

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 26, 2013

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 26, 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
Susan M. Webb	Finance Director
Vincent Robertson	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 097 13
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 "Sussex Conservation District Luncheon", and by deleting "Job Applicants' Qualifications" and "Personnel" under "Executive Session"; 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**

**Corre-
spondence**

Mr. Moore read the following correspondence:

**SEAFORD LIBRARY AND CULTURAL CENTER, SEAFORD,
DELAWARE.**

RE: Letter in appreciation of grant.

THE HOME OF THE BRAVE FOUNDATION, MILFORD, DELAWARE.

RE: Letter in appreciation of grant.

COMMUNITY FOOD PANTRY, SELBYVILLE, DELAWARE.

**RE: Letter in appreciation of the food donation collected at the Caroling on
The Circle event.**

Mrs. Deaver commented on a study by the Caesar Rodney Institute called the Gray Wave, which was published in April 2011.

**Adminis-
trator's
Report**

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

1. County Council Meeting Schedule

Be advised, County Council will not meet on March 5th and March 12th, to attend the National Association of Counties Legislative Conference in Washington, D.C., and for the previously scheduled winter break respectively. The next regularly scheduled Council meeting will be held on March 19, 2013, at 10:00 a.m.

2. Substantial Completion

Per the attached Engineering Department Fact Sheet, Senators – Phase 1A received Substantial Completion effective February 25, 2013.

3. Harvey Brasure

It is with sadness we inform you that Harvey Brasure, County pensioner, passed away on February 18, 2013. Mr. Brasure worked for Sussex County from October 1980 until his retirement in October 2005. He retired from Engineering – SCRWF where he worked as a Purchasing Agent. We would like to express our condolences to the Brasure family.

4. County's Website Status

On February 19th the County's computer network incurred a serious virus attack that has affected both the public's access as well as the County's ability to perform some network functions. As of today, the Information Technology department reports the system is stable and working properly. I want to thank the public for its patience and recognize the efforts of the IT staff who worked long nights and through the weekend to get our system back online. Thank you to the staff for your dedication.

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

**Kronos
Time
and
Attendance
System/
Proposed
Purchase**

Gina Jennings, Finance Director Appointee, presented a request to purchase the Kronos time and attendance application at a cost of \$126,582.00. She explained that the largest operating expense of the County is employee salaries; this expense is over \$22 million annually for all employees; salary expense makes up 40 percent of the general fund operating budget. Mrs. Jennings noted that since it is such a large expense to the County, it is important to accurately manage this cost and she noted that the following objectives are expected by the purchase of a time and attendance system:

Kronos Time and Attendance System/ Proposed Purchase (continued)	<ul style="list-style-type: none">• reduction in payroll inflation (overstatement of hours)• improvement in employee utilization by having more data available about the workforce• reduction in overtime• improvement in productivity <p>Mrs. Jennings noted that the cost of \$126,582.00 was approved in the FY 2013 budget.</p>
M 098 13 Approve Purchase of the Kronos System	<p>A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council approves the purchase of the Kronos time and attendance system at a cost of \$126,582.00.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
RFP Results/ Airport Terminal Building Restaurant and Proposed Lease Agreement with Deli Days, LLC	<p>Hal Godwin, Deputy County Administrator, reported that a Request for Proposals was issued for the lease and operation of the Sussex County Airport Terminal Building restaurant and that only one proposal was received, which was from Deli Days, LLC, operating as Arenas. Mr. Godwin reported that Deli Days is proposing to be open every day of the week serving a lunch and dinner menu, opening no later than 10:00 a.m. Monday through Friday, and opening at 8:00 a.m. on weekdays for a weekend breakfast buffet.</p> <p>Mr. Godwin recommended that the County enter into a lease agreement with Deli Days, LLC for a term of 5 years with one renewable term. At the end of the five years, both parties would have to agree to an additional five years; however, at that time, the rent amount would be reopened and reconsidered. The rent amount would be based upon 3 percent of gross sales of the operation; a rent cap would be set based upon gross sales of \$500,000; therefore, rent would max out at \$15,000 annually through the term of the lease.</p>
M 099 13 Add Addendum to Proposed Lease Agreement (Denied)	<p>A Motion was made by Mr. Cole, seconded by Mr. Phillips, to add an Addendum to the proposed Lease Agreement with Deli Days, LLC covering the County's responsibilities which are to be reconsidered after the first five year term of the lease: (1) facility - building footprint as outlined on floor plan, (2) heating and air conditioning equipment and operation and maintenance of the same, (3) all kitchen equipment in working order as per Exhibit B and one half the cost of annual service contract and any needed repairs; (4) water and wastewater service, (5) all building maintenance, including roof, doors, windows, and floors; and (6) propane gas for cooking and heating.</p> <p>Motion Denied: 3 Nays, 2 Yeas.</p>

