

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 11, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 11, 2015, at 1:00 p.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
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Todd Lawson, County Administrator, was not in attendance.

**Call to
Order**

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

Mr. Vincent called the meeting to order.

**M 318 15
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of August 4, 2015 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**SUSSEX COMMUNITY CRISIS HOUSING SERVICE, GEORGETOWN,
DELAWARE.**

RE: Letter in appreciation of grant.

**Public
Comments**

Public Comments

Paul Reiger commented on fence regulations and he referenced a discussion at a meeting of the Board of Adjustment (August 3) at which time a fence variance was considered.

Dan Kramer commented on the County's employees.

Mrs. Deaver joined the meeting.

Sussex Senior Transportation Cooperative/ iTN Southern Delaware Nancy Feichtl presented information on iTN *Southern Delaware*, a Senior Transportation Cooperative, which has come to fruition. ITN *Southern Delaware*, an affiliate of a national organization, is launching its program in August in the coastal area. The program will be launched in two stages; first, in the coastal area, and in other Sussex County areas in Spring 2016. Mrs. Feichtl thanked the Council for its previous donations and endorsement, and asked for help in getting the word out on this new program.

M 319 15 Approve Consent Agenda A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to approve the following items listed under the Consent Agenda:

**Wastewater Agreement No. 259-1
Sussex County Project No. 81-04
The Reserves – Phase Two
Ocean View Expansion of the Bethany Beach Sanitary Sewer District**

**Wastewater Agreement No. 387-1
Sussex County Project No. 81-04
Oak Creek – Phase 4 (A/K/A Sawgrass North)
West Rehoboth Expansion of the Dewey Beach 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**

Wastewater Planning Matching Grant/ Dewey Beach John Ashman, Director of Utility Planning, presented information on a request for approval for a regional planning study grant for the Dewey Beach Sanitary Sewer District. Mr. Ashman explained that a Resolution is required for the Engineering Department to apply for a wastewater planning matching grant from the Wastewater Infrastructure Advisory Council. He noted that, due to redevelopment and projected growth in the Dewey Beach area, the Engineering Department has found it is necessary to have an updated infrastructure map and sewer model for the district. Mr. Ashman reported that the Engineering Department selected Pennoni Associates from the previously approved Miscellaneous Consultants and they have supplied a cost proposal of \$49,985.00. The grant funding is based on a 50 percent match up to \$50,000 per project and this project is eligible for a full 50 percent match; the Engineering Department is requesting a \$24,933.00 matching grant from the Water Infrastructure Advisory Council.

Mr. Ashman requested approval to enter into a contract with Pennoni Associates, Inc. to compile and complete the Dewey Beach Planning Study for a sum of \$49,985.00.

- M 320 15**
Adopt
Resolution
R 011 15/
Regional
Wastewater
Planning
Grant
and
Contract/
Dewey
Beach
- A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to Adopt Resolution No. R 011 15 entitled “RESOLUTION TO SUBMIT A REQUEST FOR A REGIONAL WASTEWATER PLANNING GRANT TO THE WATER INFRASTRUCTURE ADVISORY COUNCIL FOR MATCHING FUNDS TO FINANCE A PLANNING STUDY FOR THE DEWEY BEACH SANITARY SEWER DISTRICT AND APPROVE A CONTRACT WITH PENNONI ASSOCIATES INC. FOR THE COMPLETION OF THE STUDY”.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**
- Wastewater**
Planning
Matching
Grant/
Roxana
- John Ashman, Director of Utility Planning, presented information on a request for approval for a regional planning study grant for the Roxana area. Mr. Ashman explained that a Resolution is required for the Engineering Department to apply for a wastewater planning matching grant from the Wastewater Infrastructure Advisory Council. He noted that, during the establishment of the Johnson’s Corner Sanitary Sewer District, there were parcels outside of the proposed boundaries requesting sewer service; the study will confirm the size of the drainage basin and the number of existing homes that can be served based on the capacity at the South Coastal Treatment Facility. The grant funding is based on a 50 percent match up to \$50,000; the estimated cost is expected to exceed \$50,000, so the maximum grant will be requested.**
- M 321 15**
Adopt
Resolution
R 012 15/
Regional
Wastewater
Planning
Grant
and
Contract/
Roxana
- A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to Adopt Resolution No. R 012 15 entitled “RESOLUTION TO SUBMIT A REQUEST FOR A REGIONAL WASTEWATER PLANNING GRANT TO THE WATER INFRASTRUCTURE ADVISORY COUNCIL FOR MATCHING FUNDS TO FINANCE A PLANNING STUDY FOR THE ROXANA AREA”.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Arlett, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**
- Report/**
Receipt of
Information/
CU 2014
- Lawrence Lank, Director of Planning and Zoning, reported on information received regarding Conditional Use No. 2014, filed on behalf of Jay Beach. Mr. Lank stated that, on May 19, 2015, the Council held a public hearing on this application. At the public hearing, Council requested additional information from DNREC, Sussex Conservation District, and any other appropriate agencies concerning the soils brought to the property.**

