

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 25, 2012**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 25, 2012, 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>Susan M. Webb</b>	<b>Finance Director</b>
<b>Everett Moore</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 489 12  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting “Job Applicants’ Qualifications”, “Land Acquisition”, and “Personnel” under “Executive Session”; and to approve the Agenda, as amended.**

**Motion Adopted: 5 Yeas.**

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

**Wings &  
Wheels  
Festival  
2012**

**Karen Duffield, Georgetown Chamber of Commerce, and Linda Price, Fulton Bank, were in attendance to discuss the Wings & Wheels Festival to be held in Georgetown at the Sussex County Airport on October 6th from 10:00 a.m. to 4:00 p.m. The Festival, which is now in its 5th year, is a joint event sponsored by the Greater Georgetown Chamber of Commerce, Delaware Aviation Museum, and the Lower Delaware Mustang Club. The Festival raises awareness of the Sussex County Airport and promotes economic development in Sussex County. The Fly-In & Classic Car exhibition event attracted nearly 8,000 people to the Airport last year. The Council presented a check in the amount of \$1,500.00 to help with festival expenses.**

**Election  
Year  
Scholarship  
Contest**

**Mr. Lawson reported that, with the 2012 general election just six weeks away and the ballot set, it is time for Sussex County to launch its biennial Election Year Scholarship Contest for local students. Initiated in 2000, the online contest is an educational and fun way to involve children in the**

**2012 Election Year Scholarship Contest (continued)** American electoral process. It is open every election year to children 18 and younger who are residents of Sussex County and attend school (either locally or elsewhere) in grades K through 12. Students make their predictions through the County website, at [www.sussexcountynj.gov/election](http://www.sussexcountynj.gov/election). For the 2010 election, the contest received nearly 500 entries from Sussex County students.

Mr. Lawson stated that, this year, students will try to select the winners of 24 national, statewide, and county races, including for President, U.S. Senator, Congressman, Governor, Lieutenant Governor, Insurance Commissioner, various General Assembly seats, and the County Council and Clerk of the Peace races. The student(s) with the most correct predictions will win a \$200 prize scholarship, to be paid upon enrollment into a college or other qualified post-high school program. Five runners-up will earn \$100 scholarships each. Winners will be determined and ranked based on the accuracy of their predictions. In the event of a tie, students will be asked to guess how many votes the winning gubernatorial candidate collects in Sussex County.

The contest has traditionally been funded by community grants, as well as by the firm of the County Attorney.

**M 490 12 Establish 2012 Election Year Scholarship Contest** A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council hereby establishes the Sussex County Election Year Scholarship Contest for 2012; the first place winner will receive a \$200.00 scholarship and the five runners-up will each receive a \$100.00 scholarship; \$100 will be provided from each Councilmanic Grant Account (and \$200.00 will be provided by the law firm of Moore & Rutt).

**Motion Adopted:** 5 Yeas.

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

**Letter of Credit/ Osprey Landing** Mr. Lawson reported on the Letter of Credit for Osprey Landing. On this date, the Engineering Department received notification by email from M&T Bank that they are going to extend the Letter of Credit; however, no signed documentation was received from the bank. On the advice of Legal Counsel, and with Council's approval, the County will give the Bank until the end of the week to provide an executed copy of the Renewal Statement. If the Renewal Statement is not received, the County will call/not extend the Letter of Credit. The current Letter of Credit expires on Sunday, September 30, 2012.

**M 491 12 Approve Extension/ LOC** A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, that the Sussex County Council approves an extension on calling the Letter of Credit from M&T Bank for Osprey Landing until Friday, September 28, 2012 for the purpose of receiving a signed Extension from M&T Bank for

**M 491 12**      **the Letter of Credit for Osprey Landing.**  
**(continued)**

**Motion Adopted:      5 Yeas.**

**Vote by Roll Call:    Mrs. Deaver, Yea; Mr. Cole, Yea;**  
                                 **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.      Sussex County Staff Development Day**

**All public libraries in Sussex County will be closed Thursday, September 27, 2012, for the annual Sussex County Library Staff Development Day. Staff from all 14 public libraries throughout Sussex County will meet at Delaware Technical & Community College in Georgetown for the 22nd annual conference, a daylong session to learn about a variety of topics including e-books, virtual collections, children's programs, and public space safety.**

**Libraries will reopen at their regularly scheduled times on Friday, September 28, 2012. For more information on library hours, contact your local library.**

**2.      Greenwood Library**

**I am pleased to announce that the Greenwood Library's temporary location, known as "Hilltop," is open for the public one week earlier than scheduled. Coordinated efforts between Library, Maintenance, Information Technology, and Engineering Department staff members made the move from the Mill Street location both swift and smooth.**