M 099 13
(denied)

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

M 100 13
Approve
Lease
Agreement
with
Deli
Days, LLC

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that the Sussex County Council approves a Lease Agreement, contingent on legal review, for the Sussex County Airport Terminal Restaurant facility located at 21553 Rudder Lane, Georgetown, Delaware, with Deli Days, LLC for a five year renewable term to commence on March 15, 2013.

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

Mr. Cole left the room due to a potential conflict of interest on Change of Zone No. 1724, the application of Central Storage @ Harbeson, LLC.

M 101 13
Bring
Application
off of the
Table/
C/Z
No. 1724

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to bring the zoning application, Change of Zone No. 1724 filed on behalf of Central Storage @ Harbeson, LLC, off of the table. (The Public Hearing was opened on February 5, 2013 and was tabled at that time, due to lack of a quorum.)

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

Continue
Public
Hearing
on C/Z
No. 1724

The Public Hearing was continued on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 8.05 ACRES, MORE OR LESS” (Change of Zone No. 1724) filed on behalf of Central Storage @ Harbeson, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2013 at which time the Commission deferred action. On January 24, 2013, the Commission recommended that the application be approved based upon the record and for the following reasons:

1. The site currently has a Conditional Use approval as a central storage facility. The CR-1 zoning will be consistent with this existing business use.

**Continue
Public
Hearing
on C/Z
No. 1724
(continued)**

2. The property is in the immediate vicinity of the Route 9 and Route 5 intersection where a variety of small commercial enterprises already exist. This rezoning is consistent with the uses and trends in this area.
3. The rezoning is consistent with the guidelines in the current Sussex County Comprehensive Land Use Plan which permits retail and service uses in this area along Route 9.
4. The rezoning will not have an adverse impact on neighboring or adjacent properties or the community. There is also no indication that it will have an adverse impact on traffic.
5. The proposed rezoning promotes the orderly growth, convenience, prosperity, order and welfare of the present and future inhabitants of Sussex County.
6. Any proposed use on the site, including use as a mini-storage facility, would require site plan approval by the Sussex County Planning and Zoning Commission. Since the Applicant relied heavily on the proposed use as a mini-storage facility during its presentation, the Applicant should expect that the conditions imposed on that Conditional Use for the site would transfer to the site plan for such a use under this rezoning.

See the minutes of the Planning and Zoning Commission dated January 10 and 24, 2013.

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

Mr. Lank distributed Exhibit Booklets which were provided by the Applicant.

The Council found that Mark Schaeffer of Central Storage @ Harbeson, LLC was present with Eugene Bayard, Attorney. They stated in their presentation and in response to questions raised by the Council that Mr. Schaeffer has been involved with three (3) other storage projects (Dover, Long Neck, and Milford); that the site is currently an open overgrown field; that the site will be improved by the removal of some dilapidated old buildings; that no wetlands will be disturbed; that they anticipate 15 to 20 vehicle trips per day; that the Route 9 Corridor and particularly this intersection is trending commercial; that three homes exist across Beaverdam Branch; that the Sussex County Comprehensive Plan supports the rezoning; that the rezoning will enhance property values and bring development; that there are no stormwater issues; that a need exists for more storage units; that they are proposing to build approximately 60,000 square feet of storage space; that the number of vehicle trips anticipated will not negatively impact traffic; that DelDOT will require the deletion of the two existing entrances and the redevelopment of one entrance into both sites (this site and the neighbor's site); that they are in agreement with DelDOT for a restrictive covenant limiting trips per day (DelDOT has stipulated no more than 200 trips per day); that the project will be served

