



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 16, 2011

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 16, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
David Baker	County Administrator
Todd F. Lawson	County Administrator Appointee
Susan M. Webb	Finance Director
Everett Moore	County Attorney

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

Call to Order

Mr. Vincent called the meeting to order.

Recom- mendation to Reschedule Public Hearing & Amend Agenda

Mr. Baker recommended that the Public Hearing on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE III, § 62-7 D RELATING TO BOARD OF ADJUSTMENT FEES" be rescheduled. He explained that, although the newspaper advertisements were correct, an incorrect version of the Proposed Ordinance was posted on the County's website. The Proposed Ordinance will be advertised for Public Hearing in September.

M 456 11 Amend and Approve Agenda

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to amend the Agenda by deleting the 11:00 a.m. Public Hearing – "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE III, § 62-7 D RELATING TO BOARD OF ADJUSTMENT FEES"; by deleting Old Business – "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE I, IV, V, VI, VIII, IX, XI, XIA, XII, XIII, XIV, XV, XXV AND ARTICLE XXVI RELATING TO WIND TURBINE AND

WINDMILLS IN SUSSEX COUNTY”; and by deleting “Job Applicants’ Qualifications”, “Personnel” “and Land Acquisition” 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 August 9, 2011 were approved by consent.

**Corre- Mr. Moore read the following correspondence:
spondence**

CITY OF REHOBOTH BEACH, REHOBOTH BEACH, DELAWARE.

RE: Letter in appreciation of grant for the bandstand performance of the Delaware State University Marching Band.

SUSSEX COUNTY ASSOCIATION OF REALTORS®, GEORGETOWN, DELAWARE.

RE: Recognition of the Sussex County Community Development Office for their dedication and commitment to promoting home ownership and addressing housing needs throughout the County.

THE ODYSSEY OF THE MIND TEAM, INDIAN RIVER SCHOOL DISTRICT.

RE: Letter in appreciation of contribution to the cost of their trip to the World Finals Competition.

**Introduce Mr. Baker introduced Todd F. Lawson, the incoming County
Todd Administrator, who joined Sussex County on Wednesday, August 10, 2011.
Lawson**

**P&Z Vince Robertson, Assistant County Attorney, and Lawrence Lank, Director
Commission of Planning and Zoning, reported on recommended changes to the Sussex
Recommen- County Subdivision and Zoning Codes by the Planning and Zoning
dation/ Commission. Mr. Robertson reported that the Commission held a
Corrections workshop on June 15, 2011 as the Commission was previously tasked with
to the reviewing the Code and identifying areas that may need to be corrected or
Subdivision updated. Mr. Robertson stated that, as a result of the workshop, the
and Commission identified areas that should be reviewed for the possibility of
Zoning drafting ordinances to adjust, correct or update particular areas of the
Codes Zoning Code (Chapter 115) and Subdivision Code (Chapter 99).**

Mr. Robertson reviewed some of the identified areas:

- **Section 99-9A – This needs to be corrected to reflect the current timing of hearings and decisions. It now refers to hearings and decisions during the “second regular meeting of the Commission”, which is no longer applicable since the Commission meets regularly all the time.**