**In addition, The Friends of the Greenwood Library have just passed their first financial milestone of \$25,000 with a donation from Discover Bank. Library staff has already created 'Wish Lists' for enhancements/upgrades to be funded by The Friends in the new building.**

**3.      Sussex County Citizen Corps**

**Recently, several Sussex County residents graduated from the Sussex County Citizen Corps Community Emergency Response Team (CERT) training. The training required over 21 hours of classroom time and covered Disaster Preparedness, Fire Safety, Disaster Medical Operations, Light Search and Rescue Operations, CERT Organization, Disaster Psychology, and Terrorism and CERT.**

**Adminis-  
trator's  
Report  
(continued)**

**CERT training is designed to help citizens help themselves and their neighbors before the first responders arrive, and in some cases assist them when they become overwhelmed. CERT is not a replacement for 9-1-1, but trains citizens to help each other safely when 9-1-1 is unavailable. Congratulations to – Donna Becker of Long Neck, Mary Berl of Georgetown, Arden Gordon of Lewes, Maria Hartmeyer of Frankford, Sherry & Mike Hurley of Delmar, Dan McBride of Frankford, and Debbie & Timothy Morrison of Georgetown.**

**Wastewater  
Agreement**

**Hal Godwin, Deputy County Administrator, presented a Wastewater Agreement for the Council's consideration.**

**M 492 12  
Execute  
Wastewater  
Agreement/  
Americana  
Bayside,  
Phase 6**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Engineering Department, for Sussex County Project No. 81-04, Agreement No. 991, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Carl M. Freeman Communities, for wastewater facilities to be constructed in Americana Bayside, Phase 6, located in the Fenwick Island Sanitary Sewer District.**

**Motion Adopted: 5 Yeas.**

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

**Angola  
Neck SSD/  
Force  
Main  
Contract**

**Michael Izzo, County Engineer, presented a Balancing Change Order for the Angola Neck Regional Forcemain Project with Daisy Construction Company. The Balancing Change Order, in the credit amount of \$200,271.05, is a result of the balancing of used/unused bid item quantities for final adjustments needed to close out the contract.**

**M 493 12  
Approve  
Balancing  
Change  
Order/  
Angola  
Neck SSD  
Regional  
Force  
Main  
Contract**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Engineering Department, that Sussex County Council approves the Balancing Change Order for Sussex County Project No. 09-20, Angola Neck Regional Forcemain, with Daisy Construction Company in the credit amount of \$200,271.05, thereby decreasing the contract amount from \$3,111,745.00 to \$2,911,473.95, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents, pending approval of the funding agency.**

**Motion Adopted: 5 Yeas.**

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

**Greenwood Library Project** Julie Cooper, Project Engineer, presented the bid results for the Greenwood Library Project. Six bids were received; the apparent low bidder was Richard Y. Johnson & Son at a bid amount of \$2,768,572.00 (with bid alternates). Ms. Cooper reported that the project has been in design for some time and that the Greenwood Library has now moved into a temporary location.

**M 494 12 Award Contract/ Greenwood Library Project** A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Architect, Davis, Bowen & Friedel, Inc. and the Engineering Department, that Sussex County Project No. 07-05, Greenwood Library, be awarded to Richard Y. Johnson & Son, Inc. of Lincoln, Delaware, at the bid amount of \$2,768,572.00, which considers the Base Bid with the inclusion of Alternate Bid Item Nos. 2 and 3.

**Motion Adopted:** 5 Yeas.

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

**Rudder Lane Pole Building/ Change Order** Julie Cooper, Project Engineer, presented a Change Order for the Rudder Lane Pole Building Project which is being constructed to house County maintenance vehicles. The Change Order, in the credit amount of \$1,258.75, includes adding five receptacle circuits, installing seeding and mulch in lieu of sod, and adding drain from downspouts.

**M 495 12 Approve Change Order/ Rudder Lane Pole Building** A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, based upon the recommendation of the Engineering Department, that Change Order No. 1 for Sussex County Project 11-12, Rudder Lane Pole Building, with John L. Briggs & Co., of Georgetown, Delaware, be approved in the credit amount of \$1,258.75, which decreases the contract total to \$233,350.84.

**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/ Administrative Variance Ordinance/ Yards and Open Spaces** The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV § 115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY”.

This Proposed Ordinance would allow the Director of Planning and Zoning to administratively grant a variance of 1 foot or less for a yard setback or building separation.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on March 10, 2011 at which time action was deferred.

