

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 22, 2013

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 22, 2013, 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
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 488 13
Amend
and
Approve
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to amend the Agenda by deleting “Wastewater Agreement – Hunter’s Walk” and by deleting “Pending/Potential Litigation, 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 October 15, 2013 were approved by consent.

**Corre-
spondence**

Mrs. Deaver read the following correspondence:

REPRESENTATIVE PETE SCHWARTZKOPF, LEWES, DELAWARE.

RE: Invitation to attend the next meeting of the Route 1 Pedestrian Safety Task Force on Tuesday, October 22 at 7:00 p.m. at the Rehoboth Beach Convention Center.

BETH BERGER, COMMUNICATIONS DIRECTOR, DELAWARE BREAST CANCER COALITION, WILMINGTON, DELAWARE.

RE: Notification that the Delaware Breast Cancer Coalition will be at The Circle in Georgetown on Friday, October 25th, to provide mammograms on the State’s Mobile Health Screening Van.

**Adminis-
trator’s
Report**

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

1. U.S. Fish and Wildlife Service Notification – Proposed Rule under the Endangered Species Act

The U.S. Fish and Wildlife Service (Service) recently notified Sussex County officials of two proposed rules involving the Endangered Species Act (ESA). First, the Service published a proposed rule to list the *rufa* red knot as threatened under the ESA. Second, the Service published a proposed rule to list the northern long-eared bat as endangered under the ESA. Each proposed rule has a 60-day comment period whereby the public can submit comments by accessing www.regulations.gov.

**Authoriza-
tion to
Execute
Loan and
Grant
Documents**

Mrs. Jennings reported that she would like to submit an application for funding for an upcoming County sewer district. In order to do this, she will need the authority to execute loan and grant applications for USDA Rural Development, the State of Delaware, and other governmental entities on behalf of Sussex County. This is the same authority granted to previous Finance Directors. As a continued check and balance, the County Administrator will still be responsible for signing all bond documents. This requested authority allows the Finance Director to apply for funding.

**M 489 13
Authoriza-
tion to
Execute
Loan and
Grant
Documents**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council hereby authorizes Gina A. Jennings, Director of Finance of Sussex County, to execute loan and grant applications for USDA Rural Development, the State of Delaware, and other governmental entities on behalf of Sussex County.

Motion Adopted: 5 Yeas.

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

**Contin-
uation of
Public
Hearing
on
Proposed
Ordinance
Relating to
Excessive
Dog
Barking**

The Public Hearing was continued on the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 97 OF THE CODE OF SUSSEX COUNTY, ENTITLED “EXCESSIVE DOG BARKING” WHICH SHALL DEFINE “EXCESSIVE DOG BARKING” AND CREATE ENFORCEMENT PROVISIONS AND PENALTIES FOR FAILURE TO COMPLY WITH THIS CHAPTER”.

This Ordinance creates a new Chapter 97 in the Sussex County Code which defines excessive dog barking and creates enforcement provisions and penalties for failure to comply with this Chapter.

The County Council held a Public Hearing on the Proposed Ordinance on September 10, 2013 at which time the Public Hearing was recessed for a period of approximately six weeks¹ to give the County appropriate time to re-

Continuation of Public Hearing on Proposed Ordinance Relating to Excessive Dog Barking (continued)

advertise the Public Hearing, at which time the Council will continue the Public Hearing with hopes that the Kent County SPCA staff member can attend, Mr. Moore can provide further legal information, and the public can continue to be heard.

Hal Godwin, Deputy County Administrator, provided a history of the draft ordinance and the proposed ordinance, as introduced.

The Council has discussed this matter on the following dates: June 11, July 16, July 30, and September 10, 2013. [For additional information, see the minutes of the meetings of the Sussex County Council on those dates.]

The Council discussed the Proposed Ordinance and made comments regarding enforcement, the definition of an “investigation”, a corresponding policy outlining what people can expect when they file a complaint, and whether or not a complaint will stand up in court or considered hearsay.

Major Brian Whipple, Delaware Animal Care Control and Kent County SPCA, reported that in New Castle County where they enforce a Barking Dog Ordinance, they do not respond overnight; that a 24-hour dispatcher will note the complaint in the system and the next morning, the first officer on duty will respond to that location; that if the person is not at home, they will get a note on the door along with a copy of the ordinance; that these cases rarely go to court and the ones that have gone to Court, the SPCA has won the case; that there have been no repeat offenders; that the ordinance is effective; that having a complaint on the books is a big deterrent; that, in 2013, they received approximately 60 barking dog complaints in Sussex County; that in Sussex County there is no enforcement mechanism - the SPCA can notify the dog owner of a complaint but there is nothing else the SPCA can do; that their standard operation is to give a warning, educate the dog owner regarding an ordinance, and after three complaints, proceed with legal action (issue citation and go to court). In regards to the Sussex County’s Proposed Ordinance, Major Whipple stated that it is well written; it would be easy to enforce; and that he suggests the approval of the Proposed Ordinance.

