

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 20, 2013

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 20, 2013, 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 379 13
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by changing the presenter of the Annual Comprehensive Plan Update to Todd Lawson, County Administrator, 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**

Minutes

The minutes of August 13, 2013 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**TERESA AVERY, EXECUTIVE DIRECTOR, AUTISM DELAWARE,
NEWARK, DELAWARE.**

RE: Letter in appreciation of the Council's grant for the Blue Jean Ball event.

**BRENDA C. MILBOURNE, EXECUTIVE DIRECTOR, WEST SIDE NEW
BEGINNINGS, REHOBOTH, DELAWARE.**

**RE: Letter in appreciation of the Council's grant for the Coalition for West
Rehoboth revitalization housing program.**

**ERIN HITCHENS, COMMUNITY DIRECTOR, MARCH OF DIMES
FOUNDATION, WILMINGTON, DELAWARE.**

RE: Letter in appreciation of Council's grant for The Farmer & The Chef

- Correspondence (continued)** **South event.**
- Mrs. Deaver shared that she has received an abundance of emails/letters pertaining to the Southern Delaware Botanic Garden and wanted to clarify that the record is closed at this time.
- Proclamation/DE District III Softball Team** **The Council recognized the Delaware District III Girls' Softball Team with a Proclamation entitled "A PROCLAMATION TO HONOR THE DELAWARE DISTRICT III GIRLS' SOFTBALL TEAM UPON WINNING THE 2013 BIG LEAGUE WORLD SERIES TITLE". The Delaware District III Girls' Softball Team won the 2013 Big League World Series Championship for the title of World Champions.**
- Recess** **At 10:20 a.m., a short recess was taken for the Delaware District III Girls' Softball Team to have a group picture taken with Council members on the steps of the Administration Building.**
- Reconvene** **At 10:32 a.m., the Council reconvened.**
- Employee of the Quarter** **The Council recognized and presented a Tribute to Jennifer Norwood, Sussex County Employee of the Third Quarter. Mrs. Norwood is an employee of the Planning and Zoning Department; she began her employment with Sussex County on February 1, 1991.**
- Administrator'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**

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will hold a special planning meeting on Thursday, August 22, 2013, at 9:30 a.m. at the CHEER Community Center, 20520 Sand Hill Road, in Georgetown. During the meeting, the Committee will continue discussion of its upcoming conference.
 2. **Delaware Department of Transportation – Pedestrian Safety Task Force Follow-up**

At Councilwoman Deaver's request, I contacted DelDOT Secretary Shailen Bhatt to gain an understanding of the discussion surrounding signs on Route One during the recent Pedestrian Safety Task Force meeting.

The Secretary's office clarified the discussion focused on a variety of issues including sign clutter, whether the number of signs should or could be reduced, and whether these issues were contributing to the safety problems along the corridor. In addition, there was some mention of the County's sign regulations and if any changes should

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

be considered.

During the Task Force meeting, Secretary Bhatt committed to doing a "safety audit" tour of the roadway to analyze these issues. The Secretary's office confirmed the tour will take place after Labor Day Weekend.

3. County Council Meeting Schedule

The Sussex County Council will not meet on August 27 and September 3 as a result of a summer holiday and in honor of the Labor Day holiday, respectively. The next regularly scheduled Council meeting will occur on September 10, 2013, at 10:00 a.m.

County offices will be closed on Monday, September 2, for the Labor Day holiday.

Mrs. Deaver asked if the County is enforcing sign regulations that pertain to feather flags and requested that this be brought back on a future Agenda.

**Wastewater
Agreement**

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

**M 380 13
Execute
Wastewater
Agreement/
Shoal
Harbor**

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. 995, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and 625 Rehoboth Avenue, LLC for wastewater facilities to be constructed in Shoal Harbor, located in the 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. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Proposed
Ordinance
Relating to
Special
Events**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115, ARTICLES IV, VI, X, XI, XIA, AND XII OF THE CODE OF SUSSEX COUNTY BY DELETING THE CONDITIONAL USE LANGUAGE FOR CIRCUS AND CARNIVAL GROUNDS, AMUSEMENT PARK OR MIDWAYS, INSERTING A BROADER DEFINITION OF SPECIAL EVENTS TO BE DEFINED AS CONDITIONAL USES IN AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS, GR GENERAL RESIDENTIAL DISTRICT, B-1 NEIGHBORHOOD BUSINESS DISTRICT, C-1 GENERAL COMMERCIAL DISTRICT, CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND M MARINE DISTRICT, AND TO SUBJECT ALL SPECIAL EVENTS, REGARDLESS OF DURATION, TO THE SUSSEX COUNTY SPECIAL EVENT POLICY".