**Continue
Public
Hearing
on C/Z
No. 1724
(continued)**

with private well and septic; that eight (8) foot tall fencing will be provided and will include security gates and security cameras; that a landscaped buffer will be provided along the perimeter of the project; that the perimeter will be fenced and gated; that the buffer along the Wagner property will consist of magnolia trees, which have already been planted, per the Wagner's request; that they are prepared to do additional landscaping to satisfy the Wagners; that there will be only one sign on the site of no more than 32 square feet per side; that the driveway and parking areas outside of the storage area will be paved; that the project will require minimal lighting; that there will not be any pole lighting; that they are planning on having a resident manager on the site; that they had previously planted magnolia trees along the westerly boundaries; that the majority of the existing trees will be left undisturbed; that the original Conditional Use project was not developed due to the economic crash; that they cannot obtain funding for a Conditional Use project (letters submitted into the record from Fulton Bank and County Bank); that funds can be obtained for a commercially zoned property; that the zoning requested is the appropriate zoning for the use and the trend of development taking place in the area; that the project will be built in phases, as needed; that approximately one-half of the project will be climate controlled; that according to the State Strategies, the site is located in a Level 1 and Level 2 area; that DelDOT creates warrants of control on uses and any change of use will require further review by DelDOT; that the Applicant made an application with the Office of State Planning Coordination and a report from PLUS was received and responded to; and that a mini storage facility is a quiet, friendly use.

Public comments were heard.

Peter Lowenstein, partner in a firm (Compass Point Ventures and Compass Point Associates) located immediately west of the site of this proposed project, spoke in support of the project. He stated that the Applicant will clean up and improve the area, stabilize the entrance; the project will be in keeping with the general development trends in the area; and that it will be an asset to the County and the community. Mr. Lowenstein stated that there is a letter from his firm in the file in support of the application.

Jeanette Wagner, an adjacent property owner, stated that she was not opposed to the project because the Applicant is working with them and she believes the Applicant will continue to work with them. She stated that she is glad to hear that 50 foot buffers around the wetlands are planned (one of her big concerns) and that she wants the wetlands and forested area preserved. Mrs. Wagner did note that she is concerned about the storage of boats and RVs near her property line and that she would like for the storage to be in the back. Mrs. Wagner stated that she has submitted two letters into the record.

Dr. Robert McGuire expressed concern regarding the proposed zoning change and its effect on surrounding properties. He stated that he owns two

**Continue
Public
Hearing
on C/Z
No. 1724
(continued)**

lots, one of which is about 150 feet from the proposed project site; that he has visited several storage facilities in the County and observed that the facility located at an industrial park fit the area; that the facility located in a mixed residential commercial area did not blend in with the area and that vegetation near it was not controlled well; and that at another location in a rural area where there were trees along one section, one side was acceptable and the other three sides (with chain link fencing) were not pleasing to the eye. He stated that by changing the zoning, it benefits the Applicant but not the adjacent property owners and that he believes it will negatively impact his property values; and that he hopes the Council members will look at some of the storage facilities and how they are set up.

Jacqueline Conklin expressed concern that the property can be flipped and she stated that the proposal is subjective (landscape buffer); that storage units are unattractive; and that she would like to see the wetlands and forested area preserved.

Vince Robertson noted that the preservation of the trees in the wetlands is also governed by the County Code.

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

**M 102 13
Defer
Action on
C/Z
No. 1724**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1724 filed on behalf of Central Storage @ Harbeson, LLC.

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**

Mr. Cole rejoined the meeting.

**Bid Award/
Adminis-
tration
Building
Renovations**

Brad Hawkes, presented the bid results for the Administration Building Renovations Project. Five bids were received with the low bidder being Kent Construction of Smyrna, Delaware with a Base Bid of \$199,000. Mr. Hawkes noted that the proposed project was previously reviewed with the Council on January 22, 2013.

