

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPT. 22, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 22, 2015, at 1:00 p.m., in the Council Chambers, Sussex County Administrative Offices Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Robert B. Arlett	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

**Call to
Order**

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

Mr. Vincent called the meeting to order.

**M 477 15
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of September 15, 2015 were approved by consent.

**Public
Comments**

Public Comments

Barbara Gerk read a statement regarding County Code, more specifically commercial communication towers and antennas (Section 115-194.2).

Dan Kramer made comment regarding the County's Councilmanic Grants, as well as a recent State workshop.

Paul Reiger made comment on the need for Council to periodically address various zoning regulations that may need to be tweaked, i.e. fencing regulations.

**M 478 15
Approve
Consent
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to approve the following items listed under the Consent Agenda:

**Wastewater Agreement No. 887-2
Sussex County Project No. 81-04**

**M 478 15
(Con't.)**

**Batson Creek Estates – Phase 3
Johnson’s Corner Sanitary Sewer District**

**Wastewater Agreement No. 984-5
Sussex County Project No. 81-04
Coastal Club – Land Bay 5
Goslee Creek Planning Area**

Motion Adopted: 5 Yeas.

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

**Adminis-
trator’s
Report**

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

1. Delaware Emergency Medical Services Awards

I am pleased to announce that two Sussex County paramedics received awards at the Delaware Emergency Medical Services Association (DEMSEA), awards dinner held at Dover Downs Casino on Wednesday, September 16th. Lewis Sacks received the DEMSEA “EMS Instructor of the Year” award and Jeff Cox received the DEMSEA “Stephanie Callaway Excellence in Paramedicine Award.” Congratulations to Lewis and Jeff for their awards and outstanding contributions to EMS this past year and throughout their careers.

2. DNREC Compliance Sampling and Inspection – South Coastal Regional Wastewater Facility

I am also pleased to report that the South Coastal Regional Wastewater Facility passed the Delaware Department of Natural Resources & Environmental Control (DNREC) Compliance Sampling and Inspection conducted on September 1, 2015. As reported in the attached notification, all treatment and biosolids handling processes, laboratory records, reagents, instrumentation, and methods...were found to be very thorough and within NPDES requirements. The report also stated that it is evident that personnel at this facility take their jobs seriously and are committed to maintaining compliance in the NPDES program. Congratulations to the staff and management of the South Coastal Plant.

3. Delaware State Police Activity Report

Per the attached Delaware State Police activity report for August, there were 236 violent crime arrests with 167 clearances; 2,115 property crimes with 738 clearances; and 32,503 total traffic charges with 22,836 corresponding arrests. Of those traffic arrests, 665 were

Administrator's Report (Con't.)

for DUI. Finally, there were 3,466 total vehicle crashes investigated in August. In total, there were 196 troopers assigned to Sussex County for the month of August.

4. Janice Moseley

It is with sadness that we note the passing of Janice Moseley, recently appointed member of the Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County, on August 27th. We would like to extend our condolences to the Moseley family.

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

Grant Requests

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

**M 479 15
County-wide Youth Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to give \$1,000.00 from the Countywide Youth Grants to the Indian River School District for the Sussex County Science Fair.

Motion Adopted: 5 Yeas.

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

**M 480 15
Councilmanic Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$2,000.00 (\$1,000.00 each from Mr. Vincent's and Mr. Arlett's Councilmanic Grant Accounts) to the Town of Laurel to purchase entrance signs for the Roger Fisher Park.

Motion Adopted: 5 Yeas.

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

**M 481 15
Councilmanic Grant**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to give \$1,500 (\$750.00 each from Mr. Vincent's and Mr. Arlett's Councilmanic Grant Accounts) to the Town of Laurel for the Laurel Ramble Fall Day Project.

Motion Adopted: 5 Yeas.