**Old  
Business/  
Adminis-  
trative  
Variance  
Ordinance/  
Yards and  
Open  
Spaces  
(continued)**

**On April 14, 2011, the Commission recommended that the Proposed Ordinance be approved as circulated and with the following additional recommendations: that a new sentence be added at the end of Section E (5) to state “If any objection is received, the Director shall refer the application to the Board of Adjustment.”; and that a new Section E (6) be added that states “This Administrative Variance process shall not be applicable to Manufactured Home Parks”.**

**The County Council held a Public Hearing on the Proposed Ordinance on March 29, 2011 at which time action was deferred.**

**Mr. Lank clarified that the Proposed Ordinance does not include manufactured home parks.**

**Several Council members discussed the drafting of a follow-up ordinance that would reduce the requirements for granting an administrative variance for a certain number of inches which would have a smaller impact on neighbors and would not impact the health, safety, welfare of the area.**

**M 496 12  
Adopt  
Ordinance  
No. 2278**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2278 entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV § 115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY”, with the amendments as recommended by the Planning and Zoning Commission:**

- that a new sentence be added at the end of Section E (5) to state “If any objection is received, the Director shall refer the application to the Board of Adjustment.”; and**
- that a new Section E (6) be added that states “This Administrative Variance process shall not be applicable to Manufactured Home Parks”.**

**Motion Adopted: 5 Yeas.**

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

**Grant  
Request**

**Mrs. Webb presented a grant request for the Council’s consideration.**

**M 497 12  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$200.00 (\$100.00 each from Mr. Cole’s and Mrs. Deaver’s Councilmanic Grant Accounts) to Faith U.M. Women for the Walking for the Homeless Walk-A-Thon.**

**Motion Adopted: 5 Yeas.**

- M 497 12**  
**(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 Council's grants to churches.**
- M 498 12**  
**Recess and**  
**Go Into**  
**Executive**  
**Session**
- At 10:59 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess the Regular Session and go into Executive Session for the purpose of discussing issues relating to 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 11:05 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to pending/potential litigation. The Executive Session concluded at 11:56 a.m.**
- M 499 12**  
**Reconvene**  
**Regular**  
**Session**
- At 11:58 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.**
- Motion Adopted:** 5 Yeas.
- Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea
- Action**
- Mr. Moore announced that no action was required on Executive Session items.**
- M 500 12**  
**Recess**
- At 11:59 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, 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 501 12**  
**Reconvene**
- At 1:36 p.m. a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to reconvene the Regular Session.**
- Motion Adopted:** 5 Yeas.

**M 501 12  
(continued)**

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

**Combine  
Public  
Hearings**

**It was the consensus of the Council that the three applications scheduled for Public Hearing on this date would be considered during one Public Hearing, acknowledging that each application will have an individual decision.**

**Public  
Hearing/  
C/Z 1719,  
C/Z 1720,  
C/U 1944**

**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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS, ON TWO (2) PARCELS” (Change of Zone No. 1719) and “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.02 ACRES, MORE OR LESS” (Change of Zone No. 1720) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, A MR MEDIUM DENSITY RESIDENTIAL DISTRICT, AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES, A CAMPGROUND, AND AN OUTDOOR AMUSEMENT PLACE, WHERE PERMITTED AS CONDITIONAL USES, TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 38.53 ACRES, MORE OR LESS” (Conditional Use No. 1944) filed on behalf of Castaways Bethany, LLC.**

**The Planning and Zoning Commission held a Public Hearing on the three applications on September 6, 2012. at which time action was deferred with the record left open for PLUS (Preliminary Land Use Service) comments, the Applicants responses to the PLUS comments, and the State’s response to the Applicants comments and to leave the record open for 14 days for public review and comment, and additionally the record was left open for a Letter of No Objection from DelDOT and for the Commission to review the letters and DVD that was submitted into the record; the 14 day period began from the time the receipt was announced at a public meeting before the Planning and Zoning Commission.**

**On September 20, 2012, the Commission deferred action again. At that meeting, the Commission was informed that once the Applicants respond to the PLUS comments, the Office of State Planning Coordination considers the file complete and does not issue a final letter; that this was confirmed with the Office of State Planning Coordination on September 14, 2012; that**



**Public  
Hearing/  
C/Z 1719,  
C/Z 1720,  
C/U 1944  
(continued)**

**a DelDOT Letter of No Objection is not typically required until the site plan review and approval process; that each member has received a copy of the PLUS comments and the Applicant's response; and that the 14 day period for written comments will close at the end of business on October 5, 2012.**

**See the minutes of the Planning and Zoning Commission dated September 6 and 20, 2012.**

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

**Mr. Lank distributed Exhibit Books submitted by the Applicant.**

**Copies of a DVD of a tour of Cedar Neck were distributed to the Council members; the DVD was submitted by Harry Kreger, an opponent of the application.**

