

## **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 18, 2013**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 18, 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>Gina A. Jennings</b>	<b>Finance Director</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 286 13  
Amend  
and  
Approve  
Agenda**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting “Wastewater Agreement – Carona Seagrass Plantation, LLC – Seagrass Plantation – Revision 2, Phase 5” 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 June 11, 2013 were approved by consent.

**DNREC  
Trash  
Control  
Program**

Lt. Michael Costello of the Environmental Crimes Unit of DNREC gave a presentation on the Department’s Digital Surveillance and Trash Control programs. He stated that Digital Surveillance is the use of available technology and assistance from the public to identify those responsible for the improper and illegal disposal of solid waste on the roadways.

In the State of Delaware, the law provides for three different ways for citizens to get rid of their trash: take it to the dump, recycle it, or hire a licensed solid waste contractor to dispose of it. If trash is disposed of on the side of road, it is considered dumping. Cameras have been installed in heavy dumping areas and the Department reviews videos to determine who is doing the dumping; registration is obtained on the vehicles used to transport the trash and arrests are made based on the ownership of the vehicle. (If the person who committed the dumping cannot be identified,

**DNREC  
Trash  
Control  
Program  
(continued)**

the owner of the vehicle used to commit the dumping can be prosecuted.) Another method to determine the identity of an illegal trash dumper is to go through the trash for mail that might identify where the trash came from. Lt. Costello stated that when a person in a picture cannot be identified, the photo is published on DNREC's Trash Stoppers website to ask for the public's assistance. The Trash Stoppers campaign can be accessed online at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov). (It was noted that a link to this website may be placed on the County's website.)

Lt. Costello reported that the program is still evolving and more cameras are needed; however, with a 10 member crime unit that works statewide and has many other duties, they cannot dedicate all of their time to this program. He stated that the crime unit also serves as the State's emergency response team to handle chemical spills and releases, water pollutants, etc. He stated that they have a variety of duties so they are very busy and the trash stoppers campaign is just one segment of what they do.

The minimum fine for a roadside dumping is \$500.00 plus court costs.

Lt. Costello asked that, if a citizen witnesses a dumping in progress, to take down a description of the vehicle and the person, and the tag if possible, and call the Environmental Crimes Hotline at 1-800-662-8802.

**Public  
Hearing/  
Fiscal  
Year  
2014  
Budget**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2014".

Mr. Lawson noted that on May 21st, the Budget Committee presented the Fiscal Year 2014 Proposed Budget. He stated that, for the 24th consecutive year, the County will continue to not raise taxes or increase fees, thanks in part to the Council's leadership and fiscal responsibility and a conservative budget philosophy.

Mr. Lawson stated that the proposed \$117.7 million for FY 2014 budget represents a collaborative effort between the Budget Committee, Department Heads and staff. Mr. Lawson thanked the Finance Director, the Finance Director Appointee, and the Budget and Cost Manager "for their countless hours of work to produce another responsible and balanced budget". He also expressed appreciation to the directors and their staff in developing the budget.

Mr. Lawson stated that with only a 3 percent projected growth in revenues, the Fiscal Year 2014 Budget represents a challenge and therefore, a modest 2 percent increase in operations, bringing the total General Fund to \$50.13 million. Additional highlights of the Proposed Budget include: \$3.3 million for local fire and ambulance services, \$575,000 for local law enforcement, \$1.9 million for 44 additional state troopers in Sussex County, \$13.1 million for the paramedic program, \$4.5 million for libraries, a 2 percent one-time bonus for staff, a reduction in County staff by 5.5 positions compared to last year's

**Public  
Hearing/  
Fiscal  
Year  
2014  
Budget  
(continued)**

**budget; and a pension contribution of \$5 million. In summary, the Budget Committee is recommending the Fiscal Year 2014 Budget as follows:**

- **\$50.13 million for the General Fund**
- **\$9.87 million for the Capital Projects Governmental Fund**
- **\$33.61 million for the Enterprise Fund**
- **\$17.91 million for the Capital Projects Enterprise Fund**
- **\$6.18 million for the Fiduciary Funds**

Mrs. Deaver referenced paramedic and police funding and she noted that, when considering some of the applications coming before the Council (i.e. campgrounds, RV parks, mobile home parks) there are no realty transfer taxes levied. Mrs. Jennings commented that the Budget Committee has been conservative in its projection for realty transfer taxes in the 2014 Budget. (It was noted that the transfer tax on a mobile home goes to the State of Delaware and it is a tax to the Division of Motor Vehicle; however, if it is a Class C, the County does receive a portion of the transfer tax. i.e. on owned land, not leased land). Mr. Vincent stated that the County needs to research this issue as people living in campgrounds and mobile home parks also use emergency services (including tourists/visitors). Mr. Lawson stated that this would be looked into for a recommendation to the Council in the future.

**Public comments were heard.**

Carole Somers was in attendance representing the League of Women Voters for Sussex County. She stated that the League agrees with the County Administrator's statement in his introductory remarks on the Proposed Budget that "Sussex County is at a crossroads and faces the difficult task of preserving the many attributes that make our county such a wonderful place to live while attempting to stimulate the local economy and spur economic growth. At the same time, we must look to the future to prepare for growth and increased demand on County services". Ms. Somers stated that the Proposed Budget purports to be conservative and it is fiscally conservative but not economically conservative. Revenue continues to rely heavily on the Realty Transfer Tax with 32 percent of funding coming from that source; continued dependence on the Realty Transfer Tax without developing other revenue sources is short-sighted. A reported highlight of the budget is the status quo of the tax rate; there has been no tax rate increase in 24 years nor has the County had a property reassessment since 1974. In addition to searching for other revenue sources, property reassessment or a modest tax adjustment is feasible without burdening taxpayers or diminishing their quality of life but promoting a livable and sustainable county. The need for an experienced certified planner to help address the challenges ahead is essential; the Planning and Zoning positions listed in the budget do not indicate any intention to fill this position.

Dan Kramer of Greenwood commented on the Proposed Budget's recommendation for a 2% bonus for County employees instead of a 2% COLA. He stated that the County is setting aside millions of dollars but yet

**Public  
Hearing/  
Fiscal  
Year  
2014  
Budget  
(continued)**

**“you can’t give them a raise”. Mr. Kramer stated that the proposed bonus would be detrimental to the employees: it won’t show up in their wages and so it will take away from their social security when they retire and it will end up reflected in their pensions. Mr. Kramer also commented on comp time versus overtime and he questioned if the County follows the law (County Code) and if it was brought to the Personnel Board.**

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

**Mrs. Deaver questioned if the County is still making contributions to the Land Trust. Mr. Lawson responded that there is no allocation in this Proposed Budget; however, the Council has the authority to make an allocation to the fund if there is a surplus and once it is determined if there is a surplus, this matter can be discussed. It was noted that previous funding has been set aside for the Sussex County Land Trust and for Open Space.**

**Mr. Phillips referenced the proposed 2% bonus and he stated that it treats the lower wage employees unfairly and that all employees should receive the same amount of money. The Council discussed this proposal. Mr. Lawson explained that under the scenario proposed by Mr. Phillips, employees that earn higher salaries would pay more taxes and the result would be that their net amount after taxes would be less than employees’ with lower scale earnings. Mr. Lawson asked that the Council give staff time to review the compensation packages of employees for a recommendation during next year’s budget discussions.**

**Mr. Lawson stated that it is the Budget Committee’s recommendation that the 2% bonus be based on base salaries and that the bonus would be administered upon approval of the budget with the bonus being paid to employees in July. He noted that there are merit raises in the budget, which are based on performance.**

**Mrs. Jennings noted that County employees lost 2 percent of their salary in January due to the change in the tax tables and that higher paid employees lost more.**

**Susan Webb (previously, Finance Director of the County) addressed the Council and provided an explanation of the difference between a bonus, a COLA, and merit raises.**