**P&Z
Commission
Recommendation/
Corrections
to the
Subdivision
and
Zoning
Codes
(continued)**

- **Street cross-sections should be eliminated from the Code. All subdivisions must now comply with County Engineering's street design requirements, and the cross-sections depicted in the Code are very outdated.**
- **There is currently a definition of "substantial construction" in Section 99-40 of the Subdivision Code but not one in the Zoning Code for Conditional Uses. It has been legal staff's uniform opinion that, absent a definition, the Courts would look to the one contained in the Subdivision Code for applicability to Conditional Uses. Nevertheless, one should specifically be established for Conditional Uses.**
- **The Commission expressed the desire to review the definition of "home occupation" contained in Section 115-4 to consider updating what falls under that category of use to avoid the potential unnecessary burdens (such as filing fees and hearings, etc.) imposed upon someone operating a small "in-home" business.**
- **The term "golf course" should be revised and updated. It currently only refers to golf activities, pro-shops, locker rooms, snack bars, etc. It does not recognize that just about every golf course has full dining facilities and many have large rooms used for weddings and other events.**
- **Review and revise square foot limitations and parking requirements for "big box" structures.**
- **A Conditional Use for chicken houses on less than 5 acres should be deleted from the Zoning Code. This is an area issue, which is more appropriate for the Board of Adjustment.**
- **Section 115-194.1E(3) should be corrected to include the CR-1 Zoning District within the listing of applicable setbacks in the Highway Corridor Overlay Zone. When the CR-1 District was created, it was not added to this list, which outlines the setbacks for every other zoning district.**
- **Section 115-194.3B(3) deals with the submission of information as part of the Environmentally Sensitive Development District Overlay Zone. There is currently a requirement that "the Planning and Zoning Commission shall make a determination as to whether adequate information has been presented for the project to proceed." The question has been raised by both applicants and opposition whether this establishes a preliminary step prior to a hearing or is simply part of the public hearing process. In other words, is the Commission supposed to establish that adequate information has been presented for a later hearing to be scheduled. The Commission has interpreted this Code Section to mean that the determination must be made as part of the public hearing process and that the development cannot be approved unless a determination is made that adequate information has been presented. To clarify this, the word "proceed" should be replaced with the words "be approved" in the sentence quoted above.**

**P&Z
Commission
Recommendation/
Corrections
to the
Subdivision
and
Zoning
Codes
(continued)**

- Staff and the Commission also discussed the need to clarify areas of the Sign Ordinance to address size of signs and whether temporary signs such as “feather flags” and the like need to be regulated more clearly.
- In regards to the Cluster Development Ordinance for AR subdivisions, there was the original cluster ordinance and there were two amendments – because of the way they were adopted, the sub-sections do not match up correctly. The Commission does not wish to change any of the terms of the Cluster Subdivision Ordinance, only to make it clear.
- Establish guidelines for sidewalks in subdivisions.
- Some sections located in the Subdivision Code should be located in the Zoning Code and vice versa.
- There are some areas that need to be addressed to clarify the County’s bonding requirements.

Mr. Robertson and Mr. Lank stated that the Commission recommends that the housekeeping issues be addressed first by a draft ordinance for the Council’s consideration and possible introduction.

Mr. Lank advised that, also on June 15th, he and staff members met with the Board of Adjustment at which time the Board raised questions regarding dog kennels and the number of dogs in a commercial kennel, feather flags, yard sales, billboards, off-premise vs. on-premise signs and monopole vs. wooden poles, cell towers, and the viewing of exhibits during Board of Adjustment hearings.

It was the consensus of the Council that Mr. Robertson and Mr. Lank proceed, initially, with the drafting of an ordinance to handle housekeeping items.

**Adminis-
trator’s
Report**

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

1. Sussex County Library Advisory Board Meeting

As per the attached agenda, the Sussex County Library Advisory Board will be meeting Wednesday, August 17, at the West Complex building from 10:00 a.m. to 12:00 noon.

2. Foreclosure Prevention Seminar

The Sussex County Community Development and Housing Division, in collaboration with the Office of the State Bank Commissioner and Attorney General, will be holding a foreclosure prevention seminar on August 16 at Pizza King in Seaford from 3:00 p.m. to 7:00 p.m. This is a free seminar for homeowners that are having difficulty with mortgage payments. In addition to information about new Federal and State programs and the foreclosure timeline in Delaware, representatives from HUD-approved counseling agencies, the Bank

Commissioner's office, the Attorney General's office, and the County's housing department will be available for questions.

3. Delaware State Police Report for June 2011

The Delaware State Police handled 4,332 complaints during the month of June in Sussex County. There were 1,413 criminal arrests and 4,440 traffic arrests during the month. Attached is information supplied by the Delaware State Police.

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

2011

**Actuary
Reports**

Mrs. Webb presented the 2011 Actuary Reports for Pension, Post-Retirement and Post-Employment Benefits. She noted that two plans receive an actuarial determination – the Pension Plan and the OPEB (Other Post Employment Benefits) Plan; these determinations show the condition of the plans and provide the annual required contribution recommendation to fund the plans. In addition, there are many disclosures in the actuary reports that are required in the County's audited financial statements. Mrs. Webb highlighted the information provided in the Reports.

The number of active participants is 485 people.