**Mr. Lank read a letter (received on this date) into the record from State Representative Gerald W. Hocker stating that "I came over today and due to the time frame and my schedule, I was not able to stay. I believe in transparency of Gov. and Gov. should be as close to the people as it can be. I stay out of local Gov. unless I am asked to get involved by those elected officials. It is inappropriate for a sitting House member to participate in County issues that will put one side against the other. We share some of the same concerns as my residence butts up to this property. We live in the area and run a business in the area and have no financial interest in this and have sold no property or have any interest in selling any property. I have encouraged everyone to come here and express their views and concerns. I have faith in our elected County Council that they will make the right decision."**

**Mr. Lank distributed an estimated comparison of County revenues for proposed uses of the parcels (Seasons at Bethany compared to the campground and the water park with 60 rental units). The report was made a part of the record and copies were distributed to the Applicant and the Attorney representing some of the Opposition.**

**Mr. Lank summarized the correspondence received in opposition to the application:**

- The total number of signatures on petitions in opposition to the applications was 288 (95 signatures from homeowners who access Sandy Cove Road; 74 signatures from the general area; 87 signatures from Cedar Landing; and 32 signatures from Sandy Cove).**
- As of September 24th, 407 letters/emails/faxes were received in opposition to the applications – nine letters were received in opposition on behalf of residents in nine communities (North Beach, Bayside Hamlet, Quillens Point, Salt Pond, Cedar Landing, Bethany**

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C/Z 1719,  
C/Z 1720,  
C/U 1944  
(continued)**

**Preserve, Bethany Grand, Pine Crest, The Reservation, Murray's Estates, Bethany Lakes, Bayside at Bethany Lakes, Sandy Cove, Collins Park, and other communities in the Cedar Neck area, along with other individuals.**

**In summary, the concerns include, but are not limited to, increased traffic, traffic safety, pedestrian safety, noise and air pollution, that the use is not compatible with the area, the environmental impacts, lighting, the impact on the James Farm Ecological Preserve, the impact on the Fresh Pond Seashore State Park, road conditions of Cedar Neck Road, bike paths, depreciation of property values, crime, the hours of operation, the density, stormwater issues, sewer capacity, cyclist safety, and emergency response impacts.**

**Mr. Lank noted that there is some duplication of letters since some parties sent letters, emails and faxes of the same documents to the Council and the Commission.**

**Mr. Lank noted that he would make the PLUS comments available to the Council members.**

**The Council found that Todd Burbage, a principal of Castaways Bethany, LLC was present with James Fuqua, Jr., Attorney with Fuqua, Yori, and Willard, P.A., Jeff Clark of Land Tech Land Planning, LLC, and Garth Jones, Professional Engineer, of the Becker Morgan Group,**

**Mr. Fuqua referenced the County Revenue Comparison Report and he questioned who directed this report to be prepared. Mr. Lank stated that it was submitted by Administration. Mr. Cole stated that he asked staff to prepare the report. Mr. Fuqua questioned if the report was an Exhibit being entered by Council on this application. Mr. Moore stated that if the Comparison Report is being used, it would be considered an Exhibit. Mr. Fuqua stated that in the past 30 years he is unaware of the Council ever doing an economic comparison of the tax benefit of a proposed use. Mr. Cole responded that for many years, Applicants have provided this information. Mr. Fuqua stated that he wouldn't object to it, that it is in the record, but that he is concerned if Council members begin to enter exhibits and that it could lead to a problem. Mr. Fuqua noted that he was not familiar with the report as it was just handed to him on this date.**

**The representatives of the applications stated in their presentations and in response to questions raised by the Council that they have made application for two (2) rezoning requests and a Conditional Use for a campground, multi-family duplex residential units, and a water park amusement facility; that Change of Zone No. 1719 is for the rezoning of a small portion of the existing land from MR to AR; that Change of Zone No. 1720 is for the rezoning of a portion of the existing land from MR to CR-1; that Conditional Use No. 1944 is for multi-family dwelling structures, a campground, and an outdoor amusement park; that although there are**

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C/Z 1719,  
C/Z 1720,  
C/U 1944  
(continued)**

