

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 22, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 22, 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 Jennings	Finance Director
Jamie Sharp	Assistant County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 352 14
Amend
and
Approve
Agenda**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend the Agenda by deleting "Approval of Minutes"; by deleting the item under Juel Gibbons, Project Engineer entitled "Pump Station 207 and Force Main, Bid Award"; and by deleting "Introduction of Proposed Zoning Ordinances"; and, to approve the minutes, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Presenta-
tion/
Delmarva
Clergy
United in
Social
Action
Foundation**

Bishop Foster, CEO, Delmarva Clergy United in Social Action (DCUSA) and Keith Adams, COO, were present to update the Council on programs that have been formed by and are being managed by the Foundation: GED Program, computer classes, *Hope Makers*, Philadelphia Shelter Home (serving Kent and Sussex County), Food Program and Soup Kitchen, Clothes Closet, Childcare Center, *Griffin's Place* (transitional home for males aging out of foster care), Health Development Center (residential home for pregnant young women), Work Release/Pre-Release Program, workshops and mini-programs for a fatherhood initiative, Summer Enrichment Program, Summer Youth Working Program, and In-School Youth Program. DCUSA also offers support to Philadelphia Arms Townhomes (PAT), an affordable housing program working to help low income families become homeowners; PAT is soon to break ground for the first six townhouses. Future goals of DCUSA are a community recreational facility, senior citizen home, garage, and Women's Prisoner Re-Entry

**Prese-
ntation/
Delmarva
Clergy
United in
Social
Action
Foundation
(continued)**

Program.

Mr. Adams stated that they are always looking for financial support and that any funding would be used for continuing their programs. He noted that they also seek non-monetary donations such as office equipment, classroom equipment, etc. Mr. Adams asked that the Council consider providing funding for the housing program with Philadelphia Arms Townhomes as the project is in need of infrastructure, i.e. sewer and roads. Council members raised questions regarding grant funding for sewer service. Mr. Lawson stated that there may be ways the County can assist and that the Council could consider funding under community development grant funding received from the federal government; however, it needs to be determined if the project qualifies.

(Mrs. Deaver joined the meeting during the presentation.)

**Prese-
ntation/
Delaware
Code of
Ethics/
Public
Integrity
Commission**

Deborah Moreau, Esq. representing the Public Integrity Commission (PIC) was in attendance to give a presentation on the State of Delaware Code of Ethics. She advised that PIC's basic jurisdiction extends over the Code of Conduct which regulates the behavior of State, County, and municipal employees under the Commission's jurisdiction. She noted that the Commission also covers financial disclosure of public officers, the Compensation Policy preventing double-dipping, and lobbyist registrations.

Ms. Moreau informed the Council that in 1992, the General Assembly drafted legislation [29 Del. C. § 5802(4)] in which it states that it is the desire of the General Assembly that all counties and municipalities adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. The following towns and counties have adopted their own Code of Ethics: Wilmington, Newark, Dover, New Castle County, Delaware City, Lewes, Millsboro, and Smyrna; Dewey Beach has had a Code of Ethics approved by the Public Service Commission but has not yet adopted it. She noted that Kent County's Code is grandfathered in as it was adopted in 1985. Any county, or municipality that does not have its own Code, falls under the jurisdiction of the State's Code.

Ms. Moreau reviewed the general prohibitions in the Code of Conduct. She noted that the General Assembly has its own Code of Ethics and its own Ethics Commission.

Ms. Moreau addressed the possibility of the County adopting its own Code of Ethics and she explained what the process is for doing that. She stated that any Code to be adopted by the County should be modeled after the State's Code and must be submitted to the Public Service Commission for approval. If a Code is adopted by Sussex County, a Board or Commission would have to be appointed to review issues that come up.

Council members discussed the pros and cons of Sussex County adopting its

(continued) own Code of Ethics.

In response to questions, Ms. Moreau offered to provide a formal training session on the State's Code of Ethics for Sussex County officials and staff.

