

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 17, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 17, 2014, 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
Vance Phillips	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 279 14
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting “Administrator’s Report” and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

**M 280 14
Amend
Minutes/
Approve
Minutes**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the minutes of May 13, 2014 by correcting the vote on Motion M 228 14 as follows:

Motion Adopted: 4 Yeas, 1 Nay.

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

; and, to approve the minutes of June 10, 2014, as presented.

Motion Adopted: 5 Yeas.

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

Correspondence

Mr. Moore read the following correspondence:

ALFRED AND FLORENCE FALLAVOLLITA.

RE: Email submitted as correspondence relating to the FY2015 Budget and comments regarding the Council's discretionary accounts.

Mr. Phillips read the following correspondence:

JOHN THOROUGHGOOD, COUNCILMEMBER, TOWN OF MILLSBORO.

RE: Letter regarding discretionary accounts and Human Service Grants.

Grant Policy Clarification

Mr. Cole questioned if there is anything in writing that clarifies the use of discretionary accounts and he asked if it could be posted on the County's website.

**Moment of Silence/
Employee**

Mr. Wilson announced that Frank Tallent, a County employee, has been hospitalized as a result of an accident and that Mr. Tallent's wife was killed in the accident. A Moment of Silence was held for Mr. Tallent.

P&Z Commission

Mr. Lawson asked the Council to consider Mr. Wilson's appointment to the Planning and Zoning Commission.

**M 281 14
Appointment/
P&Z
Commission**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to approve the reappointment of Michael B. Johnson (District 2) to the Planning and Zoning Commission, effective June 1, 2014, for a term of 3 years.

Motion Adopted: 5 Yeas.

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

Wastewater Agreement

Hal Godwin, Deputy County Administrator, presented a wastewater agreement for Council's consideration.

**M 282 14
Execute
Wastewater
Agreement/
The
Landing at
Pepper
Creek**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 516-4, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and H.K.S. 4, LLC for wastewater facilities to be constructed in The Landing at Pepper Creek – Phase 3 – Revised Construction Plan, A/K/A The Marina at Pepper's Creek, located in the Dagsboro/Frankford Sanitary Sewer District.

Motion Adopted: 5 Yeas.

**M 282 14
(continued)**

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

**Legislative
Update**

Hal Godwin, Deputy County Administrator, presented the following legislative update:

House Bill No. 405 – “AN ACT PROPOSING AN AMENDMENT TO ARTICLE III OF THE DELAWARE CONSTITUTION RELATING TO THE CLERK OF THE PEACE”

Synopsis: This bill is the first leg of a Constitutional amendment that eliminates reference to the county elective office of Clerk of the Peace. Contemporaneously with the second leg of the Constitutional Amendment, the implementation language will be filed as a separate bill to maintain a Marriage Bureau in each county under the Secretary of Health and Social Services.

Mr. Godwin advised that Sussex County’s Clerk of the Peace has said that he does not oppose this Bill.

Mr. Godwin asked the Council members for their opinion on the proposed legislation.

**Wetlands
Advisory
Committee**

Hal Godwin, Deputy County Administrator, reported on the Wetlands Advisory Committee’s action on the matter of proposed changes to Title 30, State taxes, allowing a tax credit for wetland owners at a rate of 40% of fair market value of their properties. At the June 10th Council meeting, Marty Ross, Committee member, stated that he thought the percentage should be 100% because it would give the property owner a larger incentive to protect it in perpetuity. Mr. Godwin reported that the Committee met and agreed to the 40%; Mr. Ross gave his presentation for 100%, and the Committee adopted it. The Committee is going to recommend to Secretary O’Mara that he recommend to the General Assembly that this value be given to property owners of wetlands at 100% of the value. Additionally, the Committee discussed the mapping of wetlands and the recommendation is that DNREC shall map the wetlands in Delaware and offer assistance to property owners in determining if they want to participate in the incentive program or not, while seeking verification from wetland property owners with regard to boundaries.

**Noise
Complaint**

Mrs. Deaver commented on a situation at a motel in Rehoboth regarding noise complaints being received from other establishments. Mrs. Deaver raised questions about the State’s noise ordinance.