**Public Hearing/
Proposed Ordinance
Relating to Special
Events
(continued)**

The Planning and Zoning Commission held a Public Hearing on this Ordinance Amendment on July 25, 2013, at which time the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated July 25, 2013.)

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

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

Council discussed the following: exempt events, how the three (3) day event approval process was established, and the longevity of the approved conditional use (typically for a period of five (5) years) before it would have to be renewed.

**M 381 13
Adopt Ordinance
No. 2316/
Ordinance
Relating to
Special
Events**

A Motion was made by Mr. Cole, seconded Mrs. Deaver, to Adopt Ordinance No. 2316 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLES IV, VI, X, XI, XIA, AND XII OF THE CODE OF SUSSEX COUNTY BY DELETING THE CONDITIONAL USE LANGUAGE FOR CIRCUS AND CARNIVAL GROUNDS, AMUSEMENT PARK OR MIDWAYS, INSERTING A BROADER DEFINITION OF SPECIAL EVENTS TO BE DEFINED AS CONDITIONAL USES IN AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS, GR GENERAL RESIDENTIAL DISTRICT, B-1 NEIGHBORHOOD BUSINESS DISTRICT, C-1 GENERAL COMMERCIAL DISTRICT, CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND M MARINE DISTRICT, AND TO SUBJECT ALL SPECIAL EVENTS, REGARDLESS OF DURATION, TO THE SUSSEX COUNTY SPECIAL EVENT POLICY”.

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
Relating to
Personnel
Practices**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 29 OF THE CODE OF SUSSEX COUNTY GOVERNING SUSSEX COUNTY PERSONNEL TO CONFORM TO AND COMPLY WITH FEDERAL LAW, STATE LAW AND CURRENT PERSONNEL PRACTICES”.

Mr. Barry Willoughby, Labor Attorney, and Ms. Karen Brewington, Director of Human Resources, were present to discuss the proposed changes. Mr. Willoughby shared that the process of revising this Ordinance has been lengthy due to the fact that the Ordinance has not been updated since 1972.

**Public Hearing/
Proposed Ordinance
Relating to Personnel Practices
(continued)**

Mr. Willoughby shared that before the presentation on this day, the Committee went through an extensive process to solicit input from members of the public and different stakeholders. They held two (2) employee meetings and a Personnel Board Hearing in the Council Chambers so everyone had an opportunity to have input into the Ordinance and a number of changes have been made based on those suggestions.

Mr. Willoughby shared an overview of the proposed changes to the Ordinance: update the language; create consistency within the County; and grant authority to the Administrator, with the advice of the Human Resources Director, allowing them to adopt personnel policies and practices that are not inconsistent with this Ordinance, or state or federal law.

There was Council discussion in regard to §29-13 granting authority to the County Administrator and the Human Resources Director to adopt personnel policies and practices without first being presented to Council.

Mr. Willoughby and Council discussed the information that has been modified, added or deleted from the following sections in the Proposed Ordinance.

1. §29-3. Service division (Excluded, Unclassified & Classified)
2. §29-5. Personnel Board
3. §29-15. Conditions [on tenure of service] for Continued Employment; [d]Disciplinary [a]Action; Resignations; Demotions.
4. §29-23. & §29-26 [Leave for death in immediate family] Bereavement & Reserved. [Leave for death of near relative.]
5. §29-25. (B) Vacation Leave
6. §29-29. Military Leave

Ms. Brewington shared that the majority of the items discussed are practices that have been followed in the past and are now being placed in the Ordinance. The purpose of the amended Ordinance is to bring clarity to all County employees.

Public comments were heard.