three applications, there is an interwoven design; that they have read a majority of the letters in opposition and listened to the comments made during the Planning and Zoning Commission hearing and they will try to address the concerns; that many of concerns expressed are impacts that would occur under uses already permitted on the sites by the current zoning and they believe they have properly addressed these concerns through the careful design of the site plan and the proposed conditions; that the majority of the site is vacant land; that this proposal or any other alternative proposal of this land will certainly have increased impacts on traffic, sewer use, noise, etc.; that in considering the impacts of their proposal, those impacts should not be compared to the existing vacant condition of the land but the impacts should be compared to the impacts of the possible uses of the site that are already legally permitted by virtue of the existing zoning of the land; that their proposal has impacts that are similar and in some ways significantly less than the uses that are already permitted on the site; that Cedar Neck Road has a mixture of uses, i.e. single family dwellings, manufactured homes, multi-family dwelling structures, camper parks, business and commercial uses; that the site has wetlands to the east, a single family subdivision to the north, residential uses, RV sales, and a restaurant to the south, and commercial zoning and uses to the west across Cedar Neck Road with a commercial grocery, hardware, sandwich shop, etc.; that the wetlands on the site have been delineated; that the site has been approved for a 143 unit multi-family project (The Seasons at Bethany) which includes multi-family units and townhomes, and a commercial storage facility; that they are proposing three (3) components to the project: 139 campsites with sewer and water hook-ups and two (2) bathhouses, 60 multi-family duplex rental units, and a water park with slides, pools, a wave pool, a float pool and retail sales of sundries, snacks, and gifts; that the water park will be open to the public; that entry to the park will be gated; that the MR Medium Density Residential to CR-1 Commercial Residential parcel contains 1.02 acres and is adjacent to the existing C-1 General Commercial portion of the site and is intended to enhance the water park; that the MR Medium Density Residential to AR-1 Agricultural Residential parcel contains 5.0 acres, and is intended as a part of the campground; that the Conditional Use application site includes the entire parcel, with multi-family dwelling structures to the north next to The Reservation, the water park along Cedar Neck Road, and the campground to the rear of the water park; that the County Engineering Department has established a design assumption for the project site of 205.55 EDUs; that they have calculated the projects proposed usage at 139 EDUs; that the Applicants will pay all applicable charges and fees for sewer services; that the Sussex Shores Water Company has provided an Ability to Serve Letter for the project; that according to the Sussex County Comprehensive Land Use Plan Future Land Use Map, the site is located in an Environmentally Sensitive Developing Area, a growth area; that the project is close to other developments and business uses and close to nearby municipalities; that the site has access to major roadways and sewer and water services are available to serve the project; that the Plan recognizes that a range of housing types should be permitted

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(continued)**

**in the ESD; that the Plan strongly encourages that development in the ESD be served by central water and sewer, which this site is; that the proposed development is consistent with the Plan's vision; that the proposal is in accordance with the purposes and goals of the Plan since it promotes tourism and economic development; that planning and construction of the project will generate jobs for dozens of local businesses and employees of those businesses and when completed and operational, it will generate an estimated 69 to 94 full and part time jobs; that the project will have a positive economic benefit to the area since visitors will also be using local business uses; that the Plan also states as a general principle "Sussex County government encourages economic growth and strongly respects private property rights and is committed to maintaining a viable climate for preserving agriculture"; that their proposal has no negative impact on agriculture; that it is a proposal to generate economic growth by the creation of a quality camp park and recreation facility at an appropriate location in an area designated for growth in and near the tourist related destinations in southeast Sussex County; that the two northern portions of the site have been previously approved for 143 condos and townhouses and the southern portion of the site has a self-storage facility located on it; that currently, 10.7 acres is zoned commercial and can be developed in a wide variety of commercial uses including all the permitted uses for both B-1 and C-1 zonings, i.e. a bank, gas station, car wash, auto or truck sales, service or repair, body shop, hotel or motel, restaurants, retail, offices, etc.; that a shopping center is also a permitted use; that there has to be some balancing of the goals of the Plan; that the project was submitted to the Preliminary Land Use Service (PLUS) for review and that they participated in the public meeting with State agencies; that they have responded to the PLUS comments received; that the State and Federal wetlands boundaries have been delineated and that the U.S. Army Corps. of Engineers have verified the boundaries; that there will be no encroachments into the Federal wetlands; that there are approximately 3 acres of woodlands; that there will be a minimum 60-foot setback from State wetlands; that the site slopes 10-feet from the road to the wetlands; that the entrance location is across from the entrance to the G&E/Hocker's Supermarket per DelDOT; that the entrance as shown on the Master Plan has been reviewed by DelDOT and designed in accordance with their standards; that DelDOT is requiring a bike lane and a 10 foot wide multi-modal path along the entire Cedar Neck Road frontage of this site; that a pedestrian crossing is proposed from the entrance area across to the G&E/Hocker's Supermarket site; that the 60 multi-family duplex units surround 4 shared central court yards to provide a safe play area for children and a gathering place for tenants; that each unit will be provided with two (2) parking spaces; that the drives are arranged so that emergency vehicles are not more than 100 feet from any cottage front door; that all driveways serving the cottages are proposed to have a minimum width of 25 feet; that the units will be two story cottage/bungalow styled units; that the 139 RV campsites will contain a minimum of 2,000 square feet per site and will be served by a 20-foot wide paved drive, sewer, water, utilities, parking, two bathhouses and laundry services; that there will be a central pedestrian path to the water park and**