**Public
Hearing/**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2015”.

**Public Hearing/
Proposed Ordinance/
FY 2015 Budget
(continued)**

Mr. Lawson reported that on May 20, 2014, the Proposed Fiscal Year 2015 Budget was introduced to the Council and he summarized the proposed budget: for the 25th year in a row, the County will not raise taxes; revenues from the housing sector are projected to be 20 to 30 percent over the previous year; the County's largest revenue source, Realty Transfer Tax, is expected to climb to over \$20 million by the end of this current fiscal year; as a result, budgeted revenues are increasing at a modest level of 2 percent or \$1.8 million for the General Fund; this is due in most part to the increase in housing related services, a projected surplus, and pension contribution. Additional highlights include: no General Fund fee increase; a reduction in the total number of employee positions compared to last year's budget; 2 percent COLA for all employees; \$2 million to the Delaware State Police for 44 additional state troopers; \$575,000 for local law enforcement grants; \$3.4 million for fire and ambulance services; and \$4.5 million to the local libraries.

Mr. Lawson stated that the following funding levels are being recommended for Fiscal Year 2015:

- \$51.9 million for the General Fund
- \$7.09 million for capital projects in the Governmental Fund
- \$34.4 million for the Enterprise Fund
- \$14.3 million for the capital projects in the Enterprise Fund
- \$9.51 million for the Fiduciary Funds

Public comments were heard.

Dan Kramer commented on: Fiscal Year 2014 bonus and merit raises; grant funding; raises for retirees; and "non-profit" organizations.

There were no additional public comments and the Public Hearing was closed.

**M 283 14
Adopt Ordinance
No. 2352/
FY 2015
Budget**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to Adopt Ordinance No. 2352 entitled "AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2015".

Motion Adopted: 5 Yeas.

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

**Public Hearing/
Assessment Rolls/Sewer & Water Districts**

A Public Hearing was held on the Proposed Assessment Rolls for Sewer and Water Districts.

Mrs. Jennings explained that the Assessment Rolls reflect the County's records for Equivalent Dwelling Units (EDUs) and billable front footage for each sewer and water district. These records have been made available in

(continued) **the billing office for public inspection and review, and they are subject to individual appeal via the Board of Assessment Review.**

There were no public comments and the Public Hearing was cancelled.

**M 284 14
Adopt
Assessment
Rolls for
Sewer &
Water
Districts**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council hereby adopts the Assessment Rolls for all Sussex County Sanitary Sewer and Water Districts, as presented on June 17, 2014, for the period July 1, 2014 through June 30, 2015.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Proposed
Ordinance/
Sewer &
Water
Charges
and Rates**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING ANNUAL SEWER CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SEWER DISTRICTS”.

Mrs. Jennings reviewed sewer and water highlights:

- **the County continues to work towards a uniform sewer and water rate with most districts seeing an annual increase of \$8.00**
- **this year is the first year that the County will begin unifying connection fees**
- **the County is seeing a 1.3 percent increase in EDUs**
- **there is a 2.4 percent increase in the operating budget**
- **assessment rates have either stayed the same or have decreased**
- **there will be about 1,100 customers that will see a decrease in their rate due to debt being paid off**
- **water and sewer capital projects decreased 20% and a septage rate increase is proposed**
- **continue the 100 foot cap for assessment charges**

Mr. Cole complimented staff on moving toward uniform rates and he stated that the County needs to focus on uniform front footage charges since the current policy is an antiquated way of charging users for sewer and it is not equitable.

Mrs. Deaver expressed concern about the West Rehoboth system and she questioned future costs in this District. Mrs. Jennings reported that a study has been performed to look at connection fees to make sure they will support future growth.

Public comments were heard.

(continued) **Dan Kramer questioned if the County is still subsidizing sewer service and, if so, how much. Mrs. Jennings responded that, starting last year, there are no subsidies. She noted, however, that in the Ellendale district, the County used to subsidize \$700,000 but it is now taken out of the sewer budget. There were no additional public comments and the Public Hearing was closed.**

M 285 14
Adopt
Ordinance
No. 2353/
Sewer &
Water
Charges
and Rates
A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2353 entitled “AN ORDINANCE ESTABLISHING ANNUAL SEWER CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SEWER DISTRICTS”.

Motion Adopted: 5 Yeas.