Mr. Dan Kramer shared the following questions pertaining to the Proposed Ordinance with Council:

1. Where in (Article I, § 29-1. Statutory authority; title. This chapter is adopted pursuant to and in compliance with 9 Del. C. §7006(b). It shall be known as the “Personnel Ordinance.”) does §29-1 apply under §7006 (b)?
2. §29-3. Service divisions (C) Classified Service - Why was [and they will be governed by all employee rules and regulations approved by the County Council] removed?
3. §29-5. Personnel Board (A) A Personnel Board shall be created in

**Public
Hearing/
Proposed
Ordinance
Relating to
Personnel
Practices
(continued)**

- accordance with 9 Del. C. § 7006. – Where in the Delaware Code Title 9 does it give the authority to the Director of Human Resources?
4. §29-7. Preparation of pay and personnel rules (A) – Why is this not being followed by the County?
 5. §29-9. Preparation of pay plan (A) – Why is the Director of Human Resources being added?
 6. §29-11. [Eligible lists] Selection, Resignation, & Recall. – Why is no more than being added?
 7. §29-12. Probation (A) – Why is the probationary period being changed to 18 months?
 8. §29-13. Rules governing hours of work and leaves of absence. – Would this change give authority to the County Administrator and Human Resource Director to create policies and practices without being presented to the Personnel Board?
 9. §29-15. Conditions [on tenure of service] for Continued Employment; [d] Disciplinary [a] Action; Resignations; Demotions. (B) – Why is the last sentence of this paragraph being removed?
(C) – Why is a large section of this paragraph being removed?
 10. Why did the Personnel Board approve this Ordinance without any questions?
 11. §29-24. Sick Leave (D) – In accordance with the Family Medical Leave Act (FMLA), Mr. Kramer shared that the FMLA is the Federal Law that states that an employee can have twelve (12) weeks of unpaid leave in the event an employee/immediate family member is sick and needs care. In the new Ordinance proposed by the County an employee would have to take holiday & sick time during the twelve weeks. After doing a little research, Mr. Kramer found out that it is not a mandatory law – it states that the Counties have the right to put this policy into effect but it is not mandatory. Why is this change being implemented?
 12. §29-28. Medical Leave (A) – Why isn't the FMLA in the new Ordinance, if “The County will comply with all requirements set forth in the Family Medical Leave (FMLA).” is being added?
 13. §29-29. Military Leave. - Why isn't the FMLA in the new Ordinance, if “The County will comply with all requirements set forth in the Family Medical Leave (FMLA).” is being added?
 14. §29-35. Compensation for overtime and holiday work. (A) – How will this affect County positions that have around the clock coverage (treatment plants, etc.) when a fellow employee is late or doesn't show up for work? (B) Why is [Where fewer than 35 hours have been worked due to excused absence, then time and a half may be permitted for Saturday and Sunday work] being removed?
 15. §29-36. Rate of pay for new employees (A) – Why is [If it becomes necessary to appoint a new employee of lesser qualifications, he shall be started at one or possibly two steps below the minimum rate of the class] being removed?
 16. §29-37. Transfers – Why is [or one increment step above his existing rate, whichever is higher. Temporary transfers shall be for a period

**Public
Hearing/
Proposed
Ordinance
Relating to
Personnel
Practices
(continued)**

- of no longer than 30 working days] being removed?**
- 17. §29-38. Promotions – Why is [In the case of overlapping ranges, the promoted employee shall be increased to the step immediately above his present level of compensation, but in no case shall the increase be less than 5% of the employee’s former level of compensation] being removed?**
- 18. §29-40. Annual Salary Review – Why is the anniversary date being removed?**

Mr. Phillips asked Mr. Kramer if he was questioning each removal of information from the Proposed Ordinance. Mr. Kramer stated that these changes are affecting all the employees and the Council should not vote on this Proposed Ordinance on this day.

Mr. Willoughby shared that by State Code the County is authorized to adopt these changes as has been done in the past. He addressed a few of the questions that were brought before Council: the current 5 day suspension was removed and replaced with a 3 day suspension which gives the employee an opportunity to contact the Personnel Board sooner; other sections that were referred to that were removed have been replaced to broaden not narrow the rights of the employee to a due process hearing; Concurrent Leave under the Family Medical Leave Act gives an employee up to 12 weeks of leave for serious illness for themselves, taking care of an immediate relative with a serious medical situation and intermittent leave for medical attention. The law states the FMLA is unpaid leave so the employee could potentially be subject to being unpaid for 12 weeks. County Code states that the leaves run concurrently, so that if an employee has accumulated time to continue their salary, it would be used to make the leave paid rather than unpaid. This practice is commonly used to allow the employee to continue to have income and the employer to plan.