The County's Annual Required Contribution (ARC) is an increase over last year from 11.0% (\$2,169,173) to 12.2% (\$2,342,663). This increase of approximately \$175,000 can be attributed to the following:

- There was a loss on Actuarial Value of Assets (AVA). The return on the AVA was 4.9%, lower than our assumed rate of 8.0%, which is standard for the industry. The return on the Market Value of Assets was 11.7%. The loss on the AVA is due to the recognition of the large loss from 2008 which is recognized over 5 years. This loss contributed to an increase in the ARC of approximately \$90,000.
- There was a loss due to benefits accrued of \$70,000.
- There was also a loss on demographics. The plan experienced more retirements and disabilities than expected. This resulted in an increase in the ARC of about \$15,000.

Mrs. Webb reported that Pension Plan assets totaled \$49.9 million as of December 31, 2010 and benefit payments to pensioners were \$2.3 million. The funded ratio as of January 1, 2011 was 88.7%.

Mrs. Webb reported on the schedule of employer contributions; from the Year 2000 to the Year 2011, the Actuary required a total contribution of \$16.9 million and the County actually contributed \$32.1 million – a difference of \$15 million.

Mrs. Webb reported on the summary of results on the OPEB Plan and stated that as of January 1, 2011, the asset value was \$23.9 million. She

noted that, for the OPEB Plan, it is assumed that the medical and drug claims and retiree premiums will increase at an annual trend rate of 9.5 percent. At this time, the OPEB is 72 percent funded; this has been achieved in the past five years as the Plan began in 2005.

Mr. Cole suggested that the County should research and consider an alternative retirement plan for new hires. There was no opposition to this suggestion and staff was directed to begin the process of researching options.

**Johnson's
Corner
SSD/
Amended
MOU**

Mrs. Webb reported that, on September 25, 2007, the County entered into a Memorandum of Understanding (MOU) with Twin Cedars, LLC and Bay Twenty, LLC for the benefit of the County and, in particular, the Johnson's Corner sanitary sewer project. The parties were to share in a contribution towards the construction of various components of the Johnson's Corner Sanitary Sewer District in order to reduce the portion of the overall cost of construction. Mrs. Webb noted that the contributions were received.

Mrs. Webb reported that the Agreement also stipulated an Impact Fee Fund "which may be created if desired" for the benefit of any low income residents in the District to help subsidize sewer connection fees, estimated at \$3,600.00. Mrs. Webb noted that the County was able to fund the connection fees through the financing of the project.

Mrs. Webb advised that the Finance Department and Engineering Department are recommending that the original MOU be amended to allow the reallocation of developer contributions to fund connection fees and to make the Impact Fee Fund unnecessary.

Mrs. Webb noted that this proposal is strictly for the reallocation of costs and will not change the project funding or the rates.

**M 457 11
Approve
Amendment
to MOU/
Twin
Cedars
and
Bay
Twenty**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council amends the Memorandum of Understanding, dated September 25, 2007, with Twin Cedars, LLC and Bay Twenty, LLC, and to be replaced by the First Amendment to the Memorandum of Understanding, as presented on this date, August 16, 2011.

Motion Adopted: 5 Yeas.

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

**Draft
Ordinance/
Issuance
of Bonds
to Refund
Prior**

Mrs. Webb and Susan Ostazeski of Public Advisory Consultants presented a Draft Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$91,000,000 OF GENERAL OBLIGATION OR WASTEWATER REVENUE BONDS OF SUSSEX COUNTY FOR THE PURPOSE OF REFUNDING PRIOR DEBT OF THE COUNTY WHICH WILL RESULT IN DEBT SERVICE SAVINGS AND AUTHORIZING