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

**M 482 15
Council Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$400.00 (\$100.00 each from Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts and \$200.00 from Mr. Wilson's Councilmanic Grant Account) to

M 482 15 **the Faith United Methodist Church for the annual Walking for The**
(Con't.) **Homeless Walk-A-Thon 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 483 15 **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$500.00**
Council- **(\$100.00 from each Councilmanic Grant Account) to the Delaware Devil**
manic **Dogs Detachment 780 for their Marine Corps Birthday Ball fundraiser to**
Grant **continue their volunteer work in western Sussex County.**

Motion Adopted: 5 Yeas.

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

M 484 15 **A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give**
Council- **\$1,000.00 (\$500.00 each from Mr. Cole's and Mr. Arlett's Councilmanic**
manic **Grant Accounts) to the Indian River School District for the Odyssey of the**
Grant **Mind competition.**

Motion Adopted: 5 Yeas.

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

Introduction **Mrs. Deaver introduced the Proposed Ordinance entitled "AN**
of Proposed **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1**
Ordinance **AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT**
 AND BREWERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND
 LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX
 COUNTY, CONTAINING 1.99 ACRES, MORE OR LESS" (Conditional
 Use No. 2034) filed on behalf of Beachfire Brewery Co., LLC (Tax I.D. No.
 334-5.00-215.00, 215.01, 216.00, 217.01, 218.00 & 219.00) (911 Address: 3290
 Lewes Georgetown Highway, Lewes). The proposed ordinance will be
 advertised for Public Hearing.

M 485 15 **At 1:24 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to**
Go Into **recess the Regular session and go into Executive Session for the purpose of**
Executive **discussing matters relating to personnel and land acquisition.**
Session

Motion Adopted: 5 Yeas.

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

Executive Session At 1:25 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing issues relating to personnel and land acquisition. The Executive Session concluded at 1:50 p.m.

M 486 15 Reconvene Regular Session At 1:53 p.m., A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

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

Council Members' Comments Council Members' Comments

Mrs. Deaver apologized for the delay caused by the Executive Session.

Mr. Cole stated that based on comments made by Mr. Reiger during "Public Comments", he would like County staff to look into any zoning code issues that may need to be reviewed and how they can be addressed by Council.

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

Public Hearing/ CU 2017 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 MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 22,500 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2017) filed on behalf of Eli and Victoria Zacharia (Tax Map I.D. No. 334-18.00-7.00) (911 Address: 20336 John J. Williams Highway, Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on August 13, 2015 at which time the Commission recommended that the application be deferred.

(See the minutes of the Planning and Zoning Commission dated August 13, 2015.)

Janelle Cornwell, Planning and Zoning Manager, read a summary of the Commission's Public Hearing and decision. The summary was admitted as part of the County Council's record.

**Public
Hearing
CU 2017
(Con't.)**

The Council found that the applicant, Eli Zacharia, was present. In regards to questions raised at the Planning and Zoning Commission's Public Hearing, Mr. Zacharia presented a sketch showing the intended parking area. The applicants have an attached garage that has been remodeled for extra living space, with a kitchen. Council inquired if DNREC had been contacted as to the adequacy of the current septic system.

There were no public comments in support or in opposition to this application.

The Public Hearing was closed.

**M 487 15
Leave
Record
Open/
CU 2017**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to leave the record open for C/U 2017 to allow Mr. Zacharia to obtain a feasibility report from DNREC that their current septic capacity is adequate for the proposed use.

Motion Adopted: 5 Yeas.

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

**M 488 15
Defer
Action on
CU 2017**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to defer action on Conditional Use No. 2017 filed on behalf of Eli and Victoria Zacharia.

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 1780**

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 HR-1 (RPC) HIGH DENSITY RESIDENTIAL DISTRICT (RESIDENTIAL PLANNED COMMUNITY) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 35.45 ACRES, MORE OR LESS" (Change of Zone No. 1780) filed on behalf of Lockwood Design & Construction, Inc. (Tax Map I.D. No. 334-12.00-127.02, 127.04, 127.05) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on August 13, 2015 at which time the Commission recommended that the application be deferred.

