

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 19, 2014**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 19, 2014, 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 402 14  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by striking “pending/potential litigation” under Executive Session and to combine the two Executive Sessions into one Executive Session; and to approve the Agenda, as posted.**

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

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

**(The minutes of August 5, 2014 were approved later in the meeting.)**

**M 403 14  
Approve  
Consent  
Agenda**

**A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to approve the following items contained in the Consent Agenda:**

**Wastewater Agreement No. 856-4  
Sussex County Project No. 81-04  
Millville By The Sea – Summerwind Village, Phase 1  
Millville Expansion of the Bethany Beach Sanitary Sewer District**

**Wastewater Agreement No. 990  
Sussex County Project No. 81-04  
Ocean View Beach Club  
Bethany Beach Sanitary Sewer District**

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

**M 403 14  
(continued)**

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

**Library  
Advisory  
Board**

**Mr. Lawson informed Council of a vacancy on the Library Advisory Board (District 2).**

**M 404 14  
Approve  
Library  
Advisory  
Board  
Appoint-  
ment**

**A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, that the Sussex County Council approves the appointment of Harriet Elliott to the Sussex County Library Advisory Board, effective immediately, until such time as her term expires on June 30, 2017.**

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

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

**Adminis-  
trator's  
Report**

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

**1. County Council Meeting Schedule**

**The Sussex County Council will not meet on August 26<sup>th</sup> and September 2<sup>nd</sup> for the summer holiday and in honor of the Labor Day holiday, respectively.**

**County offices will be closed on Monday, September 1, for the Labor Day holiday.**

**Wetlands  
Advisory  
Committee  
Update**

**Hal Godwin, Deputy County Administrator, presented an update on the Wetlands Advisory Committee. He reported that the Committee met on August 13th and reviewed three presentations:**

- The Committee decided not to include the recommendations from the Center for the Inland Bays, mostly because it proposed a new Executive Order that was deemed inappropriate under the Committee's mission. Senate Bill No. 78, the Committee's Charter, provides the Committee with direction to advise the Secretary of the Department of Natural Resources and Environmental Control (DNREC) in his report to the General Assembly only, NOT the Governor directly as this Executive Order would suggest.**
- The Committee decided not to include the new recommendations from DNREC (these recommendations were previously discussed by the Committee and turned down).**
- The Committee unanimously supported the recommendation from the Farm Bureau regarding the changes to State Code, Title 30, Chapter 5426 that would help ensure funding for the Ag Land Preservation Fund (previously explained to the Council by Marty Ross on August 5th).**

**Wetlands  
Advisory  
Committee  
Update  
(continued)**

**Mr. Godwin commented that some questions have been raised as to how the final report will be assembled. Senator Robert Venables has sent a letter out expressing his concern that the draft report will be a compilation of the recommendations that were developed by the Committee and not by the Governor or DNREC. Mr. Godwin noted that the reason for his concern is due to Senate Bill 78, the legislation that formed the Committee; Line 69 of Senate Bill 78 states “DNREC shall compile the results of the Committee’s recommendations, develop a draft report, and reconvene the Committee to review the draft report and solicit feedback before finalizing the report of recommendations”. Mr. Godwin also noted that Committee members are concerned that the report will be drafted as a compilation of recommendations.**

**Mr. Godwin reported that a draft of the Secretary’s report to the Delaware legislature should be available by September 15th and that he will share it with the Council for direction. He noted that the Committee will review and edit the final report by the end of September and that the Committee hopes that the report contains only the Committee’s recommendations.**

**Pump  
Station 207  
& Force  
Main  
Project/  
Contract  
Amend-  
ment**

**Juel Gibbons, Project Engineer, presented Contract 12-23, Construction Administration and Project Inspection Services, for Pump Station 207 and Force Main. She reported that it is proposed that the Contract be administered by George, Miles & Buhr (GMB) over the project’s 270 day duration from September 2014 to May 2015. The scope of services that GMB will provide include general construction administration, conduct monthly progress meetings, specialized inspection services, review of shop drawings, etc. These services will be provided at a cost not to exceed \$311,598.00.**

**M 405 14  
Execute  
Contract  
Amend-  
ment/  
Pump  
Station  
207 &  
Force  
Main  
Project**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorizes its President to execute Contract Amendment No. 2 with George, Miles and Buhr, LLC of Salisbury, Maryland, to provide Construction Administration and Project Inspection Services for Project 12-23, Pump Station 207 and Force Main Design Services, at a cost not to exceed \$311,598.00, contingent upon the approval of the Assistant County Attorney.**

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

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

**Pump  
Station 22  
Modifi-  
cations  
Bid**

**Juel Gibbons, Project Engineer, presented the bid results for Pump Station 22 Modifications Project. Three bids were received and Kuhn Construction of Hockessin, Delaware was the low bidder with a Base Bid amount of \$427,340.00. The Engineer’s estimate for the project was \$563,456.00. Ms. Gibbons reported that it is the recommendation of the Engineering**

(continued) Department to award the bid to Kuhn Construction.