Debt	ALL NECESSARY ACTION IN CONNECTION THEREWITH". Mrs. Webb and Ms. Ostazeski discussed the issuance of refunding bonds and the process for completing a public bonds financing. It was noted that, from nine loan issues and one bond issue, approximately \$4.6 million in net present value (NPV) savings and \$5.4 million in gross savings can be realized through the issuance of \$53,480,000 in tax-exempt general obligation current refunding bonds to refinance \$58,416,333 in outstanding debt.
(continued)	Mr. Baker noted that this proposal would result in a substantial savings to the County.
Introduction of Proposed Ordinance	Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$91,000,000 OF GENERAL OBLIGATION OR WASTEWATER REVENUE BONDS OF SUSSEX COUNTY FOR THE PURPOSE OF REFUNDING PRIOR DEBT OF THE COUNTY WHICH WILL RESULT IN DEBT SERVICE SAVINGS AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". The Proposed Ordinance will be advertised for Public Hearing.
EOC/ Airport Solar Energy Installation Project/ Substantial Completion	Steve Hudson, Director of Technical Engineering, requested that Substantial Completion be granted for the Sussex County EOC/Airport Solar Energy Installation Project (Project 10-04). Mr. Hudson reported that this was a 120 day contract initially, with a two-week time extension; the contractor for the project is Flexera, Inc. A Change Order was previously approved to increase the system size at a cost of \$3,720.00; the new contract total is \$549,520.00. Mr. Hudson reported that the system has been online since July 29th and the recording system has been in operation since August 10th. Mr. Hudson reviewed production from the field and it was noted that on various days, production was above projections.
M 458 11 Grant Substantial Completion/ EOC/ Airport Solar Energy Installation Project	A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that Substantial Completion be granted and any held retainage be released, for Sussex County Project 10-04, Sussex County EOC/Airport Solar Energy Installation Project, effective August 10, 2011. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
Old Business/ C/U No. 1886 and 1888	Under Old Business, the Council considered Conditional Use No. 1886 filed on behalf of Clarence A. Edgens, III and Conditional Use No. 1888 filed on behalf of Michael Henderson. Lawrence Lank, Director of Planning and Zoning, noted that both

application sites are located in the same minor subdivision (a 5 lot subdivision on a public road).

The Planning and Zoning Commission held a Public Hearing on these applications on April 14, 2011; on April 28, 2011, the Commission recommended that the applications be denied based on the restrictive covenants that prohibit commercial uses.

**Old
Business/
C/U
No. 1886
and 1888
(continued)**

The County Council held a Public Hearing on these applications on May 3, 2011 at which time they deferred action and left the record open for a period of 90 days for receipt of written comments, either pro or con, on the restrictive covenants.

On July 19, 2011, the County Council granted a 60 day time extension on the 90 day period to allow the Applicants to work with the other lot owners within the minor subdivision to adjust the restrictive covenants.

On this date, Mr. Lank reported that amended restrictive covenants have been recorded referencing the elimination of the restrictive covenant which prohibits commercial activities on the properties.

**M 459 11
Defer
Action on
C/U
No. 1886
and 1888**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1886 filed on behalf of Clarence A. Edgens, III and Conditional Use No. 1888 filed on behalf of Michael Henderson and to direct staff to prepare recommended conditions and reasons for approval of the applications.

Motion Adopted: 5 Yeas.

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

**Grant
Requests**

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

**M 460 11
Community
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give \$750.00 from Mr. Wilson's Community Grant Account to Everlasting Hope Ministries for assistance program expenses.

Motion Adopted: 5 Yeas.

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

**M 461 11
Community
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Cole's Community Grant Account to the Rehoboth Cooperative Preschool for operating expenses.

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinances Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MINI-STORAGE LOCKER UNITS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.996 ACRES, MORE OR LESS” (Conditional Use No. 1911) filed on behalf of Forrest Webster.

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 16,025 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1912) filed on behalf of William A. Bell and Kathleen M. Sperl-Bell.

The Proposed Ordinances will be advertised for Public Hearing.

Additional Business Under Additional Business, John Walsh commented on (1) the Draft Ordinance relating to Board of Adjustment fees, (2) a requirement that the Board of Adjustment members should attend educational courses, (3) staff should be able to review applications for variances and verify that they meet County and State law prior to the application being accepted; and (4) the County still needs a Land Use Planner.

Under Additional Business, Bobbie Hemmerich referenced the email regarding Sea Air Village and prior requests for information from the County Attorney and not the Planning and Zoning Director.

**M 462 11
Go Into
Executive
Session**

At 11:21 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to recess the Regular Session and to go into Executive Session for the purpose of discussing pending/potential litigation.

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 11:25 a.m., an Executive Session of the Sussex County Council was held in the 2nd Floor Conference Room for the purpose of discussing issues relating to pending/potential litigation. The Executive Session concluded at 11:40 a.m.

**M 463 11
Reconvene
Regular
Session**

At 11:43 a.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

**M 463 11
(continued)**

Motion Adopted: 5 Yeas.

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

Action

**M 464 11
Adjourn**

Mr. Moore announced that action was not required on any Executive Session items.

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to adjourn at 11:45 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**