**Public  
Hearing/  
C/Z 1719,  
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(continued)**

tot lots from the campground area; that four dumpster locations are proposed; that the campsites will be a minimum of 400-feet from any residential unit off of the site, and 100-feet from Cedar Neck Road; that a minimum of a 50-foot wide buffer shall be provided around the site with a mixing of plantings per the Code; that a nature center will be established within the campground; that no lighting is intended in the campground area; that a seven (7) foot tall solid fence is proposed between the site and The Reservation community; that the water park design includes water features, flow rider lagoon, tube slide, wave pool, tot lots, changing facilities, and a lodge for sundry sales, snack sales, etc.; that 180 parking spaces plus 11 handicap spaces are proposed; that they intend to close the water park by 8:00 p.m.; that they intend to develop the site in four (4) phases: (1) the water park and landscaping the buffers; (2) the campground and removal of the existing storage facility, and 18 duplex units; (3) 16 duplex units; and (4) the remaining 26 duplex units; that no rare or endangered species were found on the site; that the original “The Seasons at Bethany Beach” project for the site would have generated 1,000 vehicle trips per day; that the Castaways Bethany project could generate 1,300 vehicle trips per day; that the existing commercial zoning could allow for a convenience store with gas pumps that could generate 4,000 vehicle trips per day; that they have met with DelDOT and that a Traffic Impact Study will not be required; that the Applicants have agreed with DelDOT to install the original agreed upon improvements for “The Seasons at Bethany Beach” project, i.e. right turn lanes, bike paths, multi-modal path, and pedestrian crossing, and to participate in the traffic signal agreement previously established; that the site has a tidal discharge; that they will be using green technologies for stormwater management and Best Management Practices for maintenance, by using bio-swales, filter strips, and bio-retention; that there is an excellent recharge area along the front of the site; that they will comply with the Source Water Protection Ordinance; that they will meet the Total Maximum Daily Loads required for the Inland Bays; that they have met with the Sussex Conservation District; that Mr. Burbage and his family are business owners in Bethany Beach and Ocean View; that the use will enhance the community; that the Applicants own a similar project in Ocean City which has won numerous rewards for excellence; that crime has not been a problem; that there will be 24 hour security; that the duplex cottages will have a similar style to the old beach cottages in Bethany Beach with approximately 720 square foot of living space per cottage; that the cottages will be site constructed; that they will be providing a bus service to the beaches and elsewhere; that the campground is intended to be family oriented; that the property is privately owned; that, as existing, the site is zoned MR and C-1 and could be developed with permitted uses; that they are certain that the site will be developed in some form; that the intended use will have no more impact than the uses already permitted; that this is not a popularity contest, it is a land use decision process; and that they are requesting approval of the applications.

Mr. Burbage stated that the proposal is for a family oriented camping, lodging and water park resort and he described the camp project that he

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**and his father operate in Ocean City; that the 750± square feet cottages will be stick built; that their client base is upper middle class; and that the project would be an asset to the community.**

**Mr. Fuqua referenced the Comparison Report that was distributed at the beginning of the Public Hearing and he stated that the comparison has a faulty assumption as it is based on a complete build-out.**

**Mr. Fuqua submitted proposed Findings of Fact and the following Proposed Conditions:**

- 1) The maximum number of campground/RV sites shall be one hundred and thirty-nine (139).**
- 2) All entrance and other DelDOT requirements shall be completed as required by DelDOT.**
- 3) The Development shall be served by the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District.**
- 4) The Development shall be served water for domestic use and fire protection by the Sussex Shores Water Company.**
- 5) Stormwater management and sediment 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 Development shall be surrounded by a 50-foot landscaped buffer as shown on the Landscape Buffer Planting Plan and a seven (7) foot fence along the northern boundary of the site.**
- 8) The campground/RV park may open no earlier than March 15 each year and shall close no later than the first Sunday of November of each year.**
- 9) The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed.**
- 10) There shall be no accessory buildings located on individual campsites.**
- 11) Campground restrictions shall be submitted as part of the site plan review.**
- 12) 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.**
- 13) The water park component shall be constructed and open for use by the park tenants when the campground opens for use.**
- 14) The water park may open no earlier than May 15<sup>th</sup> each year and shall close no later than October 15<sup>th</sup> each year.**
- 15) The maximum number of multi-family units shall be sixty (60).**
- 16) The daily hours of operation of the water park shall be from 10:00 a.m. to 8:00 p.m. for the general public and from 8:00 a.m. to 8:00 p.m. for residents of the campground and multi-family units.**