**M 287 13  
Reopen  
Public  
Hearing  
Record  
(Budget)**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to reopen the Public Hearing record to permit Mrs. Webb’s comments to be entered into the record.**

**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  
(continued)**

**The Council members and Susan Webb discussed the differences in a bonus, a COLA, and a merit raise.**

**The Public Hearing was closed.**

**M 288 13  
Amend  
the Budget/  
Bonus  
Allocation/  
Motion  
Failed**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend the budget to change the allocation of the one-time bonus to employees so that each employee would receive \$840.37 (in lieu of the 2% of base salary).**

**Motion Failed: 2 Yeas, 2 Nays, 1 Abstention.**

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

**M 289 13  
Adopt  
Ordinance  
No. 2309/  
Annual  
Operating  
Budget**

**A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to Adopt Ordinance No. 2309 entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2014”, as presented.**

**Motion Adopted: 5 Yeas.**

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

**Mr. Vincent thanked the Budget Committee and he stated that the County will review the compensation package for next year’s Budget.**

**Public  
Hearing/  
Assessment  
Rolls for  
Sewer  
and  
Water  
Districts**

**A Public Hearing was held on the Assessment Rolls for all Sussex County Sewer and Water Districts. Mrs. Jennings explained that the Assessment Rolls reflect the County’s billing records for Equivalent Dwelling Units (EDUs) and billable front footage for each sewer and water district account. These records have been made available for public inspection in the Billing Office for review and they are subject to individual appeal via the Assessment Review Board.**

**Mr. Cole noted that the County is moving toward unit pricing and that he believes this is the fairest and best way.**

**Mrs. Deaver commented that a lot of the rates have decreased and that many people are congratulating the County on that. She noted that under the previous Finance Director, Susan Webb, many bonds were refinanced and millions of dollars were saved and those savings were passed on to sewer district customers.**

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

**M 290 13  
Adopt  
Assessment  
Rolls**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council hereby adopts the Assessment Rolls for all Sussex County Sanitary Sewer and Water Districts.**

**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/  
Sewer  
and  
Water  
Service  
Charges,  
Rates,  
Connection  
Charges**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS”.**

**Mrs. Jennings reviewed some highlights of the sewer and water budget:**

- **continue to work towards a uniform service charge**
- **decrease in assessment rates due to bond refinancing and debt payoffs; 69 percent of customers are seeing decreases this year**
- **1.5 percent increase in EDUs**
- **4 percent decrease in the 2014 operating budget**
- **16 percent decrease in sewer capital projects due to the decrease in the amount of work from the stimulus funds**
- **2.273 percent increase for inflation in system connection charges**
- **continue with 100 foot cap but it will no longer be funded through the General Fund**

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

**M 291 13  
Adopt  
Ordinance  
No. 2310/  
Sewer and  
Water  
Service  
Charges,  
Rates,  
Connection  
Charges**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2310 entitled “AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS”.**

**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:**

**Legislative  
Update  
(continued)**

**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.**

**This Bill passed the House unanimously and has been assigned to the Finance Committee in the Senate.**

**Mr. Godwin reported that he has been in contact with the Committee Chair, Senator McDowell, to let him know that Sussex County is very interested in seeing this Bill adopted and signed by the Governor.**

**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.**

**This Bill has been released by the Agricultural Committee in the House.**

**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 and it 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.**

**This Bill has made the House Ready List.**

**Legislative  
Update  
(continued)**

**House Bill No. 135 – “AN ACT TO AMEND TITLES 3 AND 29 OF THE DELAWARE CODE RELATING TO THE LICENSING OF VIDEO LOTTERY CASINOS AND HARNESS RACING DAYS”.**

This Act seeks to create jobs and new sources of revenue for the State of Delaware by, among other means, authorizing the addition of two new video lottery agents, one in Sussex County and one in New Castle County, through an application process conducted by a Lottery Economic Development Committee. This Act creates a nine member, politically-balanced Committee with financial, accounting, or banking experience to select the sites and licensees. This Act also increases the number of required racing days to reflect the current amount of racing, and prevents the addition of video lottery agents from triggering a reduction in the minimum number of days that existing harness tracks must offer harness racing. Finally, this Act also expresses the intent of the General Assembly that the new video lottery casinos will be subject to a one-time license fee and ongoing license fees, as well as such fees as are necessary to create a level playing field for competition with video lottery agents who operate horse racing or harness racing, and directs the Department of Finance to prepare legislation implementing that intent.

This Bill has been tabled by the Gaming and Pari-mutuels Committee.

Mr. Godwin stated that Council gave him direction to oppose the Bill and he has done so. He reported that he has contacted all members of the Committee to let them know of the Council’s opposition.

**Senate Bill No. 78 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO NON-TIDAL WETLANDS”.**

This legislation establishes a Wetlands Advisory Committee to develop comprehensive recommendations for conserving and restoring non-tidal wetlands in Delaware, including evaluating national best practices and standards, evaluating incentive-based programs, and reviewing state and federal wetland permitting processes to identify opportunities to improve efficiency and eliminate redundancy. The Secretary will provide a final report of recommendations to the General Assembly no later than December 31, 2014.

The Bill also amends Title 7 Del C. Chapter 66, §6607 and §6617 and Title 7 Del C. Chapter 72, §7205 and §7214 to expedite resolution of violations by allowing the use of administrative procedures and penalties to resolve wetlands and subaqueous lands violations and by minimizing the use of civil or criminal prosecution to resolve violations. The bill also allows the Secretary to issue after-the-fact permits and assess administrative penalties as appropriate.

Senate Amendment No. 1 to Senate Bill No. 78 adds additional stakeholders to the Wetlands Advisory Committee.



**Legislative  
Update  
(continued)**

**The Delaware League of Local Governments will appoint a representative from each County.**

**Mrs. Deaver stated that it would not be appropriate for the Director of the Positive Growth Alliance to represent the County.**

**Mr. Vincent stated that anyone in the County could be appointed by the Delaware League, not necessarily someone from Sussex County Government.**

**Mr. Godwin stated that he thinks the League Director would want a recommendation from the Council.**

**Mr. Lawson noted that there is also a requirement to have a County employee serve on the Committee; therefore, there will be 2 representatives from Sussex County.**

**This Bill passed the Senate and is on the House Ready List.**

**Senate Resolution No. 8 – “URGING THE UNITED STATES CONGRESS TO SUPPORT H.R. NO. 129”.**

**This Resolution urges the United States Congress to support efforts to reinstate the separation of commercial and investment banking functions in effect under the Glass-Steagall Act and support H. R. No. 129.**

**Council members have not expressed an opinion on this Resolution. Mr. Godwin advised that Council is being asked again to offer its support of the Resolution.**

**Mr. Vincent asked Mr. Lawson to review this Senate Resolution and to report back to Council with a recommendation as to whether or not the Council should endorse it.**

**Senate Bill No. 97 – “AN ACT TO AMEND TITLES 6, 9, 11, 18, 19, 25, AND 29 OF THE DELAWARE CODE RELATING TO HATE CRIMES AND DISCRIMINATION IN EMPLOYMENT, PUBLIC WORKS CONTRACTING, HOUSING, EQUAL ACCOMMODATIONS, AND THE INSURANCE BUSINESS ON THE BASIS OF GENDER IDENTITY”.**

**Mr. Wilson raised questions regarding Senate Bill No. 97 and Mr. Godwin was asked to research the Bill and report back to the Council on June 25th.**

**Adminis-  
trator’s  
Report**

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

- 1. Sussex County Airport Advisory Committee**

**Administrator's  
Report  
(continued)**

The Sussex County Airport Advisory Committee will meet on Wednesday, June 19, 2013, at the Sussex County Emergency Operations Center at 6:00 p.m. Included with this report is a copy of the agenda for the meeting.