Mr. Lawson addressed Mr. Kramer’s questions pertaining to §29-15 stating that the Personnel Board spent significant time on this section, removing four (4) sentences and then built in six (6) paragraphs of due process language which should be viewed by an employee as an increase in understanding their rights when it comes to the disciplinary actions that the Council, Administrator or Human Resources Director could take.

Ms. Brewington shared that the County Sick Leave policy states that if an employee is out for their own personal illness or the illness of a family member they would be required to take the paid sick leave. The FMLA runs concurrent and is added protection for the absence; it would not be counted against the employee.

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

**M 382 13
Personnel
Ordinance**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to defer action on the Proposed Ordinance Relating to Personnel Practices.

M 382 13
Defer Action
on Personnel
Ordinance
(continued)

Motion Adopted: 4 Yeas, 1 Nay.

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

Banning
Enterprises,
Inc./Lease
Agreement

Jim Hickin, Airport Manager, presented an Industrial Park Lease Agreement with Banning Enterprises, Inc. d/b/a Colony Pool Service. The property is located at 21628 Baltimore Avenue (1.0 acre lot with a 3,360 sq. ft. building) across from the County’s water plant. The County would be responsible for HVAC, plumbing, electrical, roofing, structural, and general maintenance of the building.

M 383 13
Approve
Lease
Agreement/
Banning
Enterprises,
Inc.

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council authorizes the Council President to execute the Lease Agreement with Banning Enterprises, Inc. for a portion of Lot 19, as improved in the Sussex County Industrial Park, 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

Annual
Compre-
hensive
Land
Use
Plan
Update

Todd Lawson, County Administrator, on behalf of Mr. Vincent Robertson, Esquire, Assistant County Attorney, presented the annual update of the Comprehensive Land Use Plan Report that is required by the State of Delaware.

Mr. Lawson stated that state law requires the County to prepare a yearly report on events that have occurred throughout the County that relate to the various Elements contained in the County’s Comprehensive Plan. In essence, it is a status report; it is modeled in form and substance after last year’s Report, which was the first of its kind, and covered a longer period of time. That Report was approved by the Office of State Planning Coordination.

The Report has been compiled with assistance from several County Departments, including Engineering, Planning and Zoning, Community Development, Legal and Administration.

In summary the Report covers the following types of data from the past year:

- 1. The number of zoning and subdivision applications considered, with a sampling of the major ones.**
- 2. The number of residential and commercial Building Permits issued**
- 3. The number of County sewer connections made.**
- 4. Efforts to promote fair housing in Sussex County and a listing of**

**Update
(continued)**

some of the initiatives implemented by the County concerning fair and affordable housing.

- 5. Economic development projects, including the Nanticoke River dredge project and airport expansion.**

There was Council discussion to clarify what the Office of State Planning Coordination is looking for in this annual report.

**M 384 13
Approve
Annual
Compre-
hensive
Report**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Annual Comprehensive Report covering the 2012-2013 Fiscal Year is approved as presented, to be submitted to the Office of State Planning Coordination and the Cabinet Committee on State Planning.

Motion Adopted: 5 Yeas.

**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 385 13
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$5,000.00 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**

**M 386 13
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,200.00 from Mr. Cole's Councilmanic Grant Account to the Rehoboth Village Improvement Association for sign costs.

Motion Adopted: 5 Yeas.

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

**M 387 13
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$750.00 (\$500.00 from Mr. Vincent's Councilmanic Grant Account and \$250.00 from Mr. Wilson's Councilmanic Grant Account) to the Bridgeville Police Department for National Community Night Out.

Motion Adopted: 5 Yeas.

**M 387 13
(continued)**

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

**M 388 13
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give \$500.00 from Mrs. Deaver’s Councilmanic Grant Account to the Mt. Joy Civic Association for a youth basketball league.

Motion Adopted: 5 Yeas.

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

**M 389 13
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Vincent’s Councilmanic Grant Account to the Seaford School District for program expenses for the Seaford High School International Baccalaureate Boosters.

Motion Adopted: 5 Yeas.

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

**M 390 13
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$1,000.00 from Mr. Phillips’ Councilmanic Grant Account to the Town of Millsboro for museum display costs.

Motion Adopted: 5 Yeas.

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

**M 391 13
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give an additional \$250.00 from Mr. Phillips’ Councilmanic Grant Account to the Mt. Joy Civic Association for a youth basketball league.