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- 17) The water park shall operate in accordance with all applicable laws and regulations of the State and County, including but not limited to laws and regulations related to pool water quality, pool safety, storage of pool chemicals and handicapped accessibility.**
- 18) A shuttle bus service shall be provided for residents of the campground and multi-family units from at least the Friday before July 4<sup>th</sup> to Labor Day of each year.**
- 19) One sign not exceeding thirty-two (32) square feet per side with lighting shall be permitted.**
- 20) Development and management of the Site shall comply with all State and Sussex County regulations and ordinances applicable to water resource protection.**
- 21) Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**In response to questions, the representatives for the application stated that in regards to wetlands protection and stormwater run-off, the project will have to meet TMDLs as identified in the Inland Bays Drainage Basin; that park models will not be permitted; that they propose 78 percent open space; that the RV component of the application is considered open space; that there is no 50 foot buffer in The Seasons Project as there is proposed in this project; that the highest structure will be 32 feet (top ramp of water slide); and that the water park is an integral part of the campground as an amenity.**

**Public comments were heard.**

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

**Public comments were heard in opposition to the application.**

**Mary Shriver-Fox, Attorney with Steen, Waehler & Fox, P.A., was present in opposition on behalf of a Homeowners Association Coalition comprised of Bethany Lakes, Bayside at Bethany Lakes, Salt Pond, The Reservation, Cedar Landing, Quillens Point, and hundreds of residents in the area; that the Comprehensive Plan is of the utmost importance in making land use decisions and she referenced various sections of the Plan; that if you consider the Plan, the overwhelming conclusion is that this project is not appropriate for the Cedar Neck peninsula; that the parcels included in the proposed project are shown on the Future Land Use Map as being in a mixed residential area with an environmentally sensitive developing overlay; that the Castaways project presents a couple of problems when considering the guidelines of the Plan; that it is not a residential project, it is a commercial venture; that the cottages and campsites would be available for short term rentals for the summer season; that in the Plan, non-residential development is discouraged; that the Castaways project does not satisfy the guidelines for the Environmentally Sensitive Developing Area; that although the proposed Castaways site is in a growth area, the property to the rear of the site has a rural designation largely consisting of protected**

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lands, the property to the west across Cedar Neck Road is also designated as being in an ESD area, a growth area, but much of the underlying zones are residential in nature with some commercial uses, i.e. a grocery store; that the proposed project does not exist in a vacuum and the surrounding area must be considered; that the vast majority of the neighboring properties are residential; that there are some commercial uses but they are the type that compliment a residential community; that in the Environmental Assessment Report submitted by the Applicant, it has made the assertion that most of the homes in the area are vacation homes, which is not accurate; that the area is changing more and more to full-time residents; that the residential communities surrounding the proposed site provides a solid tax base for Sussex County; that the proposed use is completely different than anything else in the area; that the proposed use would fundamentally change the entire character of the neighborhood; that the project is designed to attract transient guests driving in RVs, extra-large vehicles, sometimes towing a car; that the proposed project is designed as an outdoor facility which will be noisy especially combined with the noise of the large RV vehicles; that Cedar Neck Road already experiences traffic jams in the summer season; that there is one way onto the Cedar Neck peninsula and one way off which makes for dangerous situations, especially for emergency situations or the need to evacuate; that this will be exacerbated by this type of high volume enterprise; that Cedar Neck Road has little or no shoulders; that the project will impact pedestrians, bikers, and motor vehicle drivers; that there are safety and traffic issues to consider; that the proposed project will negatively impact the residential character of the area; that the use creates an inconvenience to existing residents; that noise and traffic increases will impact the area making this application an inappropriate use in this location; that there are a lot of fulltime residents that live in the Cedar Neck area and this use will impact their quality of life and the value of their investments; that protected lands need to be protected; and they request that the Council deny these applications to the benefit of the residents of the area.

Jim Gallant, President of the Bethany Lakes Homeowners Association; George Herker, an adjacent property owner; Loeda Stango, President of Salt Pond Homeowners Association; Harry Kreger, resident of The Reservations; Bob Batky of Quillens Point, Alan Frost of Bethany Lakes; Steve Swadley; Elaine Manlove of Cedar Landing; Lawrence Garr of Cedar Landing; Walter Curran, President of Bear Trap Dunes Homeowners Association (representing all 700 homeowners); Steve Callenen of Quillens Point; Shirley Price of Ocean View; Kathy Vengezo of Ocean View; Virginia Johnston of Cedar Neck Road; and Jeanne Sandifer were present in opposition. Their comments included a reference to the number of people in opposition at the Public Hearing before the Planning and Zoning Commission (approximately 170); a reference to the unsafe roadway and a cyclist accident that occurred; that DelDOT's decision to not conduct a Traffic Impact Study (TIS) was flawed and that a TIS should be performed; that the character of the area is overwhelmingly residential; that there will be a devaluation of home values; that the project will negatively affect