**M 406 14**  
**Award**  
**Bid/**  
**Pump**  
**Station 22**  
**Modifi-**  
**cations**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Contract 14-07, Pump Station 22 Modifications, be awarded to Kuhn Construction of Hockessin, Delaware, at a bid amount of \$427,340.00.

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

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

**Mr. Cole joined the meeting.**

**Discussion/**  
**Pump**  
**Station 207**  
**& Force**  
**Main**  
**Project/**  
**Contract**  
**Amend-**  
**ment**

In regard to the first presentation by Juel Gibbons on the Pump Station 207 and Force Main Contract, Mr. Phillips raised a question regarding Value Engineering; noting that the contract is a \$4 million project.

Mr. Izzo commented that the Engineering Department has been working with Mrs. Jennings to institute a new policy in regard to Value Engineering that will pertain to all new projects over a certain dollar amount. Mr. Izzo noted that the time for Value Engineering is during the design process and not during the construction process; that the project is for a standard pump station design and force main alignment; that this project is through a congested area (Route One) and they have a tight window for getting into the area; that to stop now to perform Value Engineering would possibly delay the project until Summer 2015; that they have awarded the bid based on the Council's action; that the contract bonds are being compiled; and that they anticipate a start date of September 15, 2014.

**M 407 14**  
**Value**  
**Engineering/**  
**Cursory**  
**Review**  
**Request for**  
**Pump**  
**Station 207**  
**& Force**  
**Main**  
**Project**  
**(DENIED)**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to direct the Engineering Department to contract with an Engineering Consulting Firm, preapproved by the Council, to do a cursory review for the purpose of Value Engineering the project (for Pump Station 207 and Force Main), without stopping the project.

**Motion Denied: 3 Nays, 2 Yeas.**

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

**Mr. Lawson noted that a value engineering policy is a work in progress and not in place yet.**

**Old**  
**Business**

Under Old Business, the Council discussed Change of Zone No. 1751 filed on behalf of Peninsula at Long Neck, LLC.

**Old  
Business/  
C/Z  
No. 1751  
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2014 at which time action was deferred. The Commission deferred action again on June 26th and July 17th, 2014. On July 24, 2014, the Commission recommended a conditional approval, as follows: Condition 10 (C) of C/Z #1697 in Ordinance No. 2180 is modified to extend the time period for constructing the clubhouse until December 1, 2016. However, this extension is contingent upon the following events occurring: 1) Within 60 days of the approval of this Ordinance Amendment, the developer shall submit to the Sussex County Planning and Zoning Commission a sketch or concept plan of the proposed clubhouse with the estimated square footage of the structure. The developer shall consult with the homeowners regarding the design in the sketch plan and the proposed square footage of the clubhouse; 2) At the same time the concept or sketch plan and square footage are submitted, the developer shall submit an estimated cost per square foot to construct the proposed clubhouse; 3) Within 30 days of the approval of the concept or sketch plan and square footage by the Sussex County Planning and Zoning Commission, the developer shall submit a Bond or Letter of Credit acceptable in form by the Sussex County Attorney in the amount of 125% of the estimated cost to construct the proposed clubhouse; 4) If the developer does not submit a new Bond or Letter of Credit as required, Sussex County shall prohibit the issuance of any further residential building permits within The Peninsula until the new Bond or Letter of Credit is submitted to Sussex County; and 5) No further extensions will be granted.

The County Council held a Public Hearing on this application on August 5, 2014 at which time action was deferred for two weeks.