**2. Sussex County Personnel Board**

The Sussex County Personnel Board is scheduled to meet on Thursday, June 20, 2013, in Council Chambers at 9:00 a.m. A copy of the agenda for the meeting is attached.

**3. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County**

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will hold a special planning meeting on Wednesday, June 26, 2013, at 10:00 a.m. at the Easter Seals building, 22317 DuPont Boulevard, in Georgetown. During the meeting, the Committee will continue discussion of its upcoming conference.

**4. In Memory of Stephanie Callaway**

Yesterday, Monday, June 17, 2013, marks the 5<sup>th</sup> anniversary of the death of SCEMS Paramedic Stephanie Callaway. As most of you know and remember, in the early morning hours of June 17<sup>th</sup>, 2008, Stephanie was tragically killed when the ambulance in which she was caring for a patient swerved to avoid a deer and struck a tree on Rt. 24. At the time of the accident, Stephanie was caring for her patient, 82-year-old Betty Jane Hall of Lewes, who was also killed in the crash.

During her 5-year career at SCEMS, Stephanie rose to the rank of Paramedic II, and served as a Field Training Officer, Public Information Officer, and member of the Honor Guard. She was also President of the Sussex County Paramedic Association, and an active member of the Lewes Fire Department. She was married to Steve Callaway and is survived by her two young sons, Matthew and Ryan. Stephanie, at age 31, had committed nearly half of her life to public service and hers is the only line-of-duty death of a paramedic in Delaware.

Our thoughts, prayers and support go out to Stephanie's family and her extended EMS family as we reflect and remember her on the 5<sup>th</sup> anniversary of her unfortunate and tragic death.

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

- Ocean View Beach Club Annexation/Expansion of the BBSSD/Request to Prepare and Post Notices**
- Rob Davis, Senior Planner, Utility Planning Division, requested permission to prepare and post public hearing notices for the proposed expansion of the Bethany Beach Sanitary Sewer District (Ocean View Beach Club Annexation). The parcel requesting annexation is located on the north side of Muddy Neck Road and north and east of Beaver Dam Road. The easterly boundary of the parcel adjoins the Assawoman Canal. A portion of an adjoining parcel that will provide access to the development is included in the annexation request. The area proposed for annexation is contiguous to the Bethany Beach Sanitary Sewer District. The 71.61 acre parcel is proposed for a development of 150 single family lots, 94 town house units, 56 condominiums and 3,000 square feet of retail space. The development is within the town of Ocean View and is in the town's R-3 Multi-Family Residential District/Residential Planned Community District. The property owners will be subject to system connection charges of \$4,825.00 per EDU based on July 1, 2012 – June 30, 2013 rates.**
- M 292 13 Authorize Notices/BBSSD Expansion**
- A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Engineering Department is authorized to prepare and post public hearing notices for the annexation of an area of land to the Bethany Beach Sanitary Sewer District (Ocean View Beach Club Annexation), as presented on June 18, 2013.**
- 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 293 13 Councilmanic Grant**
- A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$1,500.00 from Mr. Wilson's Councilmanic Grant Account to the City of Milford for the 2013 Museum Challenge Campaign.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**
- M 294 13 Councilmanic Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$600.00 (\$100.00 from Mr. Cole's Councilmanic Grant Account and \$500.00 from Mr. Phillips' Councilmanic Grant Account) to Boy Scout Troop 281 for William J. McCabe's Eagle Scout Project.**
- Motion Adopted: 5 Yeas.**

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

# LHS Grant Request

**Doug Marvel was in attendance to present information on the grant request from the Laurel Historical Society for the Studley House renovations. He reported that the Society is eligible for a matching State grant of \$50,000; however, they are \$5,000 short of matching the grant funds.**

**M 295 13**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$5,000.00 (\$2,500.00 each from Mr. Phillips' and Mr. Vincent's Councilmanic Grant Accounts) to the Laurel Historical Society for Studley House interior renovation expenses.**

**Motion Adopted: 5 Years.**

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

**There was no additional business.**

**M 296 13**  
**Recess**

**At 11:43 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess until 1:30 p.m.**

**Motion Adopted: 5 Yeas.**

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

**M 297 13**  
**Reconvене**

**At 1:35 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene.**

**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. 1729  
and C/U  
No. 1963**

**A Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS” (Change of Zone No. 1729) filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey’s Landing Park, Inc. and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**

**Public  
Hearing/  
C/Z  
No. 1729  
and C/U  
No. 1963  
(continued)**

**AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS” (Conditional Use No. 1963) filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey’s Landing Park, Inc.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 23, 2013 at which time action was deferred for further consideration.**

**(See the minutes of the Planning and Zoning Commission dated May 23, 2013.)**

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

**Copies of an Exhibit Book and Supplemental Booklet (provided by the Applicant) were distributed to the Council.**

**Mr. Lank reported that, since the Public Hearing on May 23rd, a letter of approval of the site plan was received from the State Fire Marshal’s Office and 3 letters in opposition to the applications were received (two from individuals and one from Kercher Engineering, Inc.).**

**Mr. Moore stated that the tax map numbers on the Agenda and on the Ordinance coincide with each other; however, on the summary of the Planning and Zoning Commission’s hearing, there is one tax map number that is different. Mr. Moore explained that he wanted to confirm that the Agenda and Ordinance are the same as what was advertised. Mr. Lank stated that the numbers in the Commission’s report are correct and the advertisements placed in the newspapers by the Planning and Zoning Department and the posting by the inspectors are correct. (Mr. Moore’s question relates to Change of Zone No. 1729 (Tax Map I.D. 2-34-25.00-31.01, 31.02 & 31.04 compared to Tax Map I.D. 2-34-25.00-31.00, 31.02 & 31.04). Mr. Lank stated that the correct Tax Map I.D. No. is 2-34-25.00-31.00, 31.02 & 31.04.**

**The Council found that James Fuqua, Attorney with Fuqua, Yori and Willard, P.A., was present representing the Faucett family entities on the two applications (C/Z No. 1729 and C/U No. 1963). Mr. Fuqua stated that testimony and evidence for both applications will be combined in one presentation. Also present on behalf of the applications were Mike Riemann, Professional Engineer with Becker-Morgan Group; Jeff Clark with Land Tech Land Planning; Kathleen Walsh and Todd Burbage with Castaways Ocean City; and members of the Faucett family, including Lynn Faucett.**

**Public  
Hearing/  
C/Z  
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**Mr. Fuqua stated that the Exhibit Books submitted include the PLUS comments and the response to those comments, an environmental assessment and facilities report, a cultural resource assessment report, the U.S. Army Corp of Engineers wetlands delineation approval letter; a vegetation community report and comments from Blackcreek Environmental Consultants LLC, an Ability to Serve Letter from Long Neck Water Company, a letter from DART proposing a bus stop, and the 2005 Traffic Impact Study recommendations from DelDOT.**

**Mr. Fuqua stated that Campgrounds/RV Parks have been a hot topic in Sussex County this year and the Council's decision on the applications is a land use decision and not a popularity contest, nor is it a referendum or to be based on how residents feel about the application. He stated that land use decisions are based on the applicable law and substantial and credible evidence submitted into the record. He stated that he respects the concerns of the opponents and that their concerns were considered and addressed when planning the campground. Mr. Fuqua stated that the applications comply with the requirements of the Zoning Ordinance and Comprehensive Plan.**

