

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 4, 2013**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 4, 2013, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Vance Phillips</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Kathy Roth</b>	<b>Budget &amp; Finance Manager</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 259 13  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend the Agenda by deleting “Job Applicants’ Qualifications” 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**

**Minutes**

**The minutes of May 7 and 21, 2013 were approved by consent.**

**Corre-  
spondence**

**Mr. Moore read the following correspondence:**

**CINDY PHILLIPS, UNIT 28 POPPY CHAIR, AMERICAN LEGION  
AUXILIARY UNIT 28, MILLSBORO, DELAWARE.**

**RE: Letter in appreciation of allowing her to present poppies to the Council members in honor of our veterans and also, to thank the Council for the \$200 grant in support of veterans through the poppy program.**

**GEORGE KRUPANSKI, PRESIDENT AND CEO, BOYS & GIRLS CLUBS  
OF DELAWARE.**

**RE: Letter in appreciation of grant to the Laurel Boys & Girls Club.**

**JANET ORLANDO, LEAGUE OF WOMEN VOTERS OF SUSSEX  
COUNTY, NASSAU, DELAWARE.**

**Correspondence  
(continued)**

**RE: Letter in appreciation of grant for the printing of their publication “They Represent You”.**

**ARLENE LITTLETON, EXECUTIVE DIRECTOR, GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of the Council’s Tribute presented at their grand opening of the Sand Hill Adult Day Program on Wednesday, May 22nd.**

**RON BREEDING, SENIOR PROGRAM & POLICY ANALYST, NEMOURS HEALTH & PREVENTION SERVICES, SEAFORD, DELAWARE.**

**RE: Letter in appreciation of the Council’s grant for the Healthy Kids Day event.**

**KELLIE TURNER, PROGRAM DIRECTOR, PREVENT CHILD ABUSE DELAWARE, WILMINGTON, DELAWARE.**

**RE: Letter in appreciation of Council’s grant to help promote their Stewards of Children program in Sussex County.**

**Mrs. Deaver read a letter from Dean Costas, a resident of The Plantations, who has researched noise (barking dogs) ordinances and she noted that she provided a copy of the letter to the County Administrator. The letter was also submitted for the correspondence file.**

**Mrs. Deaver reported that DNREC has posted its second installment in the Wetlands 101 video series on YouTube’s Delaware DNREC channel; the series is designed as an introduction to Delaware’s wetlands. The first video was released in June 2012. Mrs. Deaver noted that both videos can be accessed by typing “DNREC Wetlands” in an internet search.**

**The Council recognized and presented a Tribute to Mary Sue Sharp, Sussex County Employee of the Second Quarter. Mrs. Sharp is an employee of the Treasury Department; she began her employment with Sussex County on July 24, 1976.**

**Administrator’s  
Report**

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

**1. Delaware State Police Activity Report – April 2013**

**Per the attached Delaware State Police activity report for April, there were 3,968 total traffic arrests and 1,273 total criminal arrests. Of that 1,273, 442 were felony and 831 were misdemeanor criminal arrests. Of the total hours on duty spent, 37 percent were spent on criminal investigations.**

**2. Cape Henlopen High School Girls’ Lacrosse Team Proclamation**

**Per the attached proclamation, the County Council wishes to recognize the Cape Henlopen High School Girls’ Lacrosse team for winning the 2013 DIAA championship.**

**Report  
(continued)**      **(Attachments to the Administrator’s Report are not attached to the minutes.)**

**(It was noted that members of the Cape Henlopen High School Girls’ Lacrosse team were not in attendance; they will be invited to attend another meeting of the Council to be recognized.)**

**Wastewater  
Agreements**      **Hal Godwin, Deputy County Administrator, presented Wastewater Agreements for Council’s consideration.**