Report/ Receipt of Information/ CU 2014 (continued)	<p>On that date, action was deferred for the purpose of receiving reports.</p> <p>Mr. Lank reported that a response was received from DNREC Site Investigation and Restoration Section, and from Jessica Watson, Program Manager for the Sussex Conservation District. It was noted that the public will be given the opportunity to comment on the information submitted; the public will be given a 15 day period of time, until August 26, to submit written comments pertaining to the information submitted to Council on this date.</p>
Old Business/ CZ 1768	<p>Under Old Business, the Council discussed Change of Zone No. 1768 filed on behalf of Convergence Communities. The Planning and Zoning Commission held a Public Hearing on this application on April 9, 2015 at which time action was deferred. On July 30, 2015, the Commission recommended that the application be approved, with the following conditions:</p> <ul style="list-style-type: none">A. The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units.B. Site plan review shall be required for each phase of development.C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements, or in accordance with any further modification required by DelDOT.D. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.E. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as so required by applicable regulations.F. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with the Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.G. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As so proffered by the applicant, street design shall include sidewalks on both sides of all streets.H. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.I. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.J. The applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities

**Old
Business/
CZ 1768
(continued)**

- and other common areas.
- K. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State Permits. The wetland areas shall be clearly marked on the site with permanent markings.**
 - L. There shall be a 50 foot buffer from all tidal wetlands.**
 - M. As proffered by the applicant, owners and residents of the proposed development shall be entitled to use all of the recreational amenities of the adjacent Ocean View Beach Club development under the same rights, responsibilities and fees applicable to owners and residents of the Ocean View Beach Club.**
 - N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**M 322 15
Amend
Recom-
mended
Conditions**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend the conditions recommended for Change of Zone No. 1768 to include Condition O, as follows:

The Applicant shall notify potential purchasers and actual purchasers through sales literature and deeds that the property is in the County's jurisdiction; this requirement shall automatically terminate in the event this parcel is annexed.

Motion Adopted: 5 Yeas.

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

**M 323 15
Adopt
Ordinance
No. 2411/
CZ 1768**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to Adopt Ordinance No. 2411 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 49.66 ACRES, MORE OR LESS" (Change of Zone No. 1768) filed on behalf of Convergence Communities, with the following conditions:

- A. The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units.**
- B. Site plan review shall be required for each phase of development.**
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements, or in accordance with any further modification required by DelDOT.**
- D. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering**

**M 323 15
Adopt
Ordinance
No. 2411/
CZ 1768
(continued)**

- Department specifications and regulations.**
- E. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as so required by applicable regulations.**
 - F. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with the Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.**
 - G. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As so proffered by the applicant, street design shall include sidewalks on both sides of all streets.**
 - H. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.**
 - I. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**
 - J. The applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**
 - K. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State Permits. The wetland areas shall be clearly marked on the site with permanent markings.**
 - L. There shall be a 50 foot buffer from all tidal wetlands.**
 - M. As proffered by the applicant, owners and residents of the proposed development shall be entitled to use all of the recreational amenities of the adjacent Ocean View Beach Club development under the same rights, responsibilities and fees applicable to owners and residents of the Ocean View Beach Club.**
 - N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
 - O. The Applicant shall notify potential purchasers and actual purchasers through sales literature and deeds that the property is in the County's jurisdiction; this requirement shall automatically terminate in the event this parcel is annexed.**

Motion Adopted: 5 Yeas.

