



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 16, 2010

#### Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 16, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

#### M 116 10 Amend and Approve Agenda

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to amend the agenda by deleting "Emergency Operations Plan – Request for Proposals"; by deleting "Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition"; by deleting "Possible Action on Executive Session Items"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

#### Minutes

The minutes of February 2, 2009 were approved by consent with a correction to the name of the County Attorney in attendance. (The minutes will state that J. Everett Moore, County Attorney, was present.)

#### Corre- spondence

Mr. Moore read the following correspondence:

**JUNIOR ACHIEVEMENT OF DELAWARE.**

**RE: Letter in appreciation of Human Service Grant.**

**Storm  
Update**

Mr. Baker reported on the recent snow storms that occurred during the week of February 7, 2010 which brought two feet of snow, strong winds, freezing temperatures and blizzard conditions. There was a coordinated response which was staged at the County's Emergency Operations Center from Friday, February 5th to Saturday, February 13th. Two major problems occurred during the storm – power outages and stranded motorists. Mr. Baker reported that the following should be recognized for their efforts and contributions to the response effort: Delaware National Guard, DelDOT, ambulance and fire service, police, towns, paramedics, County EOC staff, other County staff, farmers and others.

**Storm  
Update  
(continued)**

**Legislative  
Update**

Mr. Baker reported that the Delaware Department of Natural Resources and Environmental Control (DNREC) has suggested that all three counties consider endorsing legislation that the Department has proposed. Pat Emory of DNREC was also present to discuss the draft legislation.

The first Bill is a housekeeping proposal to consolidate in Title 9 of the Delaware Code certain dog control responsibilities that have already been transferred to the counties. At this time, some of those responsibilities are noted in Title 7; this legislation would better define the responsibilities in Title 9. This legislation is being reviewed by the County Attorney and County staff. Mr. Baker noted that, in theory, the staff is in support of the legislation.

The second Bill also more properly lists county responsibilities in Title 9 of the Delaware Code versus Title 7. However, in addition to those various housekeeping changes, the legislation would also transfer the responsibility for dangerous dogs to the County. This legislation would include a definition of "dangerous dog", a section regarding a statewide Dog Control Panel, a section regarding seizure and impoundment of dangerous or potentially dangerous dogs, a section regarding various exceptions, and a section regarding a hearing and appeal process.

In regards to § 924 Hearing Procedures; Appeal, Mr. Moore suggested that the legislation reference that hearings of the Dog Control Panel should be electronically recorded so that anyone who wants a transcript of the hearing can obtain one at their own cost.

Mr. Baker noted that a requirement could be added that the Attorney General's Office will continue to prosecute violators of this law, which is currently done according to policy.

Mr. Baker stated that the purpose of placing this on the Agenda was to determine whether or not the Council supports the draft legislation.

Pat Emory stated that the draft legislation is a housekeeping measure which transfers authority from Title 7 of the Delaware Code to Title 9 of the

**Delaware Code** so that dog control legislation is not split between two different titles.

In regards to the dangerous dogs issue, Mr. Emory stated that it makes sense to transfer the responsibility to the County since there is no funding source in the State to handle dangerous dog issues.

**Legislative  
Update  
(continued)**

Mr. Emory reported that \$29,300 will be released soon to Sussex County from DNREC's Fiscal Year 2010 Budget for dog control.

Mr. Emory stated that one purpose of the draft legislation is for consistency in all three county governments during the transfer of authority of dog control from the State to the counties.

Mr. Phillips stated that he would like additional time to read the legislation prior to a vote being taken. In addition, Mr. Phillips stated that the draft legislation will be placed on the County's website for review and comment.

Mr. Phillips stated that he believes the County should be given more flexibility in the construction of the regulations since the County has the responsibility of paying for dog control.

Mr. Cole suggested that the public be invited to participate in a future discussion on the draft legislation.

Mr. Emory noted that the draft legislation will have to be considered by the General Assembly after they reconvene in March.

Mr. Godwin reported on issues pending since the last legislative update provided to the Council on February 9th:

In regards to House Bill No. 26 which would authorize the collection of liens by writ of monition, Mr. Godwin reported that he has not yet contacted Senator McDowell regarding his reason for the Amendment to this legislation.

