPON THE ACCEPTANCE OF SPECIAL USE EXCEPTION APPLICATIONS FOR OFF-PREMISES SIGNS”. He reported that the current moratorium established by Ordinance No. 2414 was extended and the extension is set to expire on June 15th. Mr. Lawson noted that an additional extension would give the Council time to finalize and vote on the sign ordinance update.

**M 283 16
Extend
Sign
Moratorium**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, that the Sussex County Council amends Ordinance No. 2414 entitled "AN ORDINANCE TO ESTABLISH A MORATORIUM UPON THE ACCEPTANCE OF SPECIAL USE EXCEPTION APPLICATIONS FOR OFF-PREMISES SIGNS" to extend the moratorium from its current expiration date until August 15, 2016.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Fair
Housing
Update**

Brandy Nauman, Housing Coordinator & Fair Housing Compliance Officer, presented a six-month update on the progress of the County's fair housing settlement requirements for HUD and the Department of Justice:

U.S. Department of Justice Consent Decree

- Section 2 relates to affordable housing by Diamond State Community Land Trust (DSCLT). The DSCLT has elected not to proceed with the New Horizons development; however, the County is still very supportive of their efforts for affordable housing construction in Sussex County.
- Regarding an Affordable and Fair Housing Marketing Plan, the County has not yet received official approval from the Department of Justice; however, the County continues to proceed as if it were approved. One of the items implemented is hosting the Sussex County Homebuyer Fair in September; the 3rd Annual Sussex County Homebuyer Fair is scheduled for September 2016.
- Regarding housing discrimination complaints, Brandy Nauman, Fair Housing Compliance Officer, receives and reviews complaints of housing discrimination against the County. In the last six months, the County has not received any complaints.
- A reporting requirement to HUD and the Department of Justice is the Semi-Annual Compliance Report on all fair housing activities; this report is due this week to both agencies.
- The County's Fourth Annual Fair Housing Training was held on June 9, 2016. Jeff May of International Development and Planning, LLC was the trainer. Regarding Fair Housing Training, the Community Development and Housing Department works closely with the Human Resources Department to ensure that any new employees hired in a department that is affiliated with administration, housing, land use or zoning receives fair housing training within 30 days of their effective date of hire.
- The County created an affordable and fair housing webpage in June 2013. Compliance reports and notice of public hearings and meetings and other events are posted on the website. The webpage will continue

**Fair
Housing
Update
(continued)**

to be updated regularly.

- The County is required to report any changes that relate to County zoning and land use laws and regulations that address affordable housing construction, especially those processed under the Moderately Priced Housing Unit Program (MPHU) or Rental Program. The County is looking at potential improvements to the Rental Program.

U.S. Department of Housing & Urban Development Voluntary Compliance Agreement

Mrs. Nauman reported that, regarding the U.S. Department of Housing & Urban Development Voluntary Compliance Agreement which was established in November 2012, HUD has issued four responses to the County's submitted activities and progress on the requirements. The County continues to work through the requirements.

- The County is required to assess the Analysis of Impediments to fair housing and create a priority plan to address those impediments and will report to HUD in the report that is due this week. The County has had HUD review the County's limited English proficiency plan; a roll-out to County staff is planned prior to the end of 2016.
- Regarding the Strong Communities Initiative and the RFP status, the County is required to perform an internal evaluation of fourteen rural communities in the County. The County contracted out this service and a final report is expected from the consultant by the end of this month.

**Proposed
Chapel
Branch
Expansion
of the
Sussex
County
Unified
SSD**

John Ashman, Director of Utility Planning, presented a request to prepare and post notices for the Proposed Chapel Branch Expansion of the Sussex County Unified Sanitary Sewer District to include the Chapel Green and Oak Crest Farms communities and parcels of land in the center connecting the two communities. Mr. Ashman reported that 174 petitions were received from the two communities in favor of establishing a sewer district in the area. Additionally, letters were sent to the parcels in between the two communities and responses were received from three parcels indicating interest in being included; a fourth parcel is under a CPCN from Tidewater and they are also interested in being included. Mr. Ashman stated that the Engineering Department would like to hold a Public Hearing on the proposed boundaries.

**M 284 16
Authorize
Public
Hearing/
Proposed
Chapel
Branch
Expansion**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, based on the receipt of petitions submitted pursuant to 9 Del. C §6503, that the Sussex County Council hereby grants permission for the Sussex County Engineering Department to prepare and post notices for a public hearing to establish a boundary for the Proposed Chapel Branch Expansion to the Sussex County Unified Sanitary Sewer District.

Motion Adopted: 4 Yeas, 1 Absent.

M 288 16
Go Into
Executive
Session

At 11:41 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to collective bargaining, personnel and land acquisition.

Motion Adopted: 4 Yeas, 1 Absent.

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

Executive
Session

At 11:48 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 collective bargaining, personnel and land acquisition. The Executive Session concluded at 1:25 p.m.

M 289 16
Reconvene
Regular
Session

At 1:34 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: 4 Yeas, 1 Absent.

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

E/S Action

There was no action on Executive Session matters.