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property values by 20 to 25 percent; that the project will have a negative effect on almost everyone on the Cedar Neck Peninsula; that the project will have a negative effect on the environment; that the proposed business does not make any substantive positive contribution to the residents of this peninsula; that the objection to the proposal is not based on the concept but the location; that there will be noise from the water park and campground; that the proposal will change the character of Cedar Neck Road; that there already are traffic jams on area roads during summer months; that emergency vehicles will have difficulty accessing the area; that the project at full capacity will create more traffic than the roads can accommodate; that they have asked DelDOT repeatedly to widen the turning lane from Fred Hudson Road to Route 1 and that has not been done; that during heavy storms, Route 360 is under water and impassable; that when this happens, the only way out is Route 26; that the project will create evacuation problems; that there will be a safety risk to drivers, pedestrians, and bicyclists; that there will be problems associated with the noise and lights this project will produce; that the Castaways project is a bad choice for the neighborhood; that there are little or no shoulders on Cedar Neck Road; that existing traffic problems will be exacerbated by large RV traffic; that there are many safety and traffic concerns; that there is a need for the protection of investments, natural habitat, tax base, and character; that in accordance with the Land Use Plan, the project must be in character with the neighboring area and it is not; that Castaways in Ocean City is located in an open space area near an airport and a golf course in an appropriate location; that this project would not be a good fit with the area; that their proposal for security is that only one staff member will be required to patrol the grounds; that a residential project would provide a better economic impact; that the Comparison Report demonstrates (impact for one year) that the County's tax benefit for permanent homes would be greater; that a project that would disappoint or impact over 1,000 people should not even be considered; that this project will place people in a deadlock position for evacuation and emergency purposes and cause a flag peninsula; that diesel engines and vehicles will cause noise and pollution; that there are safety concerns (driving) for the elderly residents; that there are environmental and ecological concerns including the impact on wildlife and birds; that there will be a large impact on the sanitary sewer district as raw sewage will be released from the RVs into the sanitary sewer system and more sewage will be released while campers are onsite; that if the application is approved, the developer should provide, at his expense, an effective means of handling the effluent this project will produce without impacting the existing system; that there are concerns about the transient population; that there is concern about flooding with the added density, additional paving, and encroachment of land; that Ocean View already has two campgrounds, Pine Tree and Bay Shore; that water parks should be located on major highways on commercially zoned land, not in a rural community; that Fred Hudson Road and Cedar Neck Road are inadequate to take on 300+ RVs along with the other seasonal traffic on Saturdays in the summer; that the roads, ecology and residents cannot handle the project; that the jobs to be created are seasonal jobs and not career jobs;

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that the project will not benefit the community; that there will be noise pollution; that pets will have to be contained; that to put a crosswalk to G&E/Hocker's Supermarket would be unwise; that Council is asked to consider the lives of people living in the area who do not want their investments lessened and their lives changed; and that they fully concur with Mary Shriver-Fox's comments.

Mr. Kreger submitted his written comments into the record including the DVD, Page 10 of the Sussex County 2012 Profile, extract of Councilpersons' website statements, letter to Councilman Cole which was also sent under separate cover to each Councilperson, and a map of the Cedar Neck Peninsula.

Mr. Swadley submitted a letter from Vera Swadley in opposition to the application

Mr. Curran submitted his written comments into the record.

Ms. Vengezo referenced the letter of opposition that she sent to the Council by email (and to Mr. Lank) on September 20th and she stated that she wrote the letter on behalf of 22 homeowners associations representing approximately 3,400 homeowners – a consortium of HOA's predominantly in the Ocean View and Bethany Areas. It was noted that the letter was previously entered into the record.

The Public Hearing was closed.

Mr. Cole suggested that the record remain open for additional information from DelDOT: (1) what is the rating for Cedar Neck Road and (2) what is the official width of Cedar Neck Road.

**M 502 12  
Close  
Public  
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Leave  
Record  
Open/  
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A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to close the Public Hearing and to leave the record open for the additional information from DelDOT regarding Change of Zone No. 1719, Change of Zone No. 1720, and Conditional Use No. 1944 filed on behalf of Castaways Bethany 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 503 12  
Defer  
Action on  
C/Z 1719,  
C/Z 1720,  
C/U 1944**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1719, Change of Zone No. 1720, and Conditional Use No. 1944 filed on behalf of Castaways Bethany LLC.

**Motion Adopted: 5 Yeas.**

**M 503 12  
(continued)**

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

**M 504 12  
Adjourn**

**At 4:58 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips,  
to adjourn.**

**Motion Adopted:    5 Yeas.**

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

**Respectfully submitted,**

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