In regards to House Bill No. 106 regarding the powers and duties of the Delaware Open Space Council, the Parks and Recreation Council and the Delaware Council on Greenways and Trails, Mr. Godwin stated that a question was raised as to whether the Councils are of the same ilk, and they are and they act as advisory councils to DNREC. Additionally, Mr. Godwin stated this legislation will not cause the public to lose ability to direct funding for projects.

In regards to House Bill No. 300 regarding the Freedom of Information Act, a question was raised regarding the meaning of "reasonable". Mr. Godwin stated that he has sent emails to the sponsors; however, he has not yet received a response.

**Adminis-  
trator's  
Report**

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

**1. Delaware State Police Report for December 2009**

**As per the attached report, the Delaware State Police handled 3,908 complaints during December in Sussex County. There were 2,395 traffic arrests, 565 felony criminal arrests, and 734 misdemeanor criminal arrests.**

**Report  
(continued)**

**(Attachments to the Administrator's Report are not attachments to the minutes.)**

**Wastewater  
Agreement**

**Mr. Godwin presented a wastewater agreement for the Council's consideration.**

**M 117 10  
Execute  
Wastewater  
Agreement/  
Bay  
Forest  
Club**

**A Motion was made by Mr. Cole, seconded by Mr. Vincent, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 913-1, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Bay Forest, LLC, for wastewater facilities to be constructed in Bay Forest Club – Phase 1.5B, located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.**

**Motion Adopted: 5 Yeas.**

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

**Fleet  
Report**

**Mr. Godwin presented a Fleet Report and made recommendations for upgrades to improve fleet efficiencies and to reduce cost per mile.**

- Mitchell On Demand – Computer on-line access to technical information for three maintenance and repair shops (Piney Neck, EMS/Airport, and Main Shop/Airport). This will enable staff to perform a more complete menu of services in-house replacing the need to outsource and affect repairs faster.**
- Require our technicians to obtain ASE certification, particularly in brakes and steering, to reduce the County's liability exposure.**
- Reassign some routine services from our main shop, when overloaded, to the EMS Shop, as workloads permit. This will support efforts to reduce outsourcing.**
- Competitively re-shop purchases of parts, accessories and tires quarterly. State contract is not always the best price.**

**Fleet  
Report  
(continued)**

- **Purchase \$16,035 of equipment to enable tire services and fluid flushing and air conditioning recharge services to be performed conveniently in house, saving money and time, immediately saving \$25,000.**
- **Computerize our service records, which will allow more accurate control of costs and time management. Piney Neck shop already uses the Dossier program.**
- **Use of Fuel Man Card will provide tighter controls, will eliminate commute to County garage for refueling, and will lower price. Fuel Man will provide the software program for fleet maintenance records. This will improve the County's miles per gallon and driver responsibility.**

**Mr. Phillips asked the Council to review the Fleet Report.**

**Request**

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

**M 118 10  
Community  
Grant**

**A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$500.00 (\$400.00 from Mr. Wilson's and \$100.00 from Mr. Phillips' Community Grant Accounts) to the Georgetown Little League for new equipment and uniforms.**

**Motion Adopted: 5 Yeas.**

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

**Additional  
Business/  
Opposition  
to Gambling  
and  
Casinos/  
Racinos in  
Sussex  
County**

**Under Additional Business, Rob DuFour, Thomas Uss, Helen Cropper, Mandy Olewiler, and Eric Bodenweiser spoke in opposition to gambling and casinos/racinos in Sussex County. Petitions containing over 160 signatures were submitted to the Council in opposition to "gambling racinos and/or casinos being built in or around Georgetown and/or Sussex County, Delaware."**

**Eric Bodenweiser referenced the proposed Resolution that he presented to the County Council on January 19th and 26th in regards to preventing gambling in Sussex County. Mr. Bodenweiser asked the Council to put the draft Resolution on the next County Council Agenda for consideration and he stated that a Resolution from the Sussex County Council would have a resounding affect on legislators' decisions regarding racinos and casinos in Sussex County.**

**M 119 10  
Recess**

**At 11:48 a.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

**M 120 10  
Reconvene**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to reconvene at 1:34 p.m. Motion Adopted by Voice Vote.