**Mr. Fuqua, Mr. Rieman, Mr. Davidson, Ms. Walsh, and Mr. Linford Faucett stated in their presentation and in response to questions raised by the Council that they are requesting approval to change the zoning from MR Medium Density Residential to AR-1 Agricultural Residential and requesting approval of a Conditional Use for a campground/RV park to be known as Castaways at Massey's Landing; that the project is planned on both sides of Long Neck Road and is adjacent to State land, the boat ramp site, the existing Massey's Landing Manufactured Home Park and the existing Pot-Nets Seaside Manufactured Home Park; that the site contains 50.83 acres of land and does not include Mrs. Faucett's home site nor the existing Massey's Landing Manufactured Home Park; that the Park was included in the PLUS submittal and subsequently removed from the plan and is not a part of this application; that the site is currently zoned MR-RPC Medium Density Residential – Residential Planned Community; that the RPC was approved in May 2007 for 120 residential units; that the RPC has not been developed due to the impacts of the recent economy downturn; that prior to the 2007 zoning, all of the lands around the site (Faucett lands) were zoned AR-1 Agricultural Residential; that the rezoning of the Faucett lands to AR-1 will return it to the zoning designation that it was in from 1970 to 2007, it will be consistent with the existing AR-1 zoning of the area, and it is a downzoning of the property to AR-1; that they are proposing 322 campsites with sewer, water, electric hookups, bathhouses, laundry, general store, swimming pool, meeting areas, administration offices, café, snack bar, and recreational and maintenance facilities; that the recreational amenities support the use of the campground and are for camp visitors and not the general public; that the purpose of a Conditional Use references that uses are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare; however, because of the nature of the use, the importance of the relationship to the Comprehensive**

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**Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment on location and site plan; that County sewer is available for up to 147 EDUs and the County Engineer has confirmed that capacity is available; that central water will be provided by Long Neck Water Company, a public utility; that Delaware Electric Cooperative will provide electricity; that the site is located in the Indian River Fire Company service area; that the Office of the State Fire Marshal has reviewed the plans in regards to fire protection and approved the plans, as submitted; that a copy of the Fire Protection Plan Review Report dated June 7, 2013 has been submitted into the record; that shopping, restaurants and service uses are available in the area; that a Traffic Impact Study was completed in 2005 and has again been reviewed and accepted by DelDOT subject to certain recommendations in terms of improvements that the Applicant will be responsible for; that, as stated by DelDOT on Page 5 of the March 12, 2013 PLUS comments, DelDOT found that conditions in the study area have not changed substantially since the 2005 TIS was done and that the development now proposed will be similar in its trip generation and therefore “our findings and recommendations based on the TIS contained in a letter dated November 4, 2005, are applicable to the current development proposals as well and a new TIS is not necessary” (this letter is contained in the Exhibit Book); that DelDOT reviewed and determined that the existing TIS data is appropriate and a new TIS is not needed because it would serve no purpose; that under Delaware law, Sussex County entered into an agreement with DelDOT for DelDOT to review Traffic Impact, to review existing traffic criteria to consider the effect of the existing traffic, to project traffic growth, and to consider traffic projected by a proposed use; that this is a determination that is made based on the expertise of DelDOT which is the State agency responsible for traffic impact and recommending roadway improvements and DelDOT has determined that the 2005 TIS analysis and recommendations are applicable to these applications and no further analysis is required; that DelDOT’s determination was made based on the original information submitted by PLUS and that information was for a 575 space RV park; that the application filed with the County reduced that amount from 575 spaces to 322 spaces (a 44 percent reduction than what DelDOT found acceptable); that the 2005 TIS is acceptable to DelDOT and it has been reduced by the Applicant since DelDOT’s review; that DelDOT noted that one significant change on Long Neck Road was improvements on Long Neck Road at the intersection with Banks Road and School Lane have already been completed; that DelDOT did recommend that the County impose the following condition on an approval of the application, which the Applicant is agreeable to – to enter into an agreement with DelDOT to fund an equitable portion of the installation of a single lane roundabout at the intersection of Delaware Route 23 and Pot Nets Road (Sussex Road 22C) – the agreement should be worded such that DelDOT may utilize the funding contribution for the installation of a traffic signal at this intersection should a roundabout be determined to be infeasible at DelDOT’s discretion – the agreement should include pedestrian signals, crosswalks and interconnection, at DelDOT’s discretion (the applicant accepts this**

recommendation and it would be one of the proposed conditions of approval); that DelDOT reviewed the site plan for the proposed project and there is a letter in the record dated May 13, 2013, indicating there is no objection to the entrance location; that a bus stop has been suggested by DelDOT; that a DART bus stop for DART Route 207 will be provided; that DART comments in the Supplemental Exhibit Booklet reference that “given the location and proposed land use, your project would offer an ideal turnaround in conjunction with a premier bus stop”; that the bus stop will be a significant amenity for the park and will contribute to traffic mitigation; that Long Neck Road is a two lane roadway with paved shoulders; that the roadway will accommodate RVs without interfering with pedestrians and cyclists on Long Neck Road; that Long Neck Road experiences occasional flooding due to tropical storms and nor’easters (most of which are winter storms); that the campground will be seasonal; that the developers will be working with State and County officials to establish an Emergency Evacuation Plan and will comply with voluntary and mandatory evacuations orders (see Tab 11 in the Exhibit Booklet); that according to the State Strategies, the site is located in an Investment Level 3 Area, a Growth Area; that the site should be located in an Investment Level 1 Area since the area is almost fully developed and since this project could be considered infill; that according to the Comprehensive Plan Update, the site is located in the Environmentally Sensitive Developing Area, a growth area; that the Plan includes two land use maps – the existing land use map and the future land use map; that the existing land use map shows that the Faucett lands border existing manufactured home parks to the south and west and appear to be the only undeveloped land in the area and would be considered an infill piece; that the future land use map designates the areas that are growth areas and the areas that are intended to remain rural areas; that the Faucett lands are designated on the map as being in the Environmentally Sensitive Developing Area, a growth area created by the Plan; that according to the Plan, new development should be located in growth areas; that the Plan includes references that development should be directed to areas that have community services and that protect critical natural resources; that the campground utilizes wooded buffers and other environmental design features to protect the environment; that the County’s agricultural economy should be conserved by promoting farming and preserving agricultural land values; that tourism should be encouraged; that this application promotes tourism and provides commercial job opportunities; that the application is designed in accordance with the ordinance requirements and environmental considerations and conforms to the conservation elements of the Plan; that new developments should incorporate preserved usable open space and other best practices; that Long Neck Road is adequate to maintain the traffic; that according to traffic counts and calculations, traffic should be decreased from the recently approved RPC plans for the site; that the use complies with the Mobility Element of the Plan; that this application will have no negative impact on agriculture; that the project provides economic growth; that the Faucett family has owned the property since 1938 and believes in property rights; that the Faucett family sold the property to the



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State that is used for the boat ramp; that Long Neck Road is classified by DelDOT as a Major Collector Road, the same as Route 24; that Long Neck Road is a major collector roadway which is a dead end roadway; that the Road contains 12 foot lanes with 8-foot shoulders; that two access points are proposed (included in the request to DelDOT for a Letter of No Objection); that DelDOT made the determination that the Traffic Impact Study that was completed in 2005 is still sufficient for this project; that the TIS was based on 130 residential units and the plan that became recorded on the site was actually for 120 units; that, at the time application was made to DelDOT and initiated the PLUS process, it was for a 570 RV site project; that the application has now been reduced to a 322 RV site project; that DelDOT's decision was based on the 570 RV site, a bigger application; that this project will reduce traffic not only from the original TIS but also from the plan that is currently recorded on the property; that there has been a lot of concern expressed that the TIS is old, there has been a lot of growth in the area, the population has increased since 2005, and the TIS shouldn't be valid; that a TIS accounts for growth in population; that there are a number of committed developments (not yet built) in the TIS that were part of the 2005 study; that when a TIS is performed, it must account for the future growth that is already recorded and planned; that there were improvements required as part of the TIS and this project is required to commit to those improvements (i.e. an agreement at Route 23 and Pot Nets Road for either a round-about or signal, to be determined by DelDOT); that the Long Neck Road/Banks Road intersection was recently upgraded by DelDOT; that the Long Neck Road/Pot Nets Road improvements will be required; that they are proposing to install pervious pavement with filter strips, rather than impervious pavement; that none of the adjacent developments went through the DNREC or Sussex Conservation District process for stormwater management, and probably could not have been developed, as developed, under current regulations; that they will agree to meet all of DelDOT's requirements; that they will meet all of DNREC and Sussex Conservation District stormwater management requirements; that they plan on utilizing green technologies and best management practices, i.e. pervious pavements, bio-retention areas, and filter strips; that wetlands have been delineated and the boundaries approved; that there are no threatened/endangered species on site; that they have met with the Office of the State Fire Marshal, the Indian River Volunteer Fire Company, DNREC, the U.S. Army Corps of Engineers, the Association of Park Owners, and residents of the area; that the project will have controlled and gated access to the campground directly from Long Neck Road; that the main entrance creates a 4-way intersection with the existing entrance with the Massey's Landing mobile home park; that no campsite will have direct access to Long Neck Road; that all the campsites will be served by interior street systems; that every RV site will be served by a 20 foot wide maintained travel surface; that the interior private driveway will be 30 feet wide; that the streets within the project will be sized to accommodate the largest emergency vehicle of the Indian River Volunteer Fire Company; that all 322 of the RV sites measure at least 40 feet in width and contain a minimum of 2,000 square feet; that each site will be served with a sanitary sewer