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**

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND

Introduction of Proposed Ordinances (continued) **LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS” (Tax Map I.D. 1-35-10.00-56.03) (Conditional Use No. 1970) filed on behalf of Matthew A. Carr.**

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.24 ACRES, MORE OR LESS” (Tax Map I.D. 3-34-10.00-199.00) (Change of Zone No. 1736) filed on behalf of Judith B. Demeno, Trustee.

The Proposed Ordinances will be advertised for Public Hearing.

M 392 13 Recess/ Go Into Executive Session **At 12:21 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, to recess and go into Executive Session for the purpose of discussing issues relating to Job Applicants’ Qualifications, Personnel, 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 12:24 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to Job Applicants’ Qualifications, Personnel, Pending/Potential Litigation, and Land Acquisition. The Executive Session concluded at 12:55 p.m.**

M 393 13 Reconvene **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to reconvene at 12:58 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

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

M 394 13 Recess **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to recess until 1:30 p.m.**

Motion Adopted: 5 Yeas.

**M 394 13
(continued)**

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

**M 395 13
Reconvene**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to reconvene at 1:41 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**

**Public
Hearing/
C/U No.
No. 1967**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A WASTEWATER TREATMENT PLANT TO TREAT OFFSITE WASTE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.26 ACRES, MORE OR LESS” (Two Tracts) (Tax Map I.D. 3-34-11.00 Parcels 83.00 and 83.04) (Conditional Use No. 1967) filed on behalf of Tidewater Environmental Services, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on August 8, 2013 at which time the Commission deferred action.

(See the minutes of the Planning and Zoning Commission dated August 8, 2013.)

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

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

Dennis Schrader, Attorney, and Gerard Esposito, President of Tidewater Environmental Services, Inc. (TESI), and Rob Plitko, P.E. of Vista Designs, Inc., were present on behalf of the application. They stated for the record and in response to questions that the application is for the purpose of taking the currently existing wastewater treatment plant at The Retreat of Love Creek and to extend service from that location to cover the Coastal Club, Phase I; that this is not an expansion of the wastewater treatment plant, it is simply an extension of the collection and transmission; that wastewater would be collected at the Coastal Club and then taken to The Retreat for treatment and disposal; this regionalization of the wastewater treatment plant is authorized in Sussex County Code, Section 115-31, Conditional Uses; that there is a disposal site of 9.89 acres involved in this application and a treatment facility site of 0.37 acres; that they have submitted exhibits

**Public
Hearing/
C/U No.
No. 1967
(continued)**

which include the Conditional Use application, the proposed pump station and force main system map, the wastewater treatment plant site plans, agreements for service to The Retreat; capacity studies, evaluations and DNREC Permit, Wastewater CPCN, No Violation Letter from DNREC, schedule of construction to connections, listing of TESI owned and operated wastewater treatment plants, costs of connection and user charges, and proposed Findings of Fact and Conditions of Approval; that the map of the proposed service area (Coastal Club) shows a centrally located pump station for Phase 1 and the ultimate build-out; that the Phase 1 Pumping Station will pump through the Coastal Club property out to the Sussex County right-of-way and into The Retreat; that at the time Phase 1 is complete, they will have also designed the Phase 2 Force Main which will connect into a future facility; that they are in the process of having the final plans approved; that they are trying to build this in phases; that the Coastal Club build-out is approximately 630 EDUs (mostly homes); that this proposal could also serve some failing systems and other systems near the project; that they have DNREC approval at The Retreat to serve up to 326 homes – it currently services approximately 160 homes – therefore, capacity is available; that this interconnection is proposed as a temporary use at the developer's request due to the economy and the size of the proposed subdivision; that due to the physical location of The Retreat, the capacity at The Retreat, and the availability of capacity that coincides with the first phase of the Coastal Club, their idea was to serve the first phase at The Retreat to give the community some time to develop economically and after a certain period of time (approximately 90 homes), build the other force main and build the Wandendale plant that is about 3 miles away; that all of the force mains and other facilities will be built to County and State specifications; that it is not expected or anticipated that County service will be needed; that the plant at The Retreat will not change and there will be no reconstruction; that the DNREC permit allows 48,800 gallons per day capacity and this will not change; that they have Certificates of Public Convenience and Necessity (CPCN) issued by the Public Service Commission for The Retreat, the Coastal Club and the Wandendale facilities; that CPCNs come with an obligation to serve (required by law); that The Retreat CPCN was issued on September 20, 2005; that they acquired the wastewater system from Applied Water Management in December 2004; that the Coastal Club CPCN was issued on August 23, 2005; that the status of the agreement with the developers and landowners of the Coastal Club is as follows: the finishing touches of the agreement are being finalized and will be submitted to the developers, landowners, and the Middlesex Water Company (parent company of TESI) for final approval; that the construction of this project would be based upon the demand of the developer; that the proposed schedule is as follows: April 2014 through Summer 2014 – 15 EDUS would be pumped and hauled while the force main is built to The Retreat and then, within the next 1 to 2 years, the homes would be served by facilities at The Retreat until approximately the 90th home, when they would have approximately 15 to 17 months to construct the force main and the Wandendale Treatment Plant; that when the project gets to the 155th home, there would be capacity, the force main