(See the minutes of the Planning and Zoning Commission dated August 13, 2015.)

**Public
Hearing/
C/Z 1780
(Con't.)**

Janelle Cornwell, Planning and Zoning Manager, read a summary of the Commission's Public Hearing and decision. The summary was admitted as part of the County Council's record.

Ms. Cornwell distributed copies of the site plan. She noted that four additional letters of opposition were received after the Commission's Public Hearing. The application did require a PLUS (Preliminary Land Use Service) Review by the Office of State Planning Coordination, which was done on September 24; letters were received from the Sussex Conservation District, the County's Utility Planning Division, and DelDOT.

Ms. Cornwell stated she had received a letter from DelDOT dated September 21, 2015, which expanded on their August 20, 2015 letter, and addressed traffic concerns and any expected improvements by the State in the areas near the proposed Arbor-Lyn Development.

The Council found that Robert Hood (property owner), Don Lockwood (applicant's representative), Roger Gross (Professional Engineer with Merestone Consultants, Inc.), as well as the applicant's attorney, Eugene Bayard, were present on behalf of the application.

With the use of the zoning map, Mr. Bayard presented background as to how the area has evolved, or been developed, over the past 30 years, including densities permitted with each application. Neighboring densities include: Sterling Crossing – 6.29 units per acre; Estates of Sea Chase (condos) – 6.5 units per acre; and Estates of Sea Chase (single family) – 4.13 units per acre. The proposed density of C/Z 1780, the "Arbor-Lyn" Residential Planned Community, is 5.7 units per acre. The approximate 36-acre site is located on the north side of Warrington Road (County Road 275) east of John J. Williams Highway, in Sussex County. This is the last parcel of land proposed to be developed within the Route 1, Route 24, Route 275, and Route 274 quadrant. Mr. Bayard commented that the application complies with the Sussex County Land Use Plan and as an Investment Level I, the State will make investments, as well as support and encourage a wide range of housing types and densities. The proposed use is to develop the site with a mixture of residential units consisting of 60-single family building lots, 82 townhome units (each containing 4 or 6 units), and 60 apartment type condominium units (4 buildings), at a gross density of 5.7 units per acre.

Mr. Hood read a statement into the record giving a brief history of the Hood property.

Mr. Bayard introduced Mr. Roger Gross, the Project Engineer, who together reviewed the proposed project and is included in the Exhibit Booklet that was also presented to both the Commission and Council. The booklet is comprised of 8 exhibits: 1. Revised Site Plan, 2. PLUS Comments & Response Letter; 3. Environmental Assessment and Public Facility Evaluation Report, 4. Sussex County T.A.C. & Site Plan Review, 5. DelDOT

**Public
Hearing/
C/Z 1780
(Con't.)**

Correspondence, 6. Sussex County District, 7. Utilities, and 8. Environmental.

Mr. Bayard reviewed a February 2, 2015 DeIDOT letter to Mr. Lawson. DeIDOT's letter was written in response to a series of questions sent by email from Mr. Lawson regarding Osprey Point, and also addressed the possible need for a traffic impact study and potential road improvements for area intersections that would impact the Arbor Lyn development. He noted that DeIDOT did not require a Traffic Impact Study or Traffic Operational Analysis for this proposed use. Mr. Bayard commented that due to DeIDOT's budgetary constraints, road and traffic improvements cannot be expected by the State, and these improvements will only occur as a result of development projects requiring the improvements. It was reiterated that the developer must pay for any required upgrades, including sewer and traffic improvements.

Mr. Lockwood noted that the primary targeted market for this project were second homebuyers and retirees. As a result of a marketing study, they do not anticipate any school aged children as the pricing of the units would exclude most families with children.