Adminis-
trator's
Report

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

1. First State Animal Center & SPCA Activity Report

Please find attached the Activity Reports from the First State Animal Center and SPCA for the months of May and June 2014. Per the reports, there were 234 service calls and 59 bite case calls for a total of 293 in May, and there were 345 service calls and 82 bite case calls for a total of 427 in June.

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

CAFR
Award/
Fiscal
Year
Ended
June 30,
2013

Mrs. Jennings announced that the Sussex County Government has been awarded, for the twelfth consecutive year, the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association for its Comprehensive Annual Financial Report (CAFR). This award is the highest form of recognition in governmental accounting and financial reporting and its attainment represents a significant accomplishment by a government and its management. Mrs. Jennings recognized County employees Kathy Roth, Jeff James, Sylwia Wisniewska, and Traci Burton and the rest of the Accounting Division for their extra efforts in achieving this award.

Federal
Payment
in Lieu
of Taxes

Andrea Wall, Accounting Manager, reported that a check in the amount of \$38,898 has been received from the United States Department of the Interior, Fish and Wildlife Service, as a federal payment in lieu of taxes for the Prime Hook National Wildlife Refuge. This check represents payments under the Refuge Revenue Sharing Act covering Fiscal Year 2013. The amount is calculated by the U.S. Fish and Wildlife Service by prorating the total funds available for payment. The check is funded through revenues generated from the Prime Hook National Wildlife Refuge and from a supplemental congressional appropriation. Sussex County may use these funds for any governmental purpose. The amount allocated to the County has been consistent the past three years. The recommendation is to allocate the funds in the same percentage as other County tax collections, as the County has done in the past.

M 353 14
Allocation/
Refuge
Revenue
Sharing
Fund

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council approves the recommended distribution of the Refuge Revenue Sharing Fund as follows: Milford School District - \$7,425.84; Cape School District - \$24,050.47; Sussex Technical School District - \$2,873.21; Sussex County - \$4,071.16; and Sussex County libraries - \$477.32.

**M 353 14
(continued)**

Motion Adopted: 5 Yeas.

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

**Airport
Project/
Concrete
Apron
Repairs**

Bob Jones, Project Engineer, presented a Balancing Change Order and request for Substantial Completion (as of June 17, 2014) for Sussex County Airport Project, Concrete Apron Repairs, Phase 2, Contract No. 13-13. The Change Order, in the credit amount of \$5,045.35, is to adjust bid quantities to actual final quantities and add a Catch Basin repair item.

**M 354 14
Approve
C/O and
Grant
Substantial
Completion/
Airport
Project/
Concrete
Apron
Repairs**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that the Balancing Change Order for Sussex County Contract No. 13-13, Concrete Apron Repairs, Phase 2, with Mitten Construction Company, be approved, which decreases the Contract by the amount of \$5,045.35 for a new contract total of \$165,199.65, and; Be It Further Moved that Substantial Completion be granted effective June 17, 2014 and that final payment be made and any held retainage be leased in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

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

**Lochwood
Subdivision
Project**

Bob Jones, Project Engineer, presented a Balancing Change Order and request for Substantial Completion (as of November 15, 2013) for Lochwood Subdivision Project, Contract No. 12-21. The Change Order, in the credit amount of \$78,682.11, is to adjust bid quantities to actual final quantities incorporated into the project and add driveways pipes pay item and time extension. Mr. Jones noted that there was a time extension of 8 calendars due to weather.

**M 355 14
Approve
C/O and
Grant
Substantial
Completion/
Lochwood
Subdivision
Project**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Balancing Change Order for Sussex County Contract No. 12-21, Lochwood Subdivision, with Jerry's Inc., be approved, which decreases the contract by the amount of \$78,682.11 for a new contract total of \$614,668.89; and, Be It Further Moved that the contract time be increased by 8 calendar days and Substantial Completion be granted effective November 15, 2013 and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

**M 355 14
(continued)**

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

**Old
Business/
C/Z 1746,
C/Z 1747
and
C/U 1986**

The Council discussed Change of Zone No. 1746, Change of Zone No. 1747, and Conditional Use No. 1986 filed on behalf of Castaways Bethany Beach, LLC.