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hookup, potable water hookup, electric, and onsite automobile parking; that no campsites are proposed within 400 feet of a dwelling of other ownership and are at least 100 feet from Long Neck Road; that there are no campsites containing any State or Federal wetlands; that there will not be any lot sales; that no accessory storage buildings are planned; that they are proposing to provide space for tents, RVs, travel trailers, recreational vehicles, and equipment manufactured specifically for camping purposes; that there will be no cabins; that areas of the proposed campground that are presently wooded will be carefully and selectively thinned and cleared in an effort to preserve as much mature vegetation as possible; that new native tree, grass, and shrub plantings and wetlands planning are planned; that no phasing is proposed; that they intend to develop the entire site in one phase and hope to open for the 2014 camping season; that a 50-foot buffer setback is being provided from wetlands; that the project will include pavilions, an aquatic boat rental center (no motorized watercraft), concierge, golf cart rental center, general store, welcome center/administrative offices, swimming pool, café/snack bar, bath houses, nature center/activity lodge, lodge meeting center/conference center, beach lounge BBQ and café bar, swimming pool, remote tenting area, bath houses, maintenance center, DART bus stop, interior crabbing and fishing piers, outdoor activity center, pavilions, and a dog park/swimming beach area; that employee parking will be provided; that the entrance to the campground will be 30 feet wide with a dedicated bus and emergency services lane; that there are no rare, threatened, or endangered species found on the site; that a Bald Eagle nest exists offsite (Lynch Thicket), not on this site (about 1,200 feet from the boat launch); that there will be a 330-foot buffer from the Bald Eagle nest; that no improvements or land disturbing activities will occur within any buffer areas except those that are excluded from the buffer requirement in the County Code; that they will be required to obtain seven permits from either the U.S. Army Corps. of Engineers or DNREC for piers, erosion sediment control, crossings, etc.; that landscaping plans will be submitted; that it will not be necessary that fill be brought in from off-site due to the existence of the sandy area on-site; that the Castaways Ocean City site has not had any traffic issues and they do not anticipate any traffic issues at this site nor long lines of traffic backing up on the roadway waiting to get into the park; that they have established a speedy check-in service; that there will be a fee based policy that discourages campers from bringing multiple vehicles, i.e. trailers, boats, golf carts, etc.; that in regard to evacuation concerns, (in their existing campground in Ocean City) measures are taken to make campers cooperate with an evacuation order; that buses from the Ocean City site are crowded, showing that the bus service will work; that they take great pride in their stand on the environment – the park in Ocean City has been certified a “planet green park”; that the Faucett family are all members of the partnership with the Burbage family in the development of this project; that someone from the Faucett family has owned or maintained a residence on this property since 1938; that land was sold to the State of Delaware in 1990’s; that the Faucett family has partnered with the Burbage family due to the experience of the Burbage family in developing campgrounds; that the Burbage family’s campground in Ocean City is a

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**first class resort; that the business proposal with the Burbage family allows the Faucett family to keep the property indefinitely for future generations; and that the Faucett family has watched the Long Neck area develop over the years and have always respected the rights of the other property owners to develop and use their properties in appropriate ways.**

**Mr. Fuqua offered the following suggested Findings of Fact for consideration for Change of Zone No. 1729: 1) This is an application to amend the Comprehensive Zoning Map from MR (Medium Density Residential) to AR-1 (Agricultural Residential) for 50.83 acres of land located at the eastern end of Long Neck Road; 2) The proposed use of the property is as a Campground/RV Park with amenities which require conditional use approval in the AR-1 zoning district; 3) The property is located in the Environmentally Sensitive Developing Area which is a designated growth area under the 2008 Sussex County Comprehensive Plan; 4) The property is located in an Investment Level 3 under the Strategies for State Policies and Spending as is much of the Environmentally Sensitive Developing Area; 5) The property was rezoned MR-RPC as Change of Zone No. 1608 in May of 2007, for a 120 unit residential development; 6) All lands bordering the property are zoned AR-1, as are the majority of lands in the Long Neck area; and for the stated reasons, the rezoning of the property to AR-1 would be in accordance with the Comprehensive Plan, consistent with the existing zoning in the area and appropriate for the property.**

**Mr. Fuqua offered the following suggested Findings of Fact for consideration for Conditional Use No. 1963: 1) This is an application for a Conditional Use in an AR-1 Zoning District (rezoning application from MR to AR-1 being considered with this Conditional Use application) for a 322 site campground/RV park with amenities on a parcel of land containing 50.83 acres located at the eastern end of Long Neck Road; 2) Under the Sussex County Comprehensive Plan Update, the site is located in the Environmentally Sensitive Developing Area (ESDA) which is a designated Growth Area on the Comprehensive Plan's Future Land Use Map; 3) The Comprehensive Plan strongly encourages that development in the ESDA be served by central sewer and water facilities and the proposed Conditional Use will be served by Sussex County sewer, as part of the Long Neck Sanitary Sewer District and will utilize central water provided by the Long Neck Water Company; 4) The Conditional Use is in accordance with the Plan's vision that Sussex County will maintain its role as Delaware's agricultural leader, Delaware Tourism Center, and the State's major growth center and that new full time residences, second home growth, and seasonal tourism will continue to drive the local economy; 5) The Conditional Use is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area; 6) The site is located in an Investment Level 3 under the State Strategies for State Policies and Spending and development is appropriate. Much of the ESDA is designated**