**M 408 14  
Modify  
Condition  
10(C) to  
C/Z  
No. 1697/  
Ordinance  
No. 2180  
  
(Application  
C/Z 1751)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to modify Condition 10 (C) of Change of Zone No. 1697 in Ordinance No. 2180, to extend the time period for constructing the clubhouse until December 1, 2016; however, this extension is contingent upon the following events occurring:

1. Within 60 days of the approval of this Ordinance Amendment, the developer shall submit to the Sussex County Planning and Zoning Commission a sketch or concept plan of the proposed clubhouse with the estimated square footage of the structure. The developer shall consult with and obtain the approval of the homeowners association regarding the design in the sketch plan and the proposed square footage of the clubhouse. In no event shall the clubhouse be less than 25,000 finished square feet (32,000 total square feet) with a value of \$11,470,800.00 without first obtaining approval from the homeowners association.
2. At the same time the concept or sketch plan and square footage are submitted, the developer shall submit an estimated cost per square foot to construct the proposed clubhouse.
3. Within 30 days of the approval of the concept or sketch plan and square footage by the Sussex County Planning and Zoning

**M 408 14  
Modify  
Condition  
10(C) to  
C/Z  
No. 1697/  
Ordinance  
No. 2180**

- Commission, the developer shall submit a Bond or Letter of Credit acceptable in form by the Sussex County Attorney in the amount of 125% of the estimated cost to construct the proposed clubhouse.**
- 4. If the developer does not submit a new Bond or Letter of Credit as required, Sussex County shall prohibit the issuance of any further residential building permits within The Peninsula until the new Bond or Letter of Credit is submitted to Sussex County.**
  - 5. No further extensions will be granted.**

**(Application  
C/Z 1751)**

**Motion Adopted: 5 Yeas.**

**(continued)**

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

**M 409 14  
Adopt  
Ordinance  
No. 2362/  
C/Z  
No. 1751**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2362 entitled “AN ORDINANCE TO MODIFY CONDITION NO. 10(C) IMPOSED ON ORDINANCE NO. 2180 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE FACILITY” (Change of Zone No. 1751) filed on behalf of Peninsula at Long Neck, LLC, with the following condition, as amended:**

- 1. To Modify Condition 10(C) imposed on Ordinance No. 2180 for Change of Zone No. 1697 to extend the time period for constructing the clubhouse until December 1, 2016; however, this extension is contingent upon the following events occurring:**
  - a. Within 60 days of the approval of this Ordinance Amendment, the developer shall submit to the Sussex County Planning and Zoning Commission a sketch or concept plan of the proposed clubhouse with the estimated square footage of the structure. The developer shall consult with and obtain the approval of the homeowners association regarding the design in the sketch plan and the proposed square footage of the clubhouse. In no event shall the clubhouse be less than 25,000 finished square feet (32,000 total square feet) with a value of \$11,470,800.00 without first obtaining approval from the homeowners association.**
  - b. At the same time the concept or sketch plan and square footage are submitted, the developer shall submit an estimated cost per square foot to construct the proposed clubhouse.**
  - c. Within 30 days of the approval of the concept or sketch plan and square footage by the Sussex County Planning and Zoning Commission, the developer shall submit a Bond or Letter of Credit acceptable in form by the Sussex County Attorney in the amount of 125% of the estimated cost to construct the**

**M 409 14  
Adopt  
Ordinance  
No. 2362/  
C/Z  
No. 1751  
(continued)**

- proposed clubhouse.
- d. If the developer does not submit a new Bond or Letter of Credit as required, Sussex County shall prohibit the issuance of any further residential building permits within The Peninsula until the new Bond or Letter of Credit is submitted to Sussex County.
  - e. No further extensions will be granted.

**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. 1991**

**Under Old Business, the Council discussed Conditional Use No. 1991 filed on behalf of Coolspring, LLC/Highway One.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2014 at which time action was deferred. On July 24, 2014, the Commission deferred action again. On August 7, 2014, the Commission recommended that the application be denied.**

**The County Council held a Public Hearing on this application on July 22, 2014 at which time action was deferred. On August 12, 2014, the Council deferred action again.**

**Lawrence Lank, Director of Planning and Zoning, reported that on August 17, 2014, the County received a letter from Stephen Spence, Attorney representing Coolspring, LLC/Highway One, requesting that the Council allow the application to be withdrawn. Mr. Moore read the letter into the record.**

**Mr. Lank stated that the Council has two options in regard to the application: act on the application, to approve or deny, or consider the request to withdraw the application.**

**Mr. Lank and Mr. Moore reviewed the County's policy on the withdrawal of zoning applications.**

**M 410 14  
Accept  
Request to  
Withdraw  
C/U  
No. 1991**

**A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to accept the request to withdraw Conditional Use No. 1991 filed on behalf of Coolspring, LLC/Highway One.**