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would be built, and the Wandendale plant would be operational; that if the Wandendale Plant is constructed and the Coastal Club project is delayed, the plant will be available and accessible to any failing community septic systems or individual lots; the rates and charges and developers' contributions are as follows: at The Retreat, the connection fee is \$7,850 and the user fee is \$914; as proposed in the draft contract, the Coastal Club's connection fee would be approximately \$8,700 and the user fee would be approximately \$1,270 per year – the developer would pay for the vast majority with some investment from TESI and TESI will finance it with a Letter of Credit; that they will be building a force main and bringing it into the first manhole in The Retreat – after that, there will be no further disruption in the roads; that there will be no noticeable change at the treatment plant; that operations may actually become more efficient, especially in the winter months when there is lower flow; that there is capacity at the wastewater plant and in the drain fields and there is spare capacity even at build out; that if customer revenues come in at the rate anticipated, it may forestall the need to include The Retreat in a global TESI rate filing; that TESI is a regulated utility (by the Public Service Commission); that TESI is required to have a Certificate of Public Convenience and Necessity (CPCN); that when a CPCN is issued, there is no customer choice for a utility within a specific area; that the wastewater treatment plant at The Retreat is regulated by DNREC; that at the Public Hearing before the Planning and Zoning Commission, this application was not opposed by the homeowners of The Retreat; that the County Engineering Department did not oppose the applications for the wastewater treatment plant, The Retreat or the Coastal Club; that a letter was submitted into the record by the County Engineering Department that describes the conditions that the Department would impose on this application, if it is approved, including a design review by the engineer; that the proposal will not be detrimental to Love Creek as there are monitoring wells around the disposal fields; that there is no chance that Love Creek would be contaminated before a problem was picked up by the monitoring wells; that The Retreat is not yet built out, however, there would be no capacity problems if it was built out; and that a Letter of Credit would insure a pay-back to TESI by the Developer of Coastal Club.

Mr. Esposito distributed a letter/exhibit document regarding Middlesex Water Company, the parent and sole shareholder of TESI.

Mr. Schrader distributed a copy of a map of the certificated areas in the region.

In response to questions, Michael Izzo, County Engineer, referenced the rates of the Angola Sanitary Sewer District: connection fee is \$3,724 and the average user fee is approximately \$900 a year. He noted that this District benefitted by the Federal grant program. Total project costs for Angola were approximately \$24 million and the County received approximately \$4 to \$5 million in grants.

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Public comments were heard.

Blake Thompson of Ocean Edge LLC was present in support of the application and he asked the Council to support granting the applicant's permit for sewer service so that the Coastal Club can move forward. He stated that the Coastal Club project is under contract with every intention of moving forward with the development plans following settlement with the Applicant, Coastal Lenders LLC, at the end of September; that they have agreements with builders in place; that the Coastal Club will be an upscale development and there is a need for this type of development; that the development will feature a large amount of open space and walking trails and superior clubhouse amenities; that the future homeowners will help support the construction industry rebound in Sussex County and will quickly translate into mostly year-round consumers with demand for goods and services offered by local businesses; and that approval of this Conditional Use would allow them to start the project sooner versus waiting for the construction of the Wandendale facility.

Chris Schell spoke on behalf of Schell Brothers, a builder for this project. He noted that he does not have an interest in the development entity. Mr. Schell referenced the construction market and he stated that they are now running out of lots to develop due to the fact that most projects do not have the wherewithal to move forward because of the limited availability of bank financing; that without the approval of this Conditional Use, the Coastal Club project cannot move forward; that he agrees that the CPCN process is flawed and needs to be fixed; however, he hopes that this project is not held hostage in an attempt to fix it.