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as Investment Level 3 which recognizes that it is a future growth area; 7) The Applicant participated in the PLUS process and has responded appropriately to the PLUS comments and has submitted for the record – an Environmental Assessment and Public Facility Evaluation Report properly addressing the stated criteria; 8) The Conditional Use will have no negative environmental impact. All required buffers will be provided, Green Technology, Best Management Practices as recommended by DNREC, including a combination of bio-retention, infiltration, bio-swales and filter strips will be utilized to achieve storm water quality management together with pervious pavements to meet or exceed DNREC requirements. The site will be served by County sewer and public water. Wetlands will not be disturbed except where authorized by appropriate permits and the wetland delineation has been approved by the U.S. Army Corps. of Engineers; 9) The Conditional Use will have no negative impact on traffic. The site is currently approved for a 120 residential unit development and the Conditional Use will have similar or less traffic impact than the use already approved. DelDOT has reviewed and accepted the Applicant's Traffic Impact Study and has requested the Applicant's participation in future improvements; 10) Long Neck Road is a well maintained two lane road with adequate shoulders to accommodate vehicles coming and leaving the site in a safe manner. In addition, DART operates a bus route providing round-trip bus service from the Rehoboth Park and Ride to Massey's Landing during the summer season. A DART bus stop and turnaround will be provided on the site; 11) There will be no negative impact on schools or other public facilities since the Conditional Use will operate seasonally from April 1 to October 31<sup>st</sup>; 12) The site is an appropriate location for the Conditional Use since shopping and services are located on Long Neck Road in addition to services located on site. The property is an "in-fill" piece, adjacent to manufactured home parks on the west and south and the bay and State of Delaware boat launch on the north and east; 13) The Conditional Use is essential and desirable for the general convenience and welfare since it will provide tourism related services, full and part time employment and significant secondary economic benefit to area businesses; 14) The Conditional Use with the following conditions will not have any adverse impact on the uses or values of area properties, will contribute to the convenience and welfare of Sussex County and its residents and is consistent with the purposes, goals, and provisions of the Sussex County Zoning Ordinance and Comprehensive Plan Mr. Fuqua offered the following suggested conditions for consideration for Conditional Use No. 1963: 1. The maximum number of RV sites shall be 322; 2. All entrance and other DelDOT requirements shall be completed as required by DelDOT including the requirement requested by DelDOT that "the Developer should enter into an agreement with DelDOT to fund an equitable portion of the installation of single lane roundabout at the intersection of Delaware Route 23 and Pot Nets Road (Sussex Road 22C). The agreement should be worded such that DelDOT may utilize the funding contribution from the installation of a traffic signal at this intersection, should a roundabout be determined to be infeasible at DelDOT's discretion. The agreement should include pedestrian signals, crosswalks and interconnection at DelDOT's

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discretion”; 3. The Conditional Use shall be served by the Long Neck Sanitary Sewer District; 4. The Conditional Use shall utilize public water from the Long Neck Water Company; 5. Stormwater management and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices; 6. The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan; 7. The campground/RV park may open no earlier than April 1<sup>st</sup> each year and shall close no later than October 31<sup>st</sup> of each year; 8. The campground/RV park shall remain vacant and no campers or RVs shall be stored on the sites during the period that the park is closed, except Applicant owned “park model” units; 9. There shall be no accessory buildings located on individual campsites; 10. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreation vehicles and equipment manufactured specifically for camping purposes; 11. One sign not exceeding thirty-two (32) square feet per side with lighting shall be permitted; 12. The Applicant shall plan the entrance design to accommodate a bus stop and turnabout in accordance with DART; 13. Final site plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Mr. Fuqua concluded with the following comments: regarding the Traffic Impact Study, DelDOT is the regulatory agency determining traffic impact, that there is no mistake or misunderstanding by DelDOT on this application; that DelDOT stated what they found – that conditions have not changed substantially since the 2005 TIS was performed and analyzed, that the TIS included 11 committed developments that would be built in the future, so much of what has occurred in the area has already been included in the TIS, and much of what is in the study has yet to be built; that DelDOT states that the proposed development would be similar in trip generation; that no new TIS is necessary; that DelDOT’s opinion was based on a larger RV Park than is now being proposed (44 percent less); and that pursuant to Delaware Law, the County has an agreement with DelDOT and DelDOT is the authority which the County utilizes in making traffic determinations; that in regards to the concern about emergency services, the park would be evacuated early in an emergency situation and it would not contribute to any safety problem; that in regards to the complaint about parking along the roadway near the boat parking lot, this is not a situation that is caused or would be caused by the proposed campground; that there is no basis for the demand for a new TIS; that the opposition also argued that recreational facilities should not be permitted in this campground – however, recreational facilities are normal customary accessory uses to residential and campground uses; that although the ordinance does not mention it, it does not prohibit it; that the opponents claims that the application fails to provide the required buffers from existing buffers – that under the Sussex County Zoning Ordinance, the definition of a dwelling excludes manufactured homes, therefore, the County’s ordinance does not require a buffer of 400 feet from manufactured homes; that the application meets the 400 foot buffer requirement and that the application meets the

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requirements of the ordinance; that the opposition also represented that the RVs in the proposed park would be against the edge of some manufactured home lots – this is incorrect – the conditional use ordinance does require that a RV Park be surrounded by a landscaped 50 foot buffer (around all boundaries); that their plan provides for a 50 foot buffer; that no RV site will be closer than 50 feet to any manufactured home site; that Mr. Chillik testified at the Planning and Zoning Commission public hearing that he has a home that is a dwelling (not a manufactured home) located in the Massey's Landing Park and that he pays County property tax on the property – that it appears that his home is approximately 400 feet from the proposed park; however, that 400 foot requirement does not apply to his house because he acquired his house by a Bill of Sale (because the house is on leased land – land leased from Massey's Landing Park; that the 400 foot buffer only applies to dwellings that are on properties of other ownership (in this case, the house is situated not on a property of other ownership, it is located on the property of the Applicant's ownership) so that the buffer requirement does not apply although it appears to be met anyway.

Mr. Fuqua submitted documents into the record: zoning code definitions for dwellings and buffers, Mr. Chillik's Bill of Sale and the previous 3 Bills of Sale, and a site location map for the location of Mr. Chillik's home, and the deed from Linford Faucett to Massey's Landing Park Inc. (one of the applicants for the area where the park is located).

Mr. Fuqua referenced the comments received in a letter from the County Engineering Department and he advised that part of the comments were from the Historical Preservation Planner. The comments received ordered that the Applicant prepare a Phase 1 Archaeological Study. Mr. Fuqua stated that, to his knowledge, there is no statute, ordinance, or legal basis for the County requiring this type of study. Mr. Fuqua stated that a good portion of this land has been farmed, and therefore disturbed; that the County has already approved this land for a 120 unit development in 2007 without any concern expressed about archaeological issues; that Dr. Otter did prepare a cultural resources report (included in the Exhibit Book); that there were no requirements for an archaeological study from the State in the PLUS comments; that they will be doing some archaeological study as a requirement for an Army Corp of Engineers permits. Mr. Fuqua referenced his discussions with the County's Historic Planner, Dan Parsons, and Mr. Parsons agreed that he did not have the authority to require the study and he meant it to be a recommendation and that he would submit a letter to that effect; that instead, he received a letter from Mr. Parsons stating that the comments they submitted are their comments. Mr. Fuqua stated that he objects to that requirement. (At the conclusion of Mr. Fuqua's comments, a discussion took place between Mr. Fuqua and Council members regarding the emails and letters from Dan Parsons, Historic Planner, County Engineering Department.)

Mr. Fuqua stated that some of the opponents and their attorney agree that the Future Land Use Element and the Future Land Use Map in the Comprehensive Plan are an important part of the plan, and the plan itself

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states (Page 3-7) that the importance of the Future Land Use Plan indicates that the Plan is the most influential part of the Comprehensive Plan; that Delaware Law provides that a proposed rezoning or development must be in conformance with the Land Use Plan; that the application fully conforms with the Comprehensive Plan – the most important reason being that the site is located in a designated Growth Zone and is in the growth areas that the County has determined to direct growth. Mr. Fuqua referenced the Comprehensive Land Use Plan and the definitions of Environmentally Sensitive District, Growth Areas, Rural Areas, Low Density Areas; he stated that Long Neck Road is not a low density area and it is not possible under the County's Plan to be in both an Environmentally Sensitive Developing Area and a Low Density Area. Mr. Fuqua stated that this application site is in a Growth Area, an Environmentally Sensitive Developing Area and that the site of the application has no relationship to the Low Density Rural Area.

At 3:50 p.m., Mr. Vincent declared a short recess.

The meeting reconvened at 3:57 p.m.

There were no additional public comments in support of the application.