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

Rules

Mr. Moore read the rules of procedure for public hearings.

**Public
Hearing/
CZ 1778**

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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.74 ACRE, MORE OR LESS” (Change of Zone No. 1778) filed on behalf of John Floyd Lingo. (Tax Map I.D. No. 235-30.00-68.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 9, 2015 at which time the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated July 9, 2015.)

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

The Council found that Richard Abbott, Esq. was present with Mark Davidson, Pennoni Associates, Inc., and John Lingo on behalf of the application and provided information about the application for rezoning. Mr. Abbott explained that this request is for the expansion of an existing commercially zoned property which will allow the relocation of structures from the adjacent commercially zoned property onto part of this property. Mr. Abbott also explained DelDOT’s proposed plan for intersection improvements at Route 9 and Route 5 and its impact on this property, including the proposed relocation of the existing barbershop building. Mr. Davidson explained DelDOT’s proposed entrances to the property.

There were no public comments.

The Public Hearing was closed.

**M 324 15
Adopt
Ordinance
No. 2412/
CZ 1778**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2412 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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.74 ACRE, MORE OR LESS” (Change of Zone No. 1778) filed on behalf of John Floyd Lingo.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CZ 1779**

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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.033 ACRES, MORE OR LESS” (Change of Zone No. 1779) filed on behalf of Thomas K. Munce and Judy L. Munce. (Tax Map I.D. No. 230-26.00-35.01) (911 Address: 12327 N. DuPont Blvd. Ellendale).

The Planning and Zoning Commission held a Public Hearing on this application on July 9, 2015 at which time action was deferred. On July 30, 2015, the Commission recommended that the application be denied.

(See the minutes of the Planning and Zoning Commission dated July 9 and 30, 2015.)

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

Mr. Lank noted that this site was previously approved for a Conditional Use (Conditional Use No. 1979 – Ordinance No. 2341) on March 25, 2014 for a retail package store and tavern, and that the use has been established on the site.

Mr. Lank explained that the Applicants have other options in lieu of a Change of Zone: they can submit to the Planning and Zoning Commission a request for an amendment to the condition relating to food service (Ordinance No. 2341 – Conditional Use No. 1979) or the Commission could refer the request back to a Public Hearing.

The Council found that Judy Munce was present on behalf of the application and provided information about the application for rezoning. Mrs. Munce commented that they have leased the building for the tavern and package store and that they would like to provide on-premise food service. Mrs. Munce stated her wish to be able to open a restaurant on the site.

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

**M 325 15
Adopt
Proposed
Ordinance/
CZ 1779**

DENIED

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.033 ACRES, MORE OR LESS” (Change of Zone No. 1779) filed on behalf of Thomas K. Munce and Judy L. Munce.

**M 325 15
(continued)**

Motion Denied: 4 Nays, 1 Yea.

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

**Grant
Requests**

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

**M 326 15
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$1,000.00 from Mrs. Deaver's Councilmanic Grant Account to the Milton Garden Club for the downtown clock project.

Motion Adopted: 5 Yeas.

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

**Defer
Grant
Request**

Mr. Cole asked to defer the grant request from Rehoboth Beach Film Society.

**M 327 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 (\$500.00 each from Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts) to the Rehoboth Art League for program expenses.

Motion Adopted: 5 Yeas.

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

**M 328 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$300.00 (\$100.00 each from Mr. Cole's, Mr. Arlett's, and Mrs. Deaver's Councilmanic Grant Accounts) to the Indian River Volunteer Fire Company for the Ladies Auxiliary Annual Basket Bingo fundraiser.

Motion Adopted: 5 Yeas.

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

**M 329 15
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 La Esperanza for sponsorship of the annual *Festival Hispano*.

Motion Adopted: 5 Yeas.

M 329 15
(continued)

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

Council Members' Comments

Council Member's Comments

Mr. Vincent recognized Michael A. Izzo, County Engineer, who has announced that he will be retiring after 31 years of service. Mr. Izzo will retire effective September 15, 2015.

M 330 15
Adjourn

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 2:32 p.m.

Motion Adopted: 5 Years.

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

Respectfully submitted,

Robin A. Griffith
Clerk of the Council