The Planning and Zoning Commission held a Public Hearing on the applications on April 24, 2014 at which time action was deferred. On May 22, 2014, the Commission recommended that the applications be approved.

On June 17, 2014, the County Council held a Public Hearing on the applications at which time action was deferred and the record was left open for the purpose of receiving documentation from DeIDOT as to the permitted location of the entrance.

Lawrence Lank, Director of Planning and Zoning, reported that a letter of response was received from DeIDOT. Mr. Lank reviewed DeIDOT's response: in summary, DeIDOT does not take issue with the entrance proposed by the Applicant.

**M 356 14
Adopt
Ordinance
No. 2357/
C/Z 1746**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance 2357 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF 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" (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 357 14
Adopt
Ordinance
No. 2358/
C/Z 1747**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2358 entitled "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" (Change of Zone No. 1747) filed on behalf of Castaways Bethany Beach, LLC, with the following conditions:

- A. There shall be no more than 45 lots within the RPC.**
- B. The Applicant shall form a homeowners' association responsible for the**

**M 357 14
Adopt
Ordinance
No. 2358/
C/Z 1747
(continued)**

- perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
 - E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
 - F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - G. A 20 foot forested agricultural buffer shall be shown along the perimeter of the entire residential development, including the area covered by Conditional Use #1986. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
 - H. No wetlands shall be included within any lots.**
 - I. The subdivision shall be served by Sussex County sewer.**
 - J. As proffered by the Applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 50th residential building permit for the entire project, including Conditional Use #1986.**
 - K. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.**
 - L. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The Staff shall approve the revised Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.**
 - M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**M 358 14
Adopt
Ordinance
No. 2359/
CU 1986**

A Motion was made by Mr. Cole, seconded Mrs. Deaver, to Adopt Ordinance No. 2359 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.56 ACRES, MORE OR LESS" (Conditional Use No.

**M 358 14
Adopt
Ordinance
No. 2359/
CU 1986
(continued)**

1986) filed on behalf of Castaways Bethany Beach, LLC.

- A. There shall be no more than 30 units within the Conditional Use area.**
- B. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- G. A 20 foot forested Agricultural Buffer shall be shown along the perimeter of the entire residential development, including the area covered by Change of Zone #1747 for the RPC portion of the development. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
- H. The project shall be served by Sussex County sewer.**
- I. As proffered by the Applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 50th residential building permit for the entire project, including the RPC portion of the development covered by C/Z #1747.**
- J. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.**
- K. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The staff shall approve the revised plan upon confirmation that the conditions of approval have been depicted or noted on it.**
- L. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

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 359 14 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to grant \$500.00 from Mrs. Deaver’s Councilmanic Grant Account to the Lewes Public Library for their Annual Lewes Creative Writers’ conference.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 360 14 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$750.00 (\$500.00 from Mr. Wilson’s Councilmanic Grant Account and \$250.00 from Mrs. Deaver’s Councilmanic Grant Account) to the Chamber of Commerce for Greater Milford for the Riverwalk “Freedom” Festival.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 361 14 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Cole’s Councilmanic Grant Account to West Side New Beginnings for its anti-bullying program for at-risk youth.**

Motion Adopted: 5 Yeas.

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

M 362 14 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$750.00 (\$250.00 from Mrs. Deaver’s Councilmanic Grant Account and \$500.00 from Mr. Cole’s Councilmanic Grant Account) to Rehoboth Beach Film Society for the film festival.**

Motion Adopted: 5 Yeas.

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

M 363 14 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 from Mr. Cole’s Councilmanic Grant Account to the Delaware Seashore Preservation Foundation to restore an historical tower.**

Motion Adopted: 5 Yeas.