Public comments were heard.

Pat Fish of Georgetown spoke in opposition to the Proposed Ordinance. She stated that the County should consider an arbitrator versus adopting a new law. Mrs. Fish also questioned what the County will do when someone abuses the ordinance.

Carol Barford of Rehoboth, Connie Ferrara of Rehoboth, Mary Lou Ritson of Lewes, Carol Dadds of Lewes, Dean Costas of Lewes, and Mr. Harris of Rehoboth spoke in support of the Proposed Ordinance. They stated that barking dogs affect quality of life; that some dog owners leave their dogs outside all day while the owners are at work; that some dog owners are unresponsive to complaints; that a complaint can come from one development regarding a dog in an adjacent development; that some residents are fearful

Continuation of Public Hearing on Proposed Ordinance Relating to Excessive Dog Barking (continued)

of making a complaint and a third party is needed to provide relief; that there are serious barking dog situations as well as dangerous dog situations; that there are people that are lawless; and that dogs owned by tourists are also a problem.

Dan Kramer of Greenwood questioned where in the Proposed Ordinance it allows the County to hire the SPCA to enforce the law.

Mr. Moore responded that the Proposed Ordinance stipulates that “This ordinance shall be enforced by the Sussex County Constable, or his designee.”

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

Mr. Cole raised a question – Can the Proposed Ordinance be amended so that it will be effective for only one year and that after one year, it would be determined if it is effective or not and re-adoption considered.

**M 490 13
Defer
Action on
Proposed
Ordinance
Relating to
Excessive
Dog
Barking**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action for one week on the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 97 OF THE CODE OF SUSSEX COUNTY, ENTITLED “EXCESSIVE DOG BARKING” WHICH SHALL DEFINE “EXCESSIVE DOG BARKING” AND CREATE ENFORCEMENT PROVISIONS AND PENALTIES FOR FAILURE TO COMPLY WITH THIS CHAPTER” for the Council to consider limiting the Proposed Ordinance to one year after which time the County would review it and consider re-adoption.

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**

**Consultant
Selection
for the
North
Coastal
Planning
Area**

Joe Wright, Assistant County Engineer, reported that on Tuesday, October 15th, he presented a request for approval to select a consultant to provide planning, design, and construction inspection/administration services for water and wastewater in the North Coastal Planning Area for a five (5) year period effective upon Council’s approval and successful negotiation of an agreement. The Engineering Department recommended that the Contract be awarded to Whitman, Requardt & Associates. Mr. Wright noted that the selection process was performed according to County procedures. (See the minutes of September 15th for details that were provided on that date.)

Mr. Phillips noted that, on October 15th, he raised questions and that, to date, those questions have not been answered. He stated that on October 15th he asked that an Executive Session be held prior to the meeting on this date to discuss this issue; however, he found out that his concerns do not fall within the parameters of allowing an Executive Session. For this reason, Mr. Phillips asked to meet with the President of Council, the County Administrator, and the County Attorney following the Regular Meeting on

(continued) **this date to try and get resolution to his concerns. Mr. Phillips asked that action on this matter be deferred for one week.**

M 491 13

**Defer
Action on
Consultant
Selection/
North
Coastal
Planning
Area**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action on the Consultant Selection for the North Coastal Planning Area.

Motion Adopted: 3 Yeas, 2 Nays.

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

Requests

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

M 492 13

**Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00 (\$300.00 from Mrs. Deaver's Councilmanic Grant Account and \$50.00 each from Mr. Cole's, Mr. Phillips', Mr. Vincent's and Mr. Wilson's Councilmanic Grant Accounts) to Southern Delaware Choral Society for concert costs.

Motion Adopted: 5 Yeas.

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

M 493 13

**Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$250.00 (\$50.00 from each Councilmanic Grant Account) to CHEER for the "Deck the Halls" fundraiser.

Motion Adopted: 5 Yeas.

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

M 494 13

**Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 from Mr. Vincent's Councilmanic Grant Account to City of Seaford Parks & Recreation for football 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 495 13

Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$250.00 from Mr. Cole's Councilmanic Grant Account to Del-Mar-Va Council, BSA, Cub Scout Pack 5 for camping expenses.

**M 495 13
Council-
manic
Grant
(continued)**

Motion Adopted: 5 Yeas.

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

**M 496 13
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Delaware State University Alumni Association for a scholarship fundraiser.

Motion Adopted: 5 Yeas.

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

**Additional
Business**

There was no additional business.

**M 497 13
Recess and
Go Into
Executive
Session**

At 11:17 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session to discuss a matter relating to Personnel.

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 11:18 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 a matter relating to Personnel. The Executive Session concluded at 11:43 a.m.

**M 498 13
Reconvene
Regular
Session**

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

Motion Adopted: 5 Yeas.

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

Action

There was no action on Executive Session matters.

**M 499 13
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 11:44 a.m.

Motion Adopted: 5 Yeas.

**M 499 13
(continued)**

**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**