Public comments were heard in opposition to the application

The Council found that Mary Schrider-Fox, Attorney with Steen Waehler & Schrider-Fox, LLC was present on behalf of the Massey's Landing Tenants Association and others in the area. She stated that the Association consists of homeowners in Massey's Landing Park comprised of approximately 100 homes located on a portion of the Faucett family property where the homes are owned by the individual homeowners but the land is leased; that her clients oppose the applications; that the Applicants are requesting a down-zoning for the purpose of a campground; that down-zonings are normally for less intense uses; however, that is not the case with this application; that the stated purpose for the downzoning is not for a permitted use in the AR-1 zone but rather for a resort RV park that requires a Conditional Use approval; that the application is for 322 RV sites and 10 tent sites; that with the approval of the application, 45 to 55 employees will be coming and going to the site; that they have applied because a campground is not a listed permitted use in a MR Medium Density Residential District; that a campground is a more intense use than a single-family community and this must be considered by the Council; that the use will not comply with the Comprehensive Land Use Plan since the site is located in a Low Density Area and the Environmentally Sensitive Developing Area; that even though the site is located in a growth area, what is the appropriate kind of growth; that the use does not support agriculture; that the use is not a residential project, it is a commercial enterprise in the middle of a residential area; that the density of this project also falls out of step with the growth guidelines in the Comprehensive Plan – approximately 6.5 campsites per acre when considering the entire size of the site; that

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considering the campground portion of the site (17.63 acres), the density would be 18.8 campsites per acre; that park amenities are only planned for park guests, not the general public and the surrounding neighborhood; that the goods and services are not for the convenience of local residents; that the use does not promote safety, health, or the general welfare of the community; that the wellbeing of residents cannot take a back seat to tourism; that letters in opposition to the applications reference safety concerns, traffic congestion, backups, and shoulders, prosperity and home values, evacuation issues, flooding problems, vehicles from the State boat ramp parking along Long Neck Road, among other issues; that residents have concerns that they will be evicted from their homes, which they own; that emergency response limitations is a major concern; that the use is not beneficial to area residents; that lessening of congestion needs to be addressed; that the Traffic Impact Study is eight years old and DelDOT has not considered that things have changed since 2005; that the Traffic Impact Study referenced a Residential Planned Community, not a campground; that roads are an issue since RVs are larger than standard vehicles; that traffic problems already exist on Long Neck Road in the summer months; that the site plan does not comply with the requirements of the Code; that the tent sites do not comply with the dimensional requirements; that the Code states that each campsite must be at least 2,000 square feet in size and have a width of at least 40 feet; that the site locations do not comply with the 400-foot separation from a dwelling requirement; that in regards to the definition of a dwelling excluding manufactured homes, campgrounds should be required to keep an adequate distance from places where people live and although manufactured homes are excluded from the definition, the Council should not ignore the fact that some campsites will be approximately 50 feet away from residents; that just because the definition excludes manufactured homes does not make said homes any less important or any less residential in nature or any less of a dwelling; that the Code does not provide any language for recreational amenities and many are proposed within this project; that normally if a use is silent and not specifically referenced, it is prohibited; that the use does not fit in this residential area of Long Neck Road; and that they request that the applications be denied.

**Mr. Phillips asked for Mrs. Shrider-Fox's written comments.**

**Mr. Moore asked that Mr. Fuqua submit a memo regarding statutory authority. He suggested that, at the end of the Public Hearing, the record be left open for memos from both attorneys (Shrider-Fox and Fuqua).**

**The Council found that Jeff Marks, Vice President of the Massey's Landing Homeowners Association and a resident of Massey's Landing and Newark, was present in opposition to the applications and he narrated his PowerPoint presentation. Mr. Marks stated that the residents are not in opposition to the development of the property; that they are supportive of the development of the property in accordance with the current zoning and as recommended by the Comprehensive Plan; that they want to protect the**



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safety, tax base and quality of life of the residents of Long Neck; that they wish to recognize the appropriate buffers as required by Chapter 115, Zoning Article XXIV, Conditional Uses Section H. Mr. Marks stated that one of the fastest growing areas of the County is Long Neck with a growth rate of 55%, and with an average age of 62 years; that the proposed project is located in an Investment Area Level 3 where environmental constraints exist and where infrastructure is not a top priority according to the State Strategies for Policies and Spending; that the proposed RV park will not generate Realty Transfer Tax and will drain the County for infrastructure and resources; that portions of the project on the north side and on the south side of Long Neck Road are within 400 feet of a dwelling in Pot Nets Dockside; that it does not make any sense to establish a campground in a flood zone or in an area that is prone to flooding and is often cut off by coastal storms; that photographs in the PowerPoint depict flooding over Long Neck Road; that the shoulders along Long Neck Road are less than eight (8) feet in width and too narrow for parking, but vehicles from the State boat ramp park on the shoulders; that the residents are concerned about evacuation in emergencies; that the use of Park Models is a concern since they are not easily moved, except by experts; that the Power Point depicts damages to Park Models during Hurricane Sandy; that Long Neck Road and some of the communities are impacted by flood waters during hurricane and northeastern storms; that a 2005 Traffic Impact Study does not provide current data on counts, etc. and a new Traffic Impact Study should be required; and that this proposal should be denied since: the proposal is to place an RV Park on a road that is a flood plain when there is only one way in and one way out; that there are currently over 4,500 RV sites available for RVs within the area; that downzoning this property from MR to AR-1 is a direct conflict with the Future Land Use Plan Map of the Comprehensive Plan; that revenue will be impacted due to the loss of Realty Transfer and Property Taxes; that the Applicants have submitted an eight (8) year old Traffic Impact Study; that they are proposing a plan without the appropriate buffers required; that the project will impact the State boat ramp and facilities; and that the project may put the current residents and emergency response teams of Long Neck Road at risk in the event of an evacuation. A paper copy of the PowerPoint Presentation was submitted and made a part of the record.

Steve Raign, a Traffic Engineer from Kercher Engineering, was retained by the Massey's Landing Homeowners Association and he spoke about the traffic issues and DelDOT's Traffic Impact Study (TIS). Mr. Raign stated that the firm was retained to look at the TIS, DelDOT's Letter of January 28, 2013, and the file; that DelDOT's letter states that there has not been significant changes in the area and therefore, a TIS is not required; that he looked at the 2004 traffic summary counts; that he has attached as part of his letter and the record, the 2004 traffic summary for Long Neck Road which shows that the counts for 2004 were 7,786 Average Annual Daily Traffics on that road; that in the 2012 traffic summary (the latest summary), it shows that the AADT is 11,439 vehicles, an increase of 47 percent compared to 2004; that traffic studies are done at peak hours and

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are representative of the current AADT; that this is a significant increase; that in the minutes of the Planning and Zoning Commission dated May 23, 2013, the representatives of the Applicant stated “that sites are intended to be for transient use; that based on DelDOT’s criteria, single family units generate approximately 10 trips per day and RV sites have a 20 percent reduction compared to a single family unit” – therefore, based on the previously approved site plan with a mix of 120 single family dwelling unit types, the daily trip generation would be 1,200 trips per day and the proposed RV/Campsite plan showing 322 sites will have a daily trip generation rate of 8 trips per site or 2,576 trips per day which is greater than a 100 percent increase in daily trips”; that there is a significant change in traffic and traffic volumes; that the 2005 TIS analyzes the intersections within the study area based on a full build out year of 2009 for the proposed single-family plan; that the build out year for the proposed RV Park Plan is 2014 or five years in the future compared to the cases evaluated in the 2005 study; that the 2005 TIS included eleven committed developments and to date, it is not known what has and has not been developed; that a new study would look at 2014 numbers and the old study only goes to 2009; that as per the 2005 TIS and based on the Traffic Distribution Diagram, 85 percent of the site-generated traffic will pass through the Route 24/Long Neck Road intersection and there are known issues at that intersection; that the traffic generation from the proposed RV Park has very different characteristics than the traffic generation from the approved single family site plan that was previously approved and studied; that the RV Park vehicles will be much larger and, in many cases, these vehicles will be trailering either a camper or a car; that with an increased number of larger vehicles passing through the intersections in the study area, it is almost certain that these vehicles will have an impact operationally on each intersection; that the RV traffic is much larger, some of the turning radius’ at intersections are tight due to right of way restrictions and sometimes no shoulders; that queuing/storage of vehicles is an issue to consider during signal cycles which can result in a capacity problem; that, during the summer months, many times the parking lot at Massey’s Landing is filled to capacity and trailers park where the RV Park will have its entrances; and that these operational, capacity, and safety aspects need to be taken into consideration when designing site access and Long Neck Road improvements; that a new Traffic Impact Study should be done based on the increased traffic generation from the proposed RV Park plans and the belief that the conditions in the study area have changed substantively since the 2005 study was completed.