M 363 14
(continued) **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;**
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 364 14
Council- **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give**
manic **\$1,500.00 from Mr. Phillips' Councilmanic Grant Account to the Town of**
Grant **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

Additional **Under Additional Business, Dan Kramer commented on the County's**
Business **Woodland Park Project.**

M 365 14 **At 11:37 a.m., a Motion was made by Mrs. Deaver, seconded by Mr.**
Recess **Phillips, to recess and go into Executive Session for the purpose of**
and Go **discussing issues relating to job applicants' qualifications, pending/potential**
Into **litigation, and land acquisition.**

Executive **Motion Adopted:** **5 Yeas.**
Session

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

Executive **At 11:39 a.m., an Executive Session of the Sussex County Council was held**
Session **in the Council Caucus Room for the purpose of discussing issues relating to**
job applicants' qualifications, pending/potential litigation, and land
acquisition. The Executive Session concluded at 11:53 a.m.

M 366 14 **At 11:54 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver,**
Reconvene **to come out of Executive Session and to reconvene the Regular Session.**
Regular

Session **Motion Adopted:** **5 Yeas.**

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

There was no action on Executive Session items.

M 367 14 **At 11:55 a.m., a Motion was made by Mr. Wilson, seconded by Mrs.**
Recess **Deaver, to recess until 1:30 p.m.**

Motion Adopted: **5 Yeas.**

**M 367 14
(continued)** **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 368 14
Reconvene** **At 1:32 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to reconvene.**

Motion Adopted: **4 Yeas, 1 Absent.**

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

Mr. Phillips joined the meeting.

**Public
Hearing/
C/U 1991** **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FACILITY FOR OUTDOOR ENTERTAINMENT EVENTS WITH TEMPORARY CAMPING FACILITIES DURING EVENTS ONLY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING APPROXIMATELY 500 ACRES, MORE OR LESS, OF TWO PARCELS CONTAINING 1,057.6 ACRES” (Conditional Use No. 1991) filed on behalf of Coolspring, LLC/Highway One.**

The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2014 at which time action was deferred.

(See the minutes the meeting of the Planning and Zoning Commission on July 10, 2014.)

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

Mr. Lank reported that additional correspondence has been received since the Commission’s Public Hearing: 2 letters/emails in support of the application, 58 letters/emails in opposition to the application, and a petition containing 90 signatures in opposition to the application.

Mr. Lank distributed a set of drawings that were submitted on this date by the Applicant showing the concept of the site plan, with attachments.

The Council found that Alex Pires was present representing the Applicant, Coolspring LLC/Highway One. Also present was Steve Spence, Attorney.

Mr. Spence distributed proposed conditions and google earth presentations as to the size of the site.

**Public
Hearing/
C/U 1991
(continued)**

Mr. Spence gave a brief description of the Concept Plan that was submitted. He stated that according to the updated Comprehensive Plan, this application is consistent with and is promoting to particular goals of the plan, which are tourism and conserving the agriculture economy; that the events would be a job producer; that the event would be good for the County both in terms of the economic result and for the enjoyment of local people and people coming to the area; that the proposed use would be a very limited use of the property; that for the majority of the year, the property will be used for normal agriculture use as it has been for generations; that the proposed use will encourage further tourism; and that this site is large enough to handle the proposed use.