In response to questions, Mr. Esposito stated that the timeline for the sewer line from the Coastal Club to The Retreat is 4 months and thereafter, the construction and connection to the Wandendale facility is approximately 14 months; that prior to the construction of the Force Main and the connection of the sewer line to The Retreat, the homes would be served by pumping and hauling; that the drain field would not be eliminated as it has a spare disposal field; that the drain field has a 20 plus year life; that it would be financially difficult for the homeowners to pay again for connection; that the Coastal Club project was part of the previously approved Wandendale application which the County did not object to; and that the Wandendale facility and Coastal Club have not yet been built due to the economy.

Mark Summerville was present representing Beazer Homes. He spoke in support of the application and he stated that time is of the essence in their industry.

Chase Brockstedt spoke in support of the application. He stated that he represents the owner of Coastal Club; that his client is the seller of the property; that the sale cannot occur without resolving this issue; that approval of the application is in the best interest of the County; that at the Public Hearing before the Planning and Zoning Commission, the developer

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(continued)**

testified that he would prefer the Coastal Club to be served by the County; that since the County is not ready to serve this area, this proposal provides the opportunity to get the project started and gives the County time to decide if it intends to extend into this area; that this is consistent with the Comprehensive Plan as it promotes County operated sewer treatment services; that the permit is for a limited amount of time; that it encourages Tidewater to cooperate with the County; that this development will bring new jobs to the County; and that his client and the contract buyer are willing to abide by the rules and laws as they exist today.

Councilmembers discussed potential impacts on Love Creek; the time frame for providing service in a certificated (CPCN) area; the delayed construction of Wandendale; impact and connection fees compared to County fees; eliminating drain fields as central systems are installed; the proximity of a County sewer system; obligations of the Coastal Club to Jim Town (this was a condition of the approval of the project – “that within 3 years of the first connection for the Coastal Club, the residents along Jimtown Road shall be connected to the system”); the statement that the “the County is not ready to serve this area”; metered usage versus EDUs; and the Sewage Disposal Easement.

Tom Brady, a resident in The Retreat, spoke in opposition to the application. He referenced the original agreement for TESI to build a plant in The Retreat (Applied Wastewater Management actually constructed the plant); that TESI was involved in the financing; that the plant cost \$1.36 million; that the way TESI recovered the cost is by charging each of the homebuyers a connection fee; that the connection fee was \$9,800 of which approximately \$2,000 went back to the developer; therefore, the people in the development paid for the plant but TESI owns it; that the developer had to construct the infrastructure (piping and “leech” fields) and they were turned over to TESI also; that they exist on land that TESI does not own – the land is owned by the community under a Sewage Disposal Easement; that this Easement says it is for the operation of the system at The Retreat; that the Easement has not been addressed; that The Retreat is fully built out; and that they propose to connect other homes outside of The Retreat to facilities that the residents of The Retreat have paid for. Mr. Brady submitted the Sewage Disposal Easement into the record.

Mr. Schrader stated that the Agreement was negotiated when Caldera owned The Retreat; that the Homeowners Association did not oppose this application at the Public Hearing before the Planning and Zoning Commission; and that he will review the document.

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

**M 396 13
Defer
Action**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1967 filed on behalf of Tidewater Environmental Services, Inc. and to leave the record open for the County Attorney’s

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Defer
Action
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(continued)**

comment on the Sewage Disposal Easement.

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/
C/Z
No. 1732**

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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.4219 ACRES, MORE OR LESS” (Change of Zone No. 1732) filed on behalf of Herola Family, LLC and Artisan’s Bank.

The Planning and Zoning Commission held a Public Hearing on this application on August 8, 2013 at which time the Commission deferred action.

(See the minutes of the Planning and Zoning Commission dated August 8, 2013.)