**M 103 13
Award Bid/
Adminis-
tration
Building
Project**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Architect, Davis, Bowen & Friedel, Inc., and the Engineering Department, that Sussex County Project 12-32, Sussex County Administration Office Building First Floor Renovations, be awarded to Kent Construction Company, Inc. of Smyrna, Delaware, at the base bid amount of \$199,000.00.

Motion Adopted: 5 Yeas.

**M 103 13
(continued)**

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

**Proposed
Oversizing
Credit
Agreement
with J. G.
Townsend
Jr. & Co.
and
Hawkseye,
LLC**

David Rutt, Assistant County Attorney, reported on an Oversizing Credit Agreement for the sewer system that was installed in the Gills Neck Area (approximately 10 to 12 years ago). The County has been in negotiations for over two years to come to this agreement. The Developer was required, under Sussex County Code, to oversize the facilities and an agreement was to be entered into by the Developer and the County for the recovery of the oversizing costs. Mr. Rutt reported that the Agreement was never entered into; however, the Developer did do the oversizing of the system (in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District). The County was approached by the Developer for the payment of the oversizing, initially requesting \$1.9 million. This amount was disputed by the County and all paperwork and costs were reviewed; it was determined that the total oversizing expense that would be the County's responsibility was \$1,207,963. An analysis was performed and it was determined that cash was collected and credits given, thereby reducing the total amount due to \$850,046.00. It was noted this amount due would be made strictly with credits, no cash payments.

**M 104 13
Approve
Oversizing
Credit
Agreement/
Townsend
and
Hawkseye**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, that the Sussex County Council approves the Oversizing Credit Agreement between Sussex County and J. G. Townsend, Jr. & Co. and Hawkseye LLC, as prepared by the Engineering Department (value of credits to be reimbursed is \$850,046).

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. Webb presented grant requests for the Council's consideration.

**M 105 13
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$3,500.00 (\$2,500.00 from Mr. Cole's Councilmanic Grant Account and \$1,000.00 from Mr. Phillips' Councilmanic Grant Account) to the Town of South Bethany for the Historic Society Committee (the Towns of Fenwick Island, South Bethany, Bethany Beach, Ocean View and Millville) for costs associated with hosting a Smithsonian exhibition.

Motion Adopted: 5 Yeas.

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

M 106 13 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$750.00 (\$250.00 from Mrs. Deaver’s Councilmanic Grant Account and \$500.00 from Mr. Wilson’s Councilmanic Grant Account) to the Chamber of Commerce for Greater Milford for expenses associated with the Riverwalk Freedom 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 107 13 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Delaware Senior Olympics for the purchase of AED’s and first aid kits.**

Motion Adopted: 5 Yeas.

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

M 108 13 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 (\$200.00 from each Councilmanic Grant Account) to the Delaware National Guard Youth Camp for operating expenses.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance **Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9,044 SQUARE FEET, MORE OR LESS (Conditional Use No. 1959) filed on behalf of Kenneth A. Simpler. The Proposed Ordinance will be advertised for Public Hearing.**

Additional Business **Under Additional Business, Mr. Phillips commented on the Gray Wave discussed by Mrs. Deaver during the reading of correspondence. He commented that Mrs. Deaver stated that the County needs a Planner for this and that he believes the County is doing a very adequate job in planning for the Gray Wave. Mrs. Deaver responded that she was talking about some proactive ordinances to promote small clustered communities (village concept). Mr. Phillips questioned if the County has anything in its**

**Additional
Business
(continued)**

Code/Ordinances that permit this type of development. Mr. Robertson responded that the County has a clustered subdivision process and a Residential Planned Community (RPC) process. He also noted that an application for this type of development could be made through the conditional use process.

Under Additional Business, Daniel Kramer commented on (1) the building the County is proposing to repair and (2) the expense of \$100,000 for new fobs.

**M 109 13
Go Into
Executive
Session**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to pending 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 11:35 a.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 pending/potential litigation and land acquisition. The Executive Session concluded at 11:53 a.m.

**M 110 13
Reconvene
Regular
Session**

At 11:54 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, 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. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

There was no action on Executive Session items.

**M 111 13
Adjourn**

At 11:55 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to adjourn.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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