Mr. Pires stated that they have done a lot of research on the music festival business; that there are day festivals which are typically in cities and camping festivals that are in rural America; that, for the past two years, he has looked at sites in Sussex County; that the Baker site is the largest contiguous farm in Delaware; that he has signed a lease for 500 acres on the farm; that in the first two years, they would use approximately 200 to 300 acres of the 500 acre site; that he previously spoke to the County and was told that he could obtain a permit for a three-day event and hold the event; that he was asked to go through the Conditional Use process to hold the event(s); that they have enough land to camp everybody; that they will limit the number of cars of day-trippers to 2,000; that every facet of the event is either State or County regulated and he referenced DeDOT, the Office of the State Fire Marshal, State Police, State Department of Health, Delaware Alcohol & Tobacco Enforcement, etc.; that country music festivals are camping events and there are very few day-trippers; that he would like to see 20,000 attendees; that he hopes that 80% of the attendees come in RVs and he anticipates only 20% of the attendees to be day trippers; that there will be low traffic impact – once in / once out – since the majority of the attendees will stay on the site once their RVs are set up; that more traffic goes in and out of Independence than there will be at the festival; that they propose 2 events per year back-to-back; that there will be no events eleven months out of the year; that the events will last 3-4 nights for each event; that they have also included in their application a request for 3 charitable events which are 1-day events; that if the Council wants to exclude these from the application, they do not have an objection; that he is not asking for the 1-day events for a commercial purpose; that there will be 300 to 400 security people at each event – professionals and volunteers; that these events are big charity fundraisers; that he proposes a country festival and folk festival; that he anticipates that the first year budget will be in the range of \$5,000,000 to \$6,000,000; that he expects the impact on the County to be approximately \$10 million to \$12 million; that areas that have similar venues are Brooklyn, Michigan; Ft. Loramie, Ohio; and Manhattan, Kansas; that Highway One, LLC will be responsible for the events as the majority owner of Coolspring, LLC, the operator of the festival; that they are hoping to partner with Redlight Management/Starr Hill and Live Nation, some of the largest country music promoters; that they are hoping to have the first music festival on the first or second weekend of August

**Public
Hearing/
C/U 1991
(continued)**

2015; and that he does not intend to use this site for Punkin Chunkin or any other use other than what is proposed.

Mr. Pires reviewed the following suggested voluntary conditions of approval for consideration if the requested conditional use is approved:

1) Number of Events:

- a) **No more than 5 events may be held on the site in any 12-month period. Two of the events can be as long as four (4) days and four (4) nights, including camping for each event. The remaining three (3) events can be one (1) day and one (1) night of camping. There will be no events in 2014. (Mr. Pires noted that he would accept the approval of the 2 main events and the deletion of the three (3) charity events).**
- b) **Beginning in 2015, there may be no more than two (2) music festivals in a given year, one of which would be a country music event.**
- c) **No vehicle road races, dirt bike races, monster truck events or similar activities will be permitted.**

2) Hours of Operation:

- a) **The applicant shall be required to terminate live music performances by the performing artists by 12:00 Midnight.**
- b) **All stage lighting (except security lighting) shall be shut down by 12:30 a.m. each night.**

3) Location of Staging, Vendors, Camping, Medical Tents, Bathroom and Shower Facilities and Parking:

- a) **The location of the staging, vendors, camping, medical tents, and bathroom and shower facilities shall be designed by a professional festival planner and a Delaware licensed engineer or architect, and approved by the Delaware State Fire Marshal.**
- b) **The location of all internal roads and parking shall be approved by DelDOT.**

4) Traffic, Camping, Parking:

- a) **The applicant has and will continue to meet with DelDOT and comply with DelDOT's master traffic plans for all events.**

**Public
Hearing/
C/U 1991
(continued)**

- b) **Camping: Motor homes, RV's, travel trailers, tents and related camping equipment will be permitted. Temporary gravel or stone roadways will be constructed and the layout and dimensions of individual lots for camping shall be prepared by a Delaware Registered Engineer or Architect and shall be approved by the Delaware State Fire Marshal's Office.**
- c) **Accordingly, as these multi-day events will primarily be composed of campers, parking for one day-trippers on any given day of a music festival will be limited to 2,000 cars on-site, exclusive of overnight campers.**

5) Fencing/Location of Temporary Structures:

- a) **Prior to any events being held at the site, the area of the site to be used for the event shall be fenced by temporary fencing. The temporary fencing will be removed by August 31st each year and erected again prior to each event.**
- b) **No temporary structures, except fencing, shall be erected within 100 feet of any adjacent property border and no stage area shall be located within 100 feet of any public road passing the site.**

6) Safety/Vehicle Inspections:

- a) **The Sussex County Public Safety Services Special Events Administration Procedures will be followed and if the expected attendance for any event will exceed 25,000 persons, the applicant will pay for all required services.**
- b) **At all events, the applicant shall employ a professional security company which must submit a security plan to the Delaware State Police at least thirty (30) days prior to each event. This plan shall include crisis management, radio support, and State Police communications and shall include an anti-drug detail.**
- c) **The security company shall provide, at the point of access of all vehicles to the campground areas, staff to conduct inspections of all vehicles for drugs, alcohol exceeding the ticketed limits, weapons, or other unsafe items.**

7) Medical Services:

- a) **Medical Services shall be provided on-site throughout any event consistent with County and State standards.**

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8) Fire Safety:

- a) **Access and presence by local volunteer fire departments shall be approved by the State Fire Marshal.**

9) Food and Beverages:

- a) **All food and beverage purveyors shall be required to obtain Delaware business licenses.**
- b) **Food, beverage and supply vendors will be onsite to minimize the number of vehicle trips required by attendees to maintain their food and beverage supplies.**

10) Trash, Water, Bathroom Facilities:

- a) **All refuse and trash will be removed from the site daily during any events. The final cleanup shall be completed within two (2) days after the end of the event.**
- b) **All water distribution systems shall be temporary, and if any modifications are required, they must be approved by the County. Bathroom facilities shall be provided in accordance with applicable State and local public health standards.**

Mark Baker, property owner and landlord, stated that this property has been owned by the Baker family for over 12 years; that they actively farm this parcel; that they did not make the decision lightly to enter into this agreement with Coolspring and Highway One; that one of the main reasons is the limited use of the property; that the lease caps at 11 days; that 97 percent of the year, there will be no events occurring on the property and it will remain in a natural state; that they plan to continue to use the land recreationally, i.e. to hunt, for horses, etc; that they have high standards for the maintenance of the property and that will not change; that he understands the traffic concerns but he does not think the impact will be as great as feared; that as a day-tripper to the Firefly festival in Dover, he encountered no traffic; that this is what he expects at this site; that the site is large enough to stack vehicles internally which will limit what happens on the external roads; that regarding the impact on the woodlands and tree removal, with or without this application's approval it is likely that a very large percentage of the pine trees will be cut down in the next year or two since it is an active pine forest and they are often thinned or clear-cut to further the growth of the pines; that active logging and tree-cutting will continue on the site regardless of whether or not this application occurs; that the concern about water run-off is unfounded – that the festivals will not use near the quantity of water that the current irrigation system uses; that the risk to the groundwater being removed or levels lowered are slim to none; that there will be little to no change to run-off; that it is all an impervious surface and will remain that way; that there are hundreds of

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acres to absorb any run-off; that regarding the small cemeteries on the site, they currently farm around them; that they have not disturbed, and there will not be any disturbances to, the cemeteries; that the cemeteries could be fenced off during the events; that regarding wildlife, there are no bald eagle nests on the farm; that the events will cause minimal disturbance; that the events will benefit many local businesses; and that he believes this is a positive for Sussex County.

In response to questions, Mr. Pires stated that the country music business is a June, July and August touring business; that businesses at the beach start dropping off in September and October; that shuttle services will be available; that he is willing to accept a condition requiring that shuttle services be available; that the events are primarily Friday, Saturday and Sunday; and that access to festival sites are normally the day before the event and exits a day after the event.

Mr. Phillips commented on the possibility of the Council revisiting the application after three (3) years; Mr. Pires stated that he no objection and that he is not objectionable to anything reasonable.

Mrs. Deaver commented on setbacks to protect area residents. Mr. Pires stated that they are proposing a 100 foot setback; however, they would agree to a 200 or 300 foot setback, if required by Council. Mr. Pires noted that homes on Lawson Road face the site and that Lawson Road will only be used as an access road for the artists and production crew.