**M 260 13  
Execute  
Wastewater  
Agreement/  
Warrington  
Creek**      **A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 378-4, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Sawgrass South, LLC, for wastewater facilities to be constructed in Warrington Creek, Phase 9 (a/k/a Sawgrass) located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**

**Motion Adopted:      5 Yeas.**

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

**M 261 13  
Execute  
Wastewater  
Agreement/  
Seagrass  
Plantation**      **A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 502-5, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Corona Seagrass Plantation, LLC, for wastewater facilities to be constructed in Seagrass Plantation, Revision 2, Phase 4, located in Holts Landing Sanitary Sewer District.**

**Motion Adopted:      5 Yeas.**

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

**Legislative  
Update**      **Hal Godwin, Deputy County Administrator, presented the following legislative update:**

**Senate Bill No. 58 – “AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO LOCAL SCHOOL TAXES”.**

**This Bill allows Delaware residents 65 years of age and older to qualify for the “Senior School Property Tax Credit Program” upon entering into a payment plan for payment of taxes due.”**

**Legislative  
Update  
(continued)**

**House Bill No. 95 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO CONSERVATION AND ENVIRONMENTAL LIENS”.**

**This Act provides the Department of Natural Resources and Environmental Control (DNREC) with the authority to impose environmental liens on real property in an effort to recover taxpayers’ money expended by the State in order to investigate and clean up contaminated properties in circumstances where the property owners who caused the contamination have failed to do so.**

**Mr. Godwin stated that there is an amendment to the Bill which clarifies an environmental lien’s position in the order of priority. Specifically, a lien that relates back to before the environmental lien is perfected has priority over the environmental lien. The amendment also (1) changes the minimum time period for DNREC to give a property owner notice of a lien from 21 to 30 days before its effective date. It also requires that the notice of lien include the amount of and basis for the lien, (2) clarifies that the provisions of this Act do not preclude any equitable claims by an aggrieved person in the Court of Chancery including actions to quiet title, and (3) provides that, within 10 days of a written request, DNREC shall make available the documentation upon which such lien is based.**

**Mr. Godwin stated that he needs direction from the Council as to whether the Council opposes or supports this Bill.**

**House Bill No. 150 – “AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO RAW MILK”**

**This Bill legalizes the sale of unpasteurized, raw milk directly to a final consumer. This Bill tasks the Department of Health and Social Services, in consultation with the Department of Agriculture, with establishing a raw milk permit program, as well as such rules, regulations, and standards as are necessary to further the objectives and provisions of the Bill and to ensure the safety of the general public.**

**House Bill No. 27 – “AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO STATE TAXES”**

**This Bill allows school taxes and property taxes to be collected by tax intercept.**

**Mr. Godwin stated that he will be inquiring about this Bill.**

**The Council supports this Bill.**

**Greenwood  
Library  
Project**

**Julie Cooper, Project Engineer, presented Change Order No. 1 in the amount of \$5,110.36 to the Greenwood Library Project.**

**M 262 13  
Approve  
Change  
Order/  
Greenwood  
Library  
Project**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, based upon the recommendation of the Consulting Engineer, that Change Order No. 1 for Sussex County Project No. 07-05, Greenwood Library, be approved in the amount of \$5,110.36, thereby increasing the contract total from \$2,768,572.00 to \$2,773,682.36 and increasing the contract term by four (4) calendar days.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
Proposed  
Ordinance  
Relating  
to the  
Building  
Code  
2012  
Edition**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, §52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2012 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2012 EDITION, WITH EXEMPTIONS”.

This Ordinance amends Chapter 52, § 52-1 by adopting the International Building Code 2012 Edition, Chapters 1-26 and 35, and the International Residential Code 2012 Edition, Chapters 1-10, exempting therefrom § R313 Automatic Fire Sprinkler Systems from one- and two- family dwellings and townhouses. All exemptions previously adopted and currently set forth in Chapter 52 § 52-1 shall be retained therein.