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

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

**M 411 14**            **At 10:45 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session.**  
**Go Into**  
**Executive**  
**Session**            **Motion Adopted:     5 Yeas.**

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

**Executive**            **At 10:51 a.m., an Executive Session of the Sussex County Council was held**  
**Session**            **in the Basement Caucus Room for the purpose of holding job applicants’**  
**interviews and discussing issues relating to land acquisition. The Executive**  
**Session concluded at 1:35 p.m.**

**M 412 14**            **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to reconvene the**  
**Reconvene**            **Regular Session at 1:39 p.m.**  
**Regular**  
**Session**            **Motion Adopted:     5 Yeas.**

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

**Action**            **There was no possible action on Executive Session matters.**

**Minutes**            **The minutes of August 5, 2014 were approved by consent.**

**Grant**            **Mrs. Jennings presented grant requests for the Council’s consideration.**  
**Requests**

**M 413 14**            **A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give \$6,000**  
**Council-**            **(\$5,000 from Mr. Wilson’s Councilmanic Grant Account, \$500.00 from Mr.**  
**manic**            **Phillips’ Councilmanic Grant Account, and \$500.00 from Mr. Vincent’s**  
**Grant**            **Councilmanic Grant Account) to Delmarva Teen Challenge for a**  
**fundraising event.**

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

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

**M 414 14**            **A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give**  
**Council-**            **\$750.00 (\$500.00 from Mr. Vincent’s Councilmanic Grant Account and**  
**manic**            **\$250.00 from Mr. Wilson’s Councilmanic Grant Account) to the Town of**  
**Grant**            **Bridgeville for the Police Department’s “National Night Out” community**  
**event.**

**Motion Adopted:     5 Yeas.**

**M 414 14  
(continued)**

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

**Additional  
Business**

**Under Additional Business, Dan Kramer commented on the zoning application for a country music festival.**

**Under Additional Business, Finley Jones, former Sussex County Councilman, extended greetings to Council and staff.**

**Council  
Meeting  
Schedule**

**Mr. Lawson commented on the next regularly scheduled Council meeting on September 9th and Council discussed whether or not to hold a meeting on that date. It was decided to make a decision on or before September 2nd.**

**Public  
Hearing/  
C/Z  
No. 1754**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRES, MORE OR LESS” (Change of Zone No. 1754) filed on behalf of Bayshore Plaza Associates, LLC (Tax I.D. No. 533-12.00-77.00 & 76.03) (911 Address: 36437 Lighthouse Road, Selbyville, DE 19975)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 26, 2014 at which time the recommended that the application be approved.**

**(See the minutes of the Planning and Zoning Commission dated June 26, 2014)**

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

**The Council found that Preston Dyer was present on behalf of Bayshore Plaza Associates, LLC and he submitted drawings into the record. Mr. Dyer stated that he and Mr. McCrea own the adjoining property (2.5 acres) and that they have a contract to purchase the .52 acre parcel; that they are proposing to change the zone from B-1 Neighborhood Business to CR-1 Commercial Residential as an extension to the C-1 General Commercial zoning that surrounds the site; that they want to have a consistent zoning classification; that combining the properties creates a more effective use of the land; that with CR-1 zoning, the permitted uses would be the same as in C-1 with the exception of multi-family; that the DeIDOT agreement is that access will be from the existing entrance from Route 54 that serves the adjoining C-1 zoned property; that DeIDOT constructed that entrance and they paid DeIDOT for the work; that the rezoning is consistent with the Comprehensive Plan as it lies within an Environmentally Sensitive Development District and in a Level**

**Public  
Hearing/  
C/Z  
No. 1754  
(continued)**

**2 Area; that the rezoning is basically an in-fill; that there will be no detrimental impact to the adjoining properties; that there is a scattering of commercial uses in the area; and that the project is complimented in the rear with a 100 unit townhouse project that they are in the process of developing.**

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

**M 415 14  
Adopt  
Ordinance  
No. 2363/  
C/Z  
No. 1754**

**A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2363 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRES, MORE OR LESS” (Change of Zone No. 1754) filed on behalf of Bayshore Plaza Associates, LLC.**

**Motion Adopted: 5 Yeas.**

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

**M 416 14  
Adjourn**

**A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to adjourn at 1:57 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**

**Respectfully submitted,**

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