Mr. Spence stated that, in response to comments by the Planning and Zoning Commission that the Concept Plan submitted was not sufficient, they have submitted a new plan. He noted that they are still of the view that it needs some refinement once the agencies review the plan/proposal; that if they receive approval of the application, they will have to go through the Fire Marshal staging process and site development for camping. He noted that, if they receive approval, they will have to do this for final site plan approval. He stated that, since there will be no permanent buildings or structures on the site and no sewer or water, only gravel roads, they weren't really sure what would be required on a site plan.

Public comments were heard.

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

The Council found that Trudy Belloti, Sandi Campbell Nelson, Richard Coyne, William Nelson, Mike Falkenstein, Tim Riale, Gary Simone, Beverly Morgan, Evan Bush, Nathan Wise, Deborah Sundberg, Bill Ryon, Bill Oliva, Nikki Zangwill, Vincent Wilson, Margaret Foulk, Dan Fay, and Dominic Stimola were present and spoke in opposition to the application and expressed concerns about the impact on the residential area in close

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proximity to the site; concerns about the poor condition of some of the local roads and stated that the local roads will not be able to handle the impact of the number of vehicles anticipated for the festival; that the area is agricultural and residential; that there are concerns about noise, trash, and traffic; that there are concerns about the impact on response time for emergency services in an emergency situation; that there are concerns about property damage; that insurance should be guaranteed; that the Harrington State Fairgrounds is a more appropriate location for this type of event; that the file lacks any record of a site plan that can be reviewed; that trees will be removed to locate campsites in the wooded areas causing a loss of forest land; that the site will have to be re-graded; that there are cemeteries on the site that will need to be protected; that wellheads in the area need to be protected; that the project will impact the environment, wetlands, groundwater recharge, and endangered species; that the file does not contain an environmental assessment; that the use is not in compliance with the requirements to establish a Conditional Use; that the use is not in compliance with the Comprehensive Land Use Plan; that bonding and insurance should be a mandatory requirement to protect the site and the adjacent properties; that there will be dust, trash and sanitary issues; that Avalon Woods Subdivision will be directly impacted by this proposal since the subdivision's entrance is within 540 feet of one of the main entrances to the project site; that there is concern about gridlock at the entrance to the site; that the area communities will be grid-locked; that DART services will not get through to the area and there are residents that use the service on a daily basis; that the residents of Avalon Woods are concerned about emergency services, both for the residents of Avalon Woods and the attendees at the event, since the roads in the area may be in gridlock due to the traffic to and from the project; that to date, neither DelDOT, the Emergency Operations Center, nor the State Police have any plans for the area based on the proposed events; that area residents are concerned about security, trespassing, and an increase in crime; that the use does not promote the health, safety, morals, convenience, order, prosperity and welfare of the residents of the area, it only benefits the developers; that there is no clear proposal in the file that depicts exactly how the site will be developed; that if the project is approved and becomes successful, it will increase in size in the future and create even more impacts on the area, especially traffic; that the roads in the area are local roads, not major roads; that the Punkin Chunkin event is just off of U.S. Route 13; that the Harrington State Fair faces U.S. Route 13; that the Dover Downs Nascar events and the Firefly Festival access U.S. Route 13 and Route One; that farm equipment will be traveling the same local roads; that the use does not benefit the residents of the area, but is an infringement upon each resident; that some area residents feel that there will be a lack of enforcement; that neighbors do not want to see a field full of porta-toilets; that there are too many inconsistencies in comparison to the statements made by the applicant and the minimal documentation in the record; that the roadways are not the best and will probably get worse based on the amount of traffic anticipated; that this type of temporary project will create erosion and run-off issues if the weather is not cooperative during the time of the events;