Mr. Gross noted that the site plan had been modified as a result of comments received from County staff and State recommendations, i.e. reduced project size, additional sidewalks, redesigned plan to locate single family component next to the single family development at Sea Chase, and reduced unit densities.

There were no persons in attendance in support of this application.

Wayne Battaglino (Pine Lane), Harvey Grider (representing the residents of Sterling Crossing), David Walters (Warrington Road), Richard Mihelcic (Sea Chase), Robert Kaden (Sea Chase), Charles Ockes (Sea Chase), Steve Dolnack (Sea Chase), and Kathleen Baker (Copper Drive South) spoke in opposition to the application referencing traffic and density concerns, loss of wooded areas, lack of infrastructure and/or road improvements, impact on quality of life, environmental concerns (wildlife), need for a traffic impact study to be performed during a weekend summer month, impact on schools and children safety due to no guarantee that units would be sold only to persons without children, safety of cyclists and impact on current bike paths, and a 20-foot projected tree buffer would weaken root systems possibly causing home damage with high winds.

The Public Hearing was closed.

**M 489 15
C/Z 1780
Leave
Record
Open**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to leave the record open for C/Z 1780 for a period of 20 days to allow Council to review the information presented and to ask questions of County staff or public agencies; after Planning & Zoning staff reports answers to County Council to questions posed, if any, then there will be a 15-day period to allow the

**M 489 15
(Con't.)**

public and applicant to respond in writing to the answers obtained.

Motion Adopted: 5 Yeas.

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

**M 490 15
Defer
Action
CZ 1780**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1780 filed of Lockwood Design & Construction, Inc.

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 1781**

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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 3.00 ACRES, MORE OR LESS" (Change of Zone No. 1781) filed on behalf of Riverview Associates III, LLC (Tax Map I.D. No. 233-10.00-17.00) (911 Address: 28086 Dagsboro Road, Dagsboro).

Mr. Cole excused himself from the public hearing due to a conflict of interest.

The Planning and Zoning Commission held a Public Hearing on this application on August 13, 2015 at which time action was deferred. On August 27, 2015, the Commission discussed this application under Old Business and recommended that the application be approved for the 7 reasons stated in their record.

(See the minutes of the Planning and Commission dated August 13 and 27, 2015).

Janelle Cornwell, Planning and Zoning Manager, read a summary of the Commission's Public Hearing and decision. The summary was admitted as part of the County Council's record.

Council found that Jeremy Smith (the authorized representative of Riverview Associates III, LLC) and Dennis Schrader, attorney of record for Riverview Associates, were present. Council members were given copies of the Exhibit Booklet that was also presented to the Planning & Zoning Commission; exhibits include: Application, Deed, Boundary Survey, Site

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Hearing
CZ 1781
(Con't.)**

Photos, DelDOT Transmittal Letter and Support Facilities Report, Sussex County Future Land Use Plan Map, Strategies for State Spending Map, Area Zoning Maps, Aerial Maps, and Proposed Findings of Fact. Mr. Schrader and Mr. Smith briefly reviewed the application and its intent. The site contains approximately 3 acres of land with improvements and is adjacent to a 5.0 acre parcel already zoned C-1 General Commercial District; it is proposed to combine the two parcels as an approximately 8.0 acre tract for commercial use and activities, referencing professional and trade services.

There were no public comments in support or in opposition to the application.

The Public Hearing was closed.

**M 491 15
Adopt
Ordinance
No. 2418/
CZ 1781**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to Adopt Ordinance No. 2418 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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 3.00 ACRES, MORE OR LESS" filed on behalf of Riverview Associates III, LLC.

Motion Adopted: 4 Yeas; 1 Absent.

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

**M 492 15
Adjourn**

At 3:50 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to adjourn.

Motion Adopted: 4 Yeas; 1 Absent.

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

Respectfully submitted,

**Nancy J. Cordrey
Assistant Clerk of the Council**