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

Oak Crest
Farms
Revised
Stormwater
Manage-
ment
Project/
Phase I,
Bid Award
Julie Cooper, Project Engineer, presented bid results for the Oak Crest Farms Revised Stormwater Management Project, Phase I (Sussex County Project 14-01). Ms. Cooper reported that Oak Crest Farms is an existing 175-lot single family home subdivision on Beaver Dam Road which was constructed in three phases. Phase III of the infrastructure work, primarily stormwater management, was left incomplete by the developer. The County’s Engineering Department recalled a Letter of Credit from the developer’s surety to complete the work. On February 19, 2013, the Council passed a Resolution directing the Engineering Department to submit a request for a Surface Water Matching Planning Grant to the Delaware Clean Water Advisory Council. The matching grant was approved by the Advisory Council; thus, a portion of project planning expenditures will be reimbursed to the County and put back into the project. Phase I of the Oak Crest Farms Revised Stormwater Management Project includes the realignment of Stormwater Pond C outfall to eliminate flooding on Beaver Dam Road, clearing and regrading of Stormwater Pond A to increase storage volume, the replacement of Pond A and Pond B outlet control structures for improved stormwater management, and related work.

Ms. Cooper reported that bids for Phase I were opened on June 11, 2014 and seven bids were received. The Engineering Department is recommending that Council approve awarding the bid to Melvin L. Joseph Construction Co., Inc. of Georgetown at the bid amount of \$252,817.00. The Engineer’s Estimate for the project was \$368,363.16.

The project and the recommended bid award were discussed.

M 286 14
Award
Bid/
Oak
Crest
Farms
Revised
Stormwater
Management
Project

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Engineering Department, that Sussex County Project 14-01, Oak Crest Farms Revised Stormwater Management, Phase I” be awarded to the lowest responsive bidder, Melvin L. Joseph Construction Company, Inc., of Georgetown, Delaware, at the total bid amount of \$252,817.00.

Motion Adopted: 5 Yeas.

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

Millville
Expansion
of the
BBSSD/
SR 26 –
Phase III
Expansion
Project

Michael Izzo, County Engineer, discussed the Millville Expansion of the Bethany Beach Sanitary Sewer District, SR 26 – Phase III Expansion (AKA SR 26 Mainline Project). Mr. Izzo stated that the Department’s intent is to incorporate the extension of sewer work on SR 26 from the Denton Mills subdivision west to the vicinity of St. George’s Church; by embedding this work in the DelDOT project, the County can take advantage of savings in items like road restoration costs and contractor mobilization. Also, it would greatly reduce the inconvenience to the public by having concurrent construction activities. The work will be funded by the USDA Rural Utility Service. Mr. Izzo noted that this is remnant work; the Millville sewer project has been constructed in six separate construction contracts with a total project cost of \$25 million. The Engineering Department is working with DelDOT and the construction has been embedded in DelDOT’s contract; George & Lynch is DelDOT’s contractor at a cost of \$2,128,701.22. Mr. Izzo noted that, although an excess of design funds remain in Amendment #40, a shortfall exists in Construction Administration and Inspection Amendment #38; therefore, a transfer of \$140,000 from Amendment #40 to Amendment #38 is proposed to oversee the remaining construction work. The sewer work in this Phase 3 expansion should begin in July.

Mr. Izzo reported that the Engineering Department went through the Public Hearing process, gave the presentation to the local public, and the consensus was in support of the project. Additionally, the sewer district was expanded to include this area.

M 287 14
Approve
Transfer
of Funds
for Millville
SSD SR-26
Phase III
Expansion

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council hereby approves a transfer of \$140,000 from Whitman, Requardt and Associates, LLP, Contract Amendment No. 40 to Contract Amendment No. 38 to provide Contract Administration and Construction Inspection Services for the Millville Sanitary Sewer District, SR 26 – Phase III Expansion.

Motion Adopted: 5 Yeas.

M 287 14
(continued)
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

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

M 288 14
Council-
manic
Grant A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,500.00 from Mr. Phillips' Councilmanic Grant Account to the Town of Millsboro for welcome signs.

Motion Adopted: 5 Yeas.

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

Tabled The grant request from the Town of Laurel was tabled.

M 289 14
Council-
manic
Grant A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$358.90 from Mr. Vincent's Councilmanic Grant Account to the Delmarva Council - Boy Scouts of America – Troop 249 for Eagle Scout project expenses.