Rules

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

Public
Hearing/
CZ 1796
and
CU 2046

A Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 35.45 ACRES, MORE OR LESS” (Change of Zone No. 1796) filed on behalf of Lockwood Design and Construction, Inc. (Tax Map I.D. No. 334-12.00-127.02, 127.04, 127.05) (911 Address: None Available) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 35.45 ACRES, MORE OR LESS” (Conditional Use No. 2046) filed on behalf of Lockwood Design and Construction, Inc. (Tax I.D. No. 334-12.00-127.02, 127.04, 127.05) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on these applications on March 24, 2016 at which time action was deferred. On

**Public
Hearing/
CZ 1796
and
CU 2046
(continued)**

April 14, 2016, the Commission recommended that Change of Zone No. 1796 be approved and that Conditional Use No. 2046 be approved with the following conditions:

- A. There shall be no more than 202 units within the development. As proffered by the Applicant, this shall include a minimum of at least 60 single family units.**
- B. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices to provide for positive groundwater recharge.**
- D. All entrances and roadway improvements shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- G. A 20 foot forested agricultural buffer shall be shown along the perimeter of the entire development. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
- H. The project shall be served by Sussex County sewer.**
- I. As proffered by the Applicant, the developer shall construct the pool and community building no later than the issuance of the 75th residential building permit for the project.**
- J. As proffered by the Applicant, the interior street design shall comply with or exceed Sussex County minimum standards and shall include sidewalks on at least one side of all streets in the development.**
- K. Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m. and use Route 24 to get access to the site.**
- L. The Applicant shall consult and coordinate with the local school district's transportation manager to establish appropriate school bus stop locations.**
- M. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.**
- N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**Public
Hearing/
CZ 1796
and
CU 2046
(continued)**

(See the minutes of the Planning and Zoning Commission dated March 24 and April 14, 2016.)

Lawrence Lank, Director of Planning and Zoning, provided a summary of the Planning and Zoning Commission's Public Hearing and recommendation of approval.

Mr. Lank advised of an email received from Kathleen Baker, Pat Benson, Amy Caplan, Bill Gaeckle, Harvey Grider, Bob Kiszka, Joan Lamoy, Harold Norken, and Jan Truzzolino on behalf of the residents of Sterling Crossing in opposition to the proposed project.

Mr. Lank distributed Exhibit Books submitted by the Applicant.

The Council found that Dennis Schrader, Attorney, was present with Robert Hood, owner of the property; Don Lockwood, Principal of Lockwood Design and Construction, Inc.; John Barwick of Lock and Roger Gross of Merestone Consultants, Inc.

Mr. Schrader presented the applications for a Medium Density Residential Development (Arbor-Lyn) containing 35.45 acres more or less of which 3.1 acres are in streets, 23 acres in lots, and open space of 21.17 acres (59.5% of the project). Mr. Schrader stated that the property is currently wooded and has a single family dwelling on it. Mr. Schrader stated that their proposal is to develop the site with a mixture of residential unit types consisting of 60 single family homes, 82 townhouse units, and a condominium type project with 60 apartments at a gross density of 5.70 units per acre.

Mr. Schrader referenced that this project was initially submitted as a HR-RPC (CZ 1780); he stated that the Planning and Zoning Commission recommended denial of CZ 1780 and, thereafter, the Applicant resubmitted for a Conditional Use project and a Change of Zone from AR-1 to MR thereby reducing the density to the lower densities provided for in Medium Density Residential Districts. Mr. Schrader noted that the application was refiled based on the Commission's recommendation.

Mr. Schrader and Mr. Gross reported on the following: the classification of the land according to the County's Comprehensive Plan and the State Strategies Maps; plan data; draft condominium documents; PLUS Review by the Office of State Planning Coordination; TAC Review; DeIDOT report; Sussex Conservation District report; and environmental impact information including a stormwater assessment study. Mr. Gross also reported on roads, sidewalks, buffers, open space, available utilities, zonings and densities in the surrounding area, amenities, and highlights of the site plan.

There were no public comments in support of the applications.

**Public
Hearing/
CZ 1796
and
CU 2046
(continued)**

Barbara Smuckler, Shirley Delrymple, Richard Mihelcic, Steve Dolnack, and William Zak spoke in opposition to the proposed project and expressed concerns about the proposed high density of the project; the 20 foot tree line; the proposed 25 foot buffer; drainage problems, one entrance/exit; the traffic situation, i.e. volume and back-ups; the ability of emergency vehicles to respond to the area; pedestrian/biker safety; the lack of any planned road improvements by DelDOT; and the number of developments already approved in the area.

In response to a question raised by Mr. Arlett, Mr. Gross stated that there are no wetlands on the site.

Mr. Lank and Council members discussed agency approvals.

Mr. Vincent referenced Mr. Cole's absence on this date, noted that this application is located in Mr. Cole's district, and suggested that action be deferred to allow Mr. Cole the time to listen to the audio of the meeting so that he can participate in the vote on the applications.

**M 290 16
Defer
Action on
CZ 1796**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to defer action on Change of Zone No. 1796 filed on behalf of Lockwood Design and Construction, Inc.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 291 16
Defer
Action on
CU 2046**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to defer action on Conditional Use No. 2046 filed on behalf of Lockwood Design and Construction, Inc.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 292 16
Adjourn**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to adjourn at 3:14 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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