**Public  
Hearing  
C/U  
No. 1813**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICE SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS (Conditional Use No. 1813) filed on behalf of Saddle Creek, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 28, 2010 at which time they recommended approval with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 28, 2010.)

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

Mr. Lank distributed Exhibit Booklets which were provided by the Applicant.

Ben Gordy of Saddle Creek, LLC was present on behalf of the application with James Fuqua, Attorney. Mr. Fuqua stated that the site is already improved with a building; that in 2005, the site was approved for a sales center/model home to showcase projects in the area; that the model home is no longer necessary since those projects have model homes in them; that they are proposing to convert the building into professional offices; that septic and water exists on the site; that the existing entrance on Route 30 is proposed to serve the project; that parking exists in the rear yard and space is available to expand the parking area; that the site and the adjacent lot to the west are zoned AR-1; that all other properties along Route 9 from this intersection toward the west are zoned C-1; that commercial uses in the immediate area include the DelDOT service yard, a restaurant, and a furniture store; that the site will be maintained in its current appearance; that they do not anticipate any negative impact on the area with the conditions proposed; that the use proposed is in character with the area; that there will not be any outside display or storage; that once tenants are established, a revised site plan and parking plan will be submitted; and that adequate space is available for parking expansion in the rear yard.

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

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt

**M 121 10  
Adopt  
Ordinance  
No. 2103  
(C/U  
No. 1813)**

**Ordinance No. 2103 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICE SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS (Conditional Use No. 1813) filed on behalf of Saddle Creek, LLC, with the following conditions:**

**M 121 10  
Adopt  
Ordinance  
No. 2103  
(C/U  
No. 1813)  
(continued)**

- 1. There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side.**
- 2. Any security lights shall only be installed on the building and shall be screened so that they do not shine on neighboring properties or roadways.**
- 3. The hours of operation shall be limited to between 7:00 a.m. and 9:00 p.m., Monday through Saturday.**
- 4. A landscape buffer or fence with a minimum height of six (6) feet shall be maintained along all boundaries with adjacent residential properties. The type and height of the buffer or fence shall be depicted on the Final Site Plan.**
- 5. The use shall be located within the existing two (2) story building.**
- 6. The Applicants must comply with all of DelDOT’s requirements concerning the entrance and roadway improvements.**
- 7. The use shall be limited to business and professional uses, including but not limited to medical offices, dental offices, lawyers, accountants, insurance offices, etc. There shall not be any contractor’s offices or uses that primarily involve retail sales.**
- 8. All parking shall be confined to the rear of the property.**
- 9. The Final Site Plan shall include a landscape plan for the property.**
- 10. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/U  
No. 1857**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 8.04 ACRES, MORE OR LESS” (Conditional Use No. 1857) filed on behalf of Delmarva Power & Light Co.**

**The Planning and Zoning Commission held a Public Hearing on this application on January 28, 2010 at which time they deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission**

dated January 28, 2010.)

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

Mr. Lank distributed Exhibit Books which were provided by the Applicant.

Public  
Hearing/  
C/U  
No. 1857  
(continued)