Motion Adopted: 5 Yeas.

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

M 290 14
Council-
manic
Grant A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to give \$1,000.00 from Mr. Vincent's Councilmanic Grant Account to the Seaford Historical Society for events to recognize the 75th anniversary of commercial nylon.

Motion Adopted: 5 Yeas.

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

M 291 14
Council-
manic
Grant A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the March of Dimes Foundation for The Farmer & The Chef South event.

Motion Adopted: 5 Yeas.

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

**M 292 14
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,000.00 from Mr. Phillips' Councilmanic Grant Account to the Greater Millsboro Chamber of Commerce for festival expenses.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO MODIFY CONDITION NO. 1 AND TO DELETE CONDITIONS NO. 2 AND NO. 15 IMPOSED ON ORDINANCE NO. 1532 FOR CHANGE OF ZONE NO. 1460, THE APPLICATION OF BUNTING-GRAY, LLC FOR "THE REFUGE AT DIRICKSON CREEK", A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO INCREASE THE MAXIMUM NUMBER OF ALLOWABLE DWELLING UNITS FROM 343 UNITS TO 355 UNITS, OF WHICH NO MORE THAN 68 UNITS SHALL BE MULTI-FAMILY UNITS, AND TO ELIMINATE THE B-1 NEIGHBORHOOD BUSINESS USES PERMITTED BY ORDINANCE NO. 1532 ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.3494 ACRES, MORE OR LESS" (Change of Zone No. 1755) filed on behalf of Bunting – Gray, LLC. (Tax I.D. # 533-12.00-674.00)

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 13.57 ACRES, MORE OR LESS" (Change of Zone No. 1756) filed on behalf of Delmarva Power & Light Company. (Tax I.D. # 233-5.00-135.00, 136.00, 137.01 and Part of 125.00)

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXCAVATING COMPANY STORAGE OF EQUIPMENT AND OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.34 ACRES, MORE OR LESS" (Conditional Use No. 1995) filed on behalf of Adele H. Fluharty. (Tax I.D. # 234-12.00-84.00)

The Proposed Ordinances will be advertised for Public Hearing.

**Additional
Business**

Under Additional Business, Paul Reiger commented on his complaints regarding violations that take place on the parcel adjacent to his property.

**M 293 14
Recess
and Go
Into
Executive
Session** **At 10:56 a.m., a Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to recess the Regular Session and go into Executive Session for the purpose of discussing issues relating to pending/potential litigation and land acquisition.**

Motion Adopted: 5 Yeas.

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

**Executive
Session** **At 10:59 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing issues relating to pending/potential litigation and land acquisition. The Executive Session concluded at 11:55 a.m.**

**M 294 14
Reconvene** **At 11:57 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to reconvene.**

Motion Adopted: 5 Yeas.

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

Action **There was no action on Executive Session items.**

**M 295 14
Recess** **At 11:57 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, to recess until 1:30 p.m.**

Motion Adopted: 5 Yeas.

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

**M 296 14
Reconvene** **At 1:38 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to reconvene.**

Motion Adopted: 5 Yeas.

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

Rules **Mr. Moore reviewed the rules of procedure for Public Hearings.**

**Public
Hearing/** **A Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF**

**Public
Hearing/
CZ 1746,
CZ 1747,
CU 1986**

SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.45 ACRES, MORE OR LESS (Tax Map I.D. No. 134-9.00-21.00) (part of) (Change of Zone No. 1746), “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 17.80 ACRES, MORE OR LESS” (Tax Map I.D. No. 134-9.00-21.00) (part of) (Change of Zone No. 1747) 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.56 ACRES, MORE OR LESS” (Tax Map I.D. 134-9.00-21.00) (Part of) (Conditional Use No. 1986) filed on behalf of Castaways Bethany Beach, LLC.

The Planning and Zoning Commission held a Public Hearing on the three (3) applications on April 24, 2014 at which time the Commission recommended approval of the applications (conditions of approval were recommended for Change of Zone No. 1747 and Conditional Use No. 1986).

