

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 17, 1998

Call to Order      The regular meeting of the Sussex County Council was held Tuesday, March 17, 1998, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
Finley B. Jones, Jr.	Vice President
George B. Cole	Member
George J. Collins	Member
Lynn J. Rogers	Member

The meeting was opened by repeating the Lord's Prayer and Pledge of Allegiance to the Flag.

M 122 98      A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Approve Agenda      approve the Agenda, as presented.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

M 123 98      A Motion was made by Mr. Rogers, seconded by Mr. Jones, to Approve Minutes      approve the minutes of the previous meeting, dated March 10, 1998.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Corre-      Mr. Jones, Assistant County Attorney, read the following spondence      correspondence:

WILLIAM V. ROTH, JR., UNITED STATES SENATOR, WASHINGTON, D.C.  
RE: Letter regarding Delaware's Immigration and Naturalization Service office in Dover and request for regular visits to Sussex County.

TIM SLADE, GEORGETOWN, DELAWARE.  
RE: Letter of appreciation for grant to the Minority Action Committee.

DELAWARE RIVER BASIN COMMISSION, WEST TRENTON, NEW JERSEY.  
RE: Notice of Commission Meeting and Public Hearing.

Corre- U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA, PENNSYLVANIA,  
spondence RE: Public Notice to solicit comments and recommendations from  
(con't) the public concerning issuance of a Department of the Army  
permit for Gravelly Branch Tax Ditch.

County Mr. Calio, Director of Economic Development and Industrial  
Seat Airpark, and Mr. Fuqua, Attorney for County Seat Materials,  
Materials L.L.C., were in attendance to discuss Proposed Amendments  
L.L.C. to a Lease Agreement dated September 10, 1996 for 19.38 Acres  
of land located at Sussex County Airport and Industrial Park.  
Mr. Fuqua also requested Council's authorization and consent  
to file Application with the Sussex County Board of Adjustment  
for a Special Use Exception for an Asphalt Plant. Mr. Fuqua  
explained that this is a continuation of the original Agree-  
ment that began in 1995; since that time there has been liti-  
gation involving this issue. The Board of Adjustment's  
approval of the special use exception was appealed to the  
Superior Court who upheld the Board of Adjustment's decision;  
it was then appealed to the Supreme Court who reversed the  
decision. The Proposed Amendments to the Lease Agreement are  
a result of this reversal. The initial term of the lease  
will be for one year with two one-year renewals with an annual  
rent of \$1,200 per year. This establishes County Seat Materials,  
L.L.C. as a legal tenant which will give them the immediate right  
to possession. There is also an option for a five-year lease  
with an annual rent of \$1,000 an acre plus a royalty payment.  
County Seat Materials, L.L.C. will be required to exercise this  
option within 90 days of receiving all permits and approvals.  
All other terms of the September 10, 1996 Lease Agreement will  
remain binding. It was noted that the original Agreement re-  
quires the tenant to build a new road for access to the pre-  
mises; it was clarified that the tenant has the right to  
construct their facility prior to building the road as long  
as no asphalt is transported out of the plant and through  
Georgetown prior to the road being built. This issue will be  
addressed in the final revisions to the Lease Agreement.

M 124 98 A Motion was made by Mr. Cole, seconded by Mr. Collins, to  
Approve approve the Amendments to the Lease Agreement with County  
Amend- Seat Materials, L.L.C., as presented.  
ments to

Lease Motion Adopted: 4 Yea, 1 Abstention.  
Agree-

ment/ Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
County Mr. Collins, Yea; Mr. Jones, Abstained;  
Seat Mr. Dukes, Yea

M 125 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, to  
Authorize authorize County Seat Materials, L.L.C. to file application  
County with the Sussex County Board of Adjustment for a special use  
Seat exception for an Asphalt Plant at the Sussex County Industrial  
Applica- Park; Sussex County Council will sign the application as the  
tion land owner.

M 125 98 Motion Adopted: 4 Yea, 1 Abstention.  
(con't)

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Abstained;  
Mr. Dukes, Yea

Proposed Mr. Stickels, County Administration, read in its entirety a  
Procla- Proposed Proclamation entitled "PROCLAIMING MARCH 17, 1998  
- mation IN RECOGNITION OF BEATRICE "BEA" SIMONDS, A LIFE-LONG RESIDENT  
OF SUSSEX COUNTY". Beatrice "Bea" Simonds will be inducted  
into the Hall of Fame of Delaware Women on March 18, 1998.

M 126 98 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to  
Adopt Adopt the Proclamation entitled "