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that the speed limit on Hollyville Road is 50 mph and a main entrance to the events is intended on Hollyville Road which would be dangerous; that the site is not appropriate for the use; that some of the local roads in the area are improved with surface treatment (tar and chip) which will fall apart after heavy usage; that no preliminary site plan was submitted and that the applicant, if approved, can submit for final site plan approval without a public hearing; that if the use is approved, a few individuals will make a lot of money; that they question how much money will go back into the community; that the region cannot handle the impact of this event; that there is concern that the campers will dump pollutants on the ground; that they question how the applicant will handle dumping; that there is a tax ditch near the gravel road; that they question how the applicant will keep flooding and pollutants out of the watershed and tax ditch; that the impact of the proposed use on this site will be more far reaching than just the Baker Farm; that a security fence will not keep trespassers off of private property; that they question how they will protect their communities; that the community has two protected well-heads and that fencing and lighting are needed at the wellheads; that they are concerned about the environmental impact on their wells; that the wetlands and habitat have not been adequately delineated; that they question the applicant's plan to manage sewage; that noise pollution is a concern; that there is a difference between music and noise pollution; that there will be an intrusiveness of noise on the area; that the noise pollution will affect wildlife; that there will be noise from generators; that it will take many days for campers and RVs to enter and exit the site; that the campers will not remain on the site all the time and will be travelling on the already congested roads; that if this application is approved, the roads will have to be expanded; that there is a discrepancy in Mr. Pires' comments on the number of people attending festivals; that there are major safety issues to consider, especially personal safety; that if the application is approved, a 2 year review is suggested instead of a 3 year review; that the landowner will not be able to continue to farm the land because there will be so much gravel used for the festival and camping; that after the festival, the land will not be able to be used for farmland; that the applicant has basically submitted only a business plan and did not speak to land use; and that they need specifics and answers.

Michael Rivera, Special Events Manager, Traffic Safety Section, DelDOT, was present and at the request of Council, he commented on the proposed use. He clarified that DelDOT had a preliminary meeting with Mr. Pires and, to date, nothing has been approved officially; that, in theory, they can manage the event; that the Traffic Safety Section works with applicants and other agencies (Delaware State Police) to establish a traffic control plan.

Mr. Phillips questioned the number of entrances or improvements that will be needed for an event on this site and Mr. Rivera stated that DelDOT can analyze the entrance issue and report back to the Council; however, analyzing needed improvements could not be done in a time frame for the proposed events. Mr. Phillips questioned a way to get vehicles off the road and Mr. Rivera responded that this would be required, similar to the

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Firefly Festival in Dover, whereby stacking and queuing of vehicles and RV's will have to be done in the field to eliminate queuing on the roadway.

Mr. Phillips asked if Mr. Rivera could report back on the entrance issue at the July 29th Council meeting. Mr. Rivera indicated that he could meet that deadline for a report to Council on a recommendation as to what DelDOT would want to require of the organizer to safely move traffic in and out of the venue.

Mr. Cole questioned the involvement of the Sussex Conservation District in an application such as this. Mr. Lank responded that any application requires the approval of the Sussex Conservation District for stormwater management and erosion and sediment control.

Mr. Cole questioned if the application complies with the County's Comprehensive Plan and Mr. Lank responded that the site is located in a low density area in the AR-1 Agricultural Residential District; that the AR-1 District allows for certain conditional uses and this use is one of those; and therefore, the applicant has the right to apply for this type of use based on the conditional use listing.

Mr. Cole commented on an agriculture exemption on the Baker Farm and any impact on the County tax base. Mr. Lawson stated that more information is needed to respond to Mr. Cole's questions.

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

It was noted that a recommendation has not been received from the Planning and Zoning Commission.

**M 369 14
Leave the
Record
Open for
DelDOT
Comments
on
C/U 1991**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to leave the record open on Conditional Use No. 1991 for the limited purpose of asking DelDOT to move forward with providing more detail on an ingress and egress plan to be presented to the Council at the July 29th meeting.

Motion Adopted: 5 Yeas.

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

**M 370 14
Defer
Action on
C/U 1991**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1991 filed on behalf of Coolspring LLC/Highway One.

Motion Adopted: 5 Yeas.

**M 370 14
(continued)**

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

**M 371 14
Adjourn**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to adjourn at
4:42 p.m.**

Respectfully submitted,

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