(See the minutes of the Planning and Zoning Commission dated April 24, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Exhibit Books which were provided by the Applicant were distributed. The Exhibit Book contains various documents and exhibits, including a response to the PLUS comments, Environmental Assessment and Public Facilities Evaluation Report, and a summary of the subdivision consideration set forth in the subdivision ordinance.

Mr. Lank noted that, at the time of the Public Hearings before the Commission, 46 letters and emails were received in opposition to the applications and that a large number of those emails and letters made reference to opposition to a proposed campground and waterpark. Mr. Lank stated that a campground and waterpark is not a part of the application. Mr. Lank noted that 4 additional letters and emails in opposition have been received since the date of the Public Hearing before the Commission. Mr. Lank referenced a letter/email from Debbie Swadley Engel that was sent directly to Council members; the letter/email was made a part of the record.

**Public
Hearing/
CZ 1746,
CZ 1747,
CU 1986
(continued)**

It was the consensus of the Council to hear the applications as combined applications. It was noted that separate decisions would be made on the applications.

The Council found that Todd Burbage, a Principal in Castaways Bethany Beach, LLC, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A. and Jeff Clark of Land Tech Land Planning, LLC. They stated in their presentations and in response to questions raised by the Council that the three applications are for one development (The Preserve at Cedar Pines) consisting of 30 townhouses and 45 single family lots; that the 75 proposed units consist of 45 single family dwelling lots and 30 townhouse units; that the applications include a downzoning from C-1 General Commercial to MR Medium Density Residential, a rezoning from MR Medium Density Residential to MR-RPC Medium Density Residential – Residential Planned Community, and a Conditional Use for 30 townhouse type units within ten (10) buildings; that to the east of the site is State lands with Federal and State wetlands; that to the north is a residential subdivision, The Reservation; that to the south is a C-1 General Commercial zoned mini-storage facility; that to the west is Cedar Neck Road and Hockers G & E general store; that the parcel contains 29.36 acres of land which currently is zoned C-1 General Commercial (1/3 of the site) and MR Medium Density Residential (2/3 of the site); that the site currently has a valid Conditional Use (C/U #1488) approved for 143 multi-family units; that the economic downturn impacted that proposal; that, in July 2012, the Applicants filed an application for an RV campground and waterpark which included additional lands, including the adjacent mini-storage; that the mini-storage site is not now a part of this new application; that the Commission and the County Council both held public hearings on the RV campground and waterpark; that the Commission recommended denial of the request; that the Applicants withdrew the application for the RV campground and waterpark prior to the County Council taking any action in December 2012; that the proposed application should be consistent with the current development trend of the area; that approval of C/Z #1746 will reduce the permitted density from 12 units per acre to 4 units per acre; that Conditional Use #1986 will permit 30 single family townhouse units; that C/Z #1747 will permit 45 single family detached dwelling lots; that the applications are in accordance with the Sussex County Comprehensive Plan since they are located within an Environmentally Sensitive Developing Area, a growth area, which permits housing types of single family detached dwellings, townhouses, and multi-family units; that central sewer will be provided by the County; that central water will be provided by Sussex Shores Water Company; that a Traffic Impact Study was not required by DelDOT since the project has been reduced to 1/2 of the original density; that the developer will comply with all of DelDOT's entrance and roadway improvement requirements; that wetlands will not be disturbed; that the U.S. Army Corps of Engineers have approved the established wetlands boundaries; that the site plan depicts the lots and units, a pool facility, sidewalks, and street lighting; that the townhouses are designed with courtyard areas; that access to all lots shall be from internal streets and