Shannon Carmean, Attorney, was present on behalf of the application with Jim Smith, Senior Public Affairs Manager with Delmarva Power & Light Co., Ken Usab, Professional Engineer with Morris & Ritchie Associates, and Dr. William Bailey, Scientist. They stated that the project (Cool Spring Liability Project) is in response to the growing population of the area and is necessary to meet the operational, economic and liability requirements for Delmarva Power; that the substation will enhance and maintain Delmarva Power's ability to provide reliable power to its customers in this area; that transmission lines already exist and are not intended for consideration in this application; that the site has been owned by Delmarva Power & Light since 1972 and is the residual of a 8.04 acre portion of the original parcel; that the site has existing frontage along Hudson Road and an entry road in Lazy Lake Subdivision; that Lazy Lake is to the north and the proposed Shoreview Woods multi-family project and Hunters Mill Subdivision are to the west; that the Applicants have had an agreement since 1974 for access to the entry road into Lazy Lake; that the soils on the site have been tested and will support the proposed project and will provide adequate drainage; that they are proposing to utilize a gravel drive and an eight (8) inch pervious gravel cover on the site of the project; that they are proposing an eight (8) foot high privacy fence with slats for screening around the project; that they are proposing to retain woodlands adjacent to Lazy Lake and Shoreview Woods for buffering; that they have been working with the Sussex Conservation District and determined that to best facilitate storm water management, they are proposing to purchase 2.0 acres of land from the Shoreview Woods project site for a shallow storm water management facility; that, due to the loss of acreage, the density of the Shoreview Woods project will be increased from 3.4 units per acre to 3.6 units per acre after purchase; that the project creates a diverse path to provide power during times of peak demand and emergency conditions; that the proposed use complies with the Zoning Code which identifies the property as being located in a GR General Residential District; that GR zoning has a listing of permitted uses with conditional uses; that one of the permitted uses is listed as "public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations and substations, but not telephone central offices"; that a natural buffer will be maintained around the property to lessen any impact on surrounding properties and a fence will be erected around the project to prevent entry into the substation; that the site will be surrounded by woodlands except for the opening for the power line into the site; that the fenced in site will be gated for access; and that security lighting will be erected on the site but will be for emergency conditions only.



**Mr. Smith reported that letters were sent to area residents notifying them of a public meeting and presentation and only five area residents participated in the meeting.**

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

**M 122 10  
Defer  
Action on  
C/U  
No. 1857**

**A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to defer action on Conditional Use No. 1857 filed on behalf of Delmarva Power & Light Co.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/Z  
No. 1667**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.47 ACRES, MORE OR LESS” (Change of Zone No. 1667) filed on behalf of Wyoming Concrete, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on January 28, 2010 at which time they recommended that the application be approved.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated January 28, 2010.)**

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

**Mr. Lank distributed Exhibit Booklets which were provided by the applicant.**

**Frank DeMondi of Wyoming Concrete, LLC was present on behalf of the application with James Fuqua, Attorney. They stated that the 10 acre parcel is located close to C-1 zoning along U. S. Route 113 and is across from Enchanted Meadows, a mobile home park community; that the site is located across the railroad from a 22.9 acre parcel, which is already zoned HI-1 Heavy Industrial and which is operated as a lumbering operation (known as Hardwood Mills); that another industrial use (Pioneer Concrete ) exists on the 10 acre parcel; that the use is a concrete batching plant and yard and was approved as a Special Use Exception by the County Board of Adjustment in 2000 and again in 2005; that several factors support approval of this application: 1) the adjacent industrial zoning; 2) the adjacent industrial and commercial use in the area, 3) industrial zoning**

**Public  
Hearing/  
C/Z  
No. 1667  
(continued)**

permits the concrete batch plant as a permitted use; and 4) in the current economic conditions, banks are not typically comfortable if uses are not zoned properly; that no change of use is presently intended; that if the use changes, site plans would have to be submitted to the Planning and Zoning Commission; that the ten (10) acre site is appropriate in size for an industrial use and has sufficient area for buffering/landscaping; that fencing already exists along the frontage; that they have approximately 800 feet of frontage along the railroad tracks; that they have easy access to U.S. Route 113; that the industrial use of this site, if rezoned, will comply with neighboring uses; that the existing use on this site has been a successful business; that a need exists for concrete and concrete products in the area; that concrete on trucks must be delivered to a site within 45 minutes of loading; and that some future use could access the railroad by creation of a railroad siding.

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

**M 123 10  
Adopt  
Ordinance  
No. 2104  
(C/Z  
No. 1667)**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2104 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.47 ACRES, MORE OR LESS” (Change of Zone No. 1667) filed on behalf of Wyoming Concrete, LLC.

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

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

**(Mr. Phillips was out of the room during a portion of the Public Hearing.)**

**M 124 10  
Adjourn**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to adjourn at 2:42 p.m. Motion Adopted by Voice Vote.

**Respectfully submitted,**

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