Andy Wright, Building Code Supervisor, reported that workshops were held on the proposed new building code; one of the responses back from builders and property owners throughout Sussex County was that the wind zones have been diminished which would be a cost savings in the coastal areas. Mr. Wright stated that, included in the Council’s packets, was a list of significant changes to the International Residential Code between the 2003 and 2012 editions; the largest one is the implementation of fire sprinkler systems in residential houses, duplexes, and townhouses. It was the recommendation of some builders and property owners that considering the still shaky economic housing industry, that the fire sprinkler system requirement be a proposed exemption from the 2012 code adoption. Other significant changes include requirements for carbon monoxide systems. Mr. Wright stated that an implementation date of October 1, 2013 is being recommended.

**Public comments were heard.**

Jim Clark, Architect, spoke in opposition to the 2012 IRC Building Code. He stated that a new code is not needed; that small changes could be made to the existing code; that the only thing that is changing right now is issues dealing with Green Energy; and that the old code should be updated to address anchorage on plates and sliding glass doors facing northeast.

**Public  
Hearing/  
Proposed  
Ordinance  
Relating  
to the  
Building  
Code  
2012  
Edition  
(continued)**

**Howard Fortunato, Executive Vice President of the Home Builders Association of Delaware, spoke in support of the 2012 IRC Building Code with the exemption of the fire sprinkler system requirement.**

**Mark Grahne with Atlantic Homes spoke in support of the 2012 IRC Building Code with the exemption of the fire sprinkler system requirement.**

**Mark Fitzgerald, Vice President of Schell Brothers, spoke in support of the 2012 IRC Building Code with the exemption of the fire sprinkler system requirement. He stated that it makes things easier if all jurisdictions are building under the same code.**

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

**M 263 13  
Amend  
Proposed  
Ordinance  
Relating  
to the  
Building  
Code  
2012  
Edition**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to amend the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, §52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2012 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2012 EDITION, WITH EXEMPTIONS” as presented by using the effective date of October 1, 2013.**

**Motion Adopted: 5 Yeas.**

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

**M 264 13  
Adopt  
Ordinance  
No. 2307/  
Ordinance  
Relating  
to the  
Building  
Code  
2012  
Edition**

**A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2307 entitled “AN ORDINANCE TO AMEND CHAPTER 52, §52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2012 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2012 EDITION, WITH EXEMPTIONS”.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/Z  
No. 1728**

**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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.81829 ACRES, MORE OR LESS (Change of Zone No. 1728) filed on behalf of Lighthouse Carillon, LLC.**

**Public  
Hearing/  
C/Z  
No. 1728  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on May 9, 2013 at which time the Commission recommended that the application be approved.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated May 9, 2013.)**

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

**The Council found that Gene Bayard, Esq., with Morris James Wilson Halbrook & Bayard, LLP, and Rich Polk of Vista Design, Inc. were present on behalf of the application. They stated in their presentation that no commercial buildings are planned for this expansion area; that this is the fourth rezoning request for this site; that rezonings were approved in 2000, 2004 and 2009; that a Rite-Aid pharmacy site is being prepared for construction on the existing commercially zoned portion of the site; that a WAWA is proposed to be built on another portion; that the area has a mix of commercial uses, i.e. shopping centers, service/gas stations, medical facilities, convenience store; that the neighborhood is trending toward commercial activities; that the site is irregularly shaped and the purpose of the application is to square up the boundaries and to provide access to Route 5; that there are no wetlands on this portion of the site; that there are no reported rare/endangered species on the site; that there are no archaeological features on the site; that no sewer expansion is needed to serve this portion of the site; that they submitted to the PLUS process and heard no objections and that the PLUS agencies seem to support the application; that DelDOT supports the use and the proposed improvements to the intersection of Route 24 and Route 5; that the improvements will provide for safe vehicular/pedestrian traffic; that the rezoning will provide access to Route 5 and will improve the layout of the project; that there should be no negative impact on the community or property values; that the rezoning complies with the Comprehensive Plan Update and State Strategies; that a Traffic Impact Study has been submitted for consideration by DelDOT and that a response has not yet been received; that the rezoning allows for corrections to the site plan to improve parking and pedestrian access; that interconnection with Timber Acres Manufactured Home Park is being discussed; that a sewer pump station is planned near the Route 5 entrance; that sewer service will be provided by Sussex County and water service will be provided by Tidewater; and that the Route 5 entrance lines up with the rear entrance to the Food Lion Shopping Center across Route 5.**