**Public
Hearing/
CZ 1746,
CZ 1747,
CU 1986
(continued)**

driveways; that the minimum lot size is 7,500 square feet with 60 feet minimum width; that the streets will have curb and gutter; that a minimum of two parking spaces will be provided for each unit with some overflow parking areas for guests; that evergreen and deciduous plantings will be included in the landscaping plan with some berms; that the stormwater management facilities will include green technologies and designs including bio-retention, swales, and filter strips; that the central water system will include provisions for potable water and fire protection; that a County regional pump station is adjacent to Territory Trail, a street in The Reservations subdivision; that there are no records of any endangered or protected rare plant or animal species on the site; that all utilities will be provided; that TAB 6 of the Exhibit Booklet contains references to Subdivision Code 99-9C; that creating 45 single family dwellings and 30 townhouses is consistent with the Comprehensive Plan and consistent with and provides a response to the objections to the previous campground and waterpark applications, eliminates a C-1 General Commercial zoned parcel, and reduces the density from 143 residential units to 75 residential units, a reduction of 68 units; that the existing graded streets on the site are being totally revised based on the proposed site plan; that the stormwater management design has emergency outfalls that will be subject to agency approvals; that there are no open ponds proposed; that sidewalks are planned throughout the project; that all streets are curb and gutter with sidewalks on one side; that the traffic signal agreement has some history back to the original Conditional Use #1488 approved in 2003; that a 20 foot wide strip along Cedar Neck Road has already been dedicated to public use; and that there are no commercial activities proposed in this project; and that the applications are in accordance with the County's Comprehensive Plan and are consistent with the general nature of the residential development in the area.

Mr. Fuqua noted that these applications were first misinterpreted, in the press and by the public, and that the developers are proposing only 75 residential units.

Mr. Fuqua stated that these applications are a significant step back from the previous RV – Waterpark application that was withdrawn and it is also a substantial reduction in the currently approved residential development. Mr. Fuqua noted that the net effect of these applications will be the elimination of a commercial zoned parcel containing about 9 acres and the reduction in the approved residential density of the site from 143 units to 75 units. Mr. Fuqua stated that the conditions recommended by the Commission are acceptable to the Applicant.

The Council found that Mr. Fuqua submitted suggested Findings of Fact and suggested Conditions of Approval for the Council's consideration.

Public comments were heard.

There were no comments in support of the application.

**Public
Hearing/
CZ 1746,
CZ 1747,
CU 1986
(continued)**

Debbie Swadley Engel stated that she resides on Cedar Neck Road directly across from the proposed project. Ms. Engel spoke in opposition to Conditional Use No. 1986, which would allow for multi-family dwellings structures to be located directly in front of several single family homes and an entrance directly in front of these single family homes. She stated that the proposed project is not consistent with current development trends north of Sandy Cove Road; will create a view of the back of the dwellings; will create a lot of traffic; that there is no definition for multi-family dwelling or structures that would cut across any other land in the development; that if there is any thought of or possibility of a traffic signal at the proposed project's location, it would have a devastating impact on the area both lowering the quality of life and negatively affecting the property values; and that the proposed project will significantly and adversely affect the area and would not be consistent with neighboring properties. Mrs. Engle submitted a copy of her letter/email/comments into the record.

William Johnston stated that he resides on Cedar Neck Road directly across from the proposed project. He expressed concerns about any proposed traffic light, traffic on Cedar Neck Road, the proposed central water system; and the proposed bus stop.

The Public Hearing and public record were closed.

The Council discussed and raised questions regarding the applications and specifically, the layout of the proposed entrance and the layout of the residential units.

Mr. Phillips requested that Mr. Lank and Mr. Moore contact DelDOT to find out if the entrance could be moved to the intersection of Sandy Cove Road. Mr. Phillips asked that the record remain open to allow time for the Applicant to confer with DelDOT.

Mr. Cole suggested that the record also remain open so that the Applicant might modify the site plan.

Mr. Clark noted that DelDOT was vehemently opposed to any intersection that is not at a 90 degree angle and as far away from Sandy Cove Road as possible. He noted that he could get that in writing from DelDOT.

**M 297 14
Leave
Record
Open on
Public
Hearing/
CZ 1746,
CZ 1747,
CU 1986**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, (regarding Change of Zone No. 1746, Change of Zone No. 1747, and Conditional Use No. 1986) to leave the record open for the purpose of receiving documentation from DelDOT as to the permitted location of the entrance.

Motion Adopted: 5 Yeas.

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

M 298 14
Defer
Action on
CZ 1746

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Change of Zone No. 1746 filed on behalf of Castaways Bethany Beach, LLC.

Motion Adopted: 5 Yeas.

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

M 299 14
Defer
Action on
CZ 1747

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1747 filed on behalf of Castaways Bethany Beach, LLC.

Motion Adopted: 5 Yeas.

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

M 300 14
Defer
Action on
CU 1986

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1986 filed on behalf of Castaways Bethany Beach, LLC.

Motion Adopted: 5 Yeas.

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

M 301 14
Adjourn

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 2:49 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**