Mr. Lank noted that he provided the Council members with a copy of Mr. Raign’s correspondence, dated June 18, 2013.

The Council found that William Higgins, President of the Homeowners Association of Pot Nets Coveside, Dockside, and Seaside communities, was present in opposition and speaking on behalf of 500 residents within the referenced parks. He stated that he is not opposed to RV parks, but this project has many issues which affect the life, safety, and welfare of the

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residents and businesses on Long Neck road and also the 322 guests and families of the proposed project; that Long Neck Road is 5 miles long, a dead end which ends at Massey's Landing and adjacent to the proposed project; that whatever goes down to the dead end has to turn around and return at some point in time the same way; that on a summer holiday, there are over 10,000 people on Long Neck Road; that on a summer holiday, over 100,000 cars pass through the intersection; that there is crime in the area; that the approved townhomes project for the site would blend in with the other townhomes on Long Neck Road; that there is a demand for more townhomes; that there are serious life safety issues should this be project be approved, i.e. a nearby school (children and buses), traffic accidents, road closures due to accidents, dangers for those in canoes, boaters, etc., and flooding and emergency evacuations; that the Applicant proposes to rent golf carts and he questions if there will be an age requirement; that there are unsafe and unprotected lagoons where campers will be tempted to swim in and there are swift currents in the area water bodies; and that he questions how many people will evacuate when they are asked to instead of at the last minute and he asked the Council to picture 10,000 residents on Long Neck Road leaving at the same time; that the formula for RVs is 3 persons per unit plus employees equals 1,000 people plus their vehicles, RVs, and boats; that of the 50 acres, only approximately 25 acres can be used because it is wetlands, so there would be 1,000 people on 25 acres. Mr. Higgins referenced the news article in the Cape Gazette on June 7th that states that there are now 4,200 RV sites in Sussex County and at least 15 RV campgrounds in Sussex County and 5 of these are now on Long Neck Road; and that he has met with the camp managers on Long Neck Road who stated that the sites are only half filled during the summer. Mr. Higgins submitted pictures that depict flooding of the Pot Nets Dockside entrance during Hurricane Sandy, flooding of the State boat ramp parking lot, flooding over Long Neck Road between Pot Nets Dockside and Pot Nets Coveside, and flooding at a lagoon in Seaside next to Massey's Landing.

Betty Grenwalt, President of Pot Nets Lakeside Community Homeowners Group; Mary Hecker, President of Massey's Landing Homeowners Association; Lewis Newman, Denny Coffman, Pat Rice, Vinny Rice, Emil Shepherd, and Jim Gervan were present in opposition to the applications. They stated that school buses travel on Long Neck Road and will be operating 7 months during which the campground will be open; that Long Neck Road is one lane in and one lane out; that there is nothing for the youth to do on Long Neck Road; that children need something to do; that golf carts are not the answer; that the site should be used for manufactured homes and not RVs/campsites; that Massey's Landing has no pool, no paved roads, no street lights, and no signs; that emergency vehicles are up and down the road all the time during the summer months; that there are too many inconsistencies with the proposed plan; that the project is a bad idea; that they need stability on Long Neck Road; that RVs bring an extra car with them; that campers will leave behind their boat trailers, etc.; that electric rates will go up if the campers do not use Delaware Electric Coop's Beat the Peak notification system; that there is concern about one phase/one

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time construction; that archaeological finds are a concern; that no outside storage is to be allowed on the campground and there will be 38 park models – so where is the storage going to be (park models will remain on the site but moved to higher ground when necessary); that in regards to the 400 foot dwelling rule – in the front of Pot Nets Dockside, there is a legal “dwelling” owned by Mr. Tunnell and that someone should measure 400 feet from this dwelling because it will certainly go in the area of the proposed RV park; that a main concern is emergency medical rescue times will be affected by additional traffic; that the proposed project will decrease home values; that home invasions will increase; that the turning lanes and shoulders are insufficient; that golf carts on the roadway will create a safety hazard especially in the evenings; that flooding is a concern; that evacuation is a concern; that people come to the area to fish; that there is a children’s fishing program; that if this park is allowed, it will take away the small amount of parking that is now available; that the proposal will negatively impact the locals; that when you consider the word dwelling, if a person lives in a manufactured home, is that not a dwelling, does that mean the person is homeless, does that mean the person can get assistance and does not have to pay property taxes; that there will be no security; that they question the economic impact of seasonal money (campground) vs. year-round money (townhomes); that they question if Long Neck will attract campers; that it is only a matter of time before the campground takes over the park; that the campground will affect people’s lives and that they could lose their homes; that the residents have invested their savings and some have nowhere else to go; that the PLUS review states that a master land use conceptual site plan encompassing the entire Faucett family property was submitted for PLUS agency review and comment and that the initial development phase of the Faucett land will not include the 6 acre home place property (known as Massey’s Landing Park) and there is no schedule to develop either one of these tracts of land at this time and that there is concern about the words “phase” and “at this time”; that the application site has anthropological and archaeological importance of the land; that the heritage of the land should be considered (including Indian heritage); and that the low ground warrants an archaeological study also.

During Ms. Hecker’s comments, she questioned the tax map and parcel numbers mentioned and whether or not Ida Faucett’s property is being included or used as a part of the campground. Ms. Hecker also questioned if the campers would be allowed to encroach upon Massey’s Landing manufactured home park for the use of amenities and be able to drive in the park, etc. (It was noted that no marina is being proposed in this application.) Mr. Lank responded that Parcel 31.00 is the southern side of Long Neck Road, Parcel 31.02 is the majority of the northern side (approximately 53 acres), and Parcel 31.04 is where the home site is located. Mr. Lank stated that a part of Parcel 31.04 is included in the project site; that there is a realignment of the property line for that site; and that the application does not include the home site. Mr. Fuqua referred to the plan that shows the perimeter of the park and Mr. Davidson stated that there is a piece of Mrs. Faucett’s property in the campground and there is also an

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easement on her property for the buffer; that there are 3 separate tax parcels – one will be involved in its entirety and two other ones in part.

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

Mrs. Deaver stated that she would like a new Traffic Impact Study. Mr. Moore stated that DelDOT has jurisdiction on Traffic Impact Studies and DelDOT's comments are asked for during the early stages of an application. For these applications, DelDOT has not required a TIS. Mr. Fuqua stated that the Council should only ask for clarification on traffic issues rather than order a new TIS as the Council does not have the authority to do that.

**M 298 13  
Defer  
Action on  
C/Z  
No. 1729**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1729 filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc.

Motion Adopted: 5 Yeas.

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

**M 299 13  
Defer  
Action on  
C/U  
No. 1963**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1963 filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc.

Motion Adopted: 5 Yeas.

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

**Record  
Open on  
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In regard to both Motions to defer action, it was noted that the record would remain open for: comments from Michael Izzo, County Engineer, regarding the archaeological issue; memos from legal counsel for the Applicant and the Opposition (on questions raised concerning the AR-1 zoning and the Conditional Use), and for a response from DelDOT for clarification of traffic issues.

**M 300 13  
Adjourn**

At 6:05 p.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn.

Respectfully submitted,

Robin A. Griffith  
Clerk of the Council