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

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

The Council found that James Fuqua, Jr., Attorney, was present on behalf of the application with Zac Crouch and D. J. Hughes, Professional Engineers with Davis, Bowen & Friedel, Inc. He stated that they are proposing to rezone 25.4 acres of land currently zoned AR-1 Agricultural Residential to CR-1 Commercial Residential; that Artisans' Bank owns Lot 1 and Herola Family, LLC owns the remainder; that the site is west of Route 1; that the site is west of and to the rear of the Rehoboth Mall; that the Beebe Medical Center is west of the site; that Route 24 and the Delaware Eye Institute are north of the site; that Sterling Crossing development and lands of J.G. Townsend Jr. and Company are to the south of the site; that on the north side of Route 24 (across from the site), the majority of the land in the immediate area is zoned commercial or B-1 and the parcels contain a wide variety of commercial uses; that the Beebe Medical Center property was purchased from Herola Family LLC; that the site has road frontage on Route 24; that this site was originally approved for an intended medical and professional office complex (Conditional Use No. 1716) and has not been successfully developed; that a decision was made to seek CR-1 zoning for this parcel of land with the intended use of retail

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business use; that the only difference from C-1 and CR-1 is that multi-family use is permitted in C-1 and requires a Conditional Use in CR-1; that there is no intention for residential use – the intended use is commercial retail business use; that a site plan has not been prepared yet; that the final use has not yet been determined; that the Zoning Ordinance will dictate the use based on site plan review; that the only issue is if the 25.4 acres of land is suitable for CR-1 zoning; that there are no records of any endangered species, plants or animals on the site; that there are no wetlands on the site; that there are no historical or cultural resources on the site; that the site is located in a Tidewater Utilities service area; that the site is partially within the West Rehoboth Expansion Area and the remainder can be annexed in; that DelDOT did not require a Traffic Impact Study since the area has already been studied (Old Landing Road Traffic Study); that a road interconnection and road network will be required to be improved by the developer providing interconnection from Route 24 to Old Landing Road at Airport Road; that any development of the property will only occur with the new road in the design; that the Route 24 and Old Landing Road connection has been planned for some time and it has the approval and support of DelDOT; and that the development of the Herola site will result in the construction and opening of that road. Mr. Fuqua stated that this land is appropriate for CR-1 zoning since the application is consistent with (1) the State Strategies and with the comments of the State agencies through the Office of State Planning Coordination (PLUS), (2) the Sussex County Comprehensive Land Use Plan and Map, (3) the Sussex County Zoning Ordinance, and (4) the Planning and Zoning Commission’s and the County Council’s comments and guidance from other CR-1 zoning applications (Mr. Fuqua explained each item in detail.).

Mr. Fuqua distributed a hand-out which included the following documents: the Planning and Zoning Commission’s recommendation on Conditional Use No. 1716; the Planning and Zoning Commission’s recommendation on Change of Zone No. 1683; the Planning and Zoning Commission’s recommendation on Change of Zone No. 1690; Strategies for State Policies and Spending and PLUS comments; pages from the Sussex County Comprehensive Plan – Future Land Use Map; Sections of the Sussex County Zoning Ordinance relating to the purpose of CR-1 and Large Scale Uses; and the Sussex County Subdivision Ordinance – Definition of Major Arterial Roadway. Mr. Fuqua also distributed proposed Findings of Fact.

Mr. Cole referenced DelDOT’s comments regarding the connecting road and he questioned how assurances can be given that the road will be built and that the requirement will go with the land (if the land is sold). Mr. Fuqua responded that if the road is not going to be done, a new Traffic Impact Study would be required and DelDOT would not grant an entrance approval. Mr. Fuqua also stated that this application is for a Change of Zone and that Site Plan approval will be required.

Mr. Fuqua stated that he would submit a letter to the County (to Mr. Lank and Mr. Moore) stating that the site plan for this site will include the

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connecting road (Route 24 to Old Landing Road); the letter will state that there will be a donation of land for this easement across their land and further, that the road will be shown on the Site Plan. It was noted that this is a Proffer, not a Condition.

In response to questions, Zac Crouch stated that there is an access easement for Beebe and the land that will be extended is all on the Herola property; that when the road is constructed, it will be built to DelDOT standards, turned over to DelDOT, and DelDOT will maintain it and dedicate it to public use. (Mr. Cole requested that this information also be included in Mr. Fuqua's letter to the County.)

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

**M 397 13
Defer
Action
on C/Z
No. 1732**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1732 filed on behalf of Herola Family, LLC and Artisans' Bank and to leave the record for the submission of a letter from the Applicant.

Motion Adopted: 5 Yeas.

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

**M 398 13
Adjourn**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to adjourn at 4:09 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,

**Kelly A. Collins
Administrative Secretary**

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