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

**M 265 13  
Adopt  
Ordinance  
No. 2308**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2308 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1**

**M 265 13**  
**Adopt**  
**Ordinance**  
**No. 2308**  
**(continued)**

**COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.81829 ACRES, MORE OR LESS (Change of Zone No. 1728) filed on behalf of Lighthouse Carillon, 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 266 13**  
**Cancel**  
**Public**  
**Hearing**  
**on Lot**  
**Main-**  
**tenance**

**A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to cancel the Public Hearing on the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL CHAPTER 80, “LOT MAINTENANCE,” § 80-3 IN ITS ENTIRETY AND AMEND CHAPTER 115, ARTICLE XXV, “SUPPLEMENTARY REGULATIONS,” §§ 115-191.4 AND 115-191.5 OF THE CODE OF SUSSEX COUNTY BY INCLUDING IN § 115-191.4 MINIMUM STANDARDS FOR LOT MAINTENANCE PERTAINING TO PROHIBITED ACCUMULATIONS OF OVERGROWN GRASS AND WEEDS AND TO INCLUDING FAILURE TO COMPLY WITH THE MINIMUM LOT MAINTENANCE STANDARDS PROHIBITING OVERGROWN GRASS AND WEEDS IN THE PENALTY AND ENFORCEMENT PROVISIONS OF § 115-191.5” due to the fact that it has been withdrawn.**

**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**

**Kathy Roth, Budget and Finance Manager, presented grant requests for the Council’s consideration.**

**M 267 13**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$200.00 from Mr. Cole’s Councilmanic Grant Account to Cape Henlopen High School to sponsor the After-Graduation Party.**

**Motion Adopted: 5 Yeas.**

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

**M 268 13**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$200.00 from Mr. Cole’s Councilmanic Grant Account to Cats Around Town Society for the spay/neuter program.**

**Motion Adopted: 5 Yeas.**



**M 268 13**  
**(continued)**

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

**Introduction of Proposed Ordinances**

**Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PAINTBALL FACILITY AND OTHER SPORTS RELATED ACTIVITIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 12.9 ACRES, MORE OR LESS” (Conditional Use No. 1966) filed on behalf of Steven T. James, d/b/a Precision Paintball. The Proposed Ordinance will be advertised for Public Hearing.**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOTANIC GARDENS AND RELATED VISITOR CENTER, CONSERVATORY, THEATER, NATURE CENTER AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 36.99 ACRES, MORE OR LESS” (Conditional Use No. 1965) filed on behalf of Southern Delaware Botanic Gardens, Inc. The Proposed Ordinance will be advertised for Public Hearing.**

**Additional Business**

**Under Additional Business, Dan Kramer of Bridgeville commented on DNREC regulations and the Greenwood Library Project.**

**M 269 13**  
**Go Into**  
**Executive**  
**Session**

**At 11:08 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and go into Executive Session for the purpose of discussing issues relating to pending/potential litigation and land acquisition.**

**Motion Adopted:     5 Yeas.**

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

**Executive Session**

**At 11:10 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 11:36 a.m.**

**M 270 13**  
**Reconvene**

**At 11:37 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted:     5 Yeas.**

**M 270 13  
(continued)**

**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 271 13  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at  
11:38 a.m.**

**Motion Adopted:   5 Yeas.**

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

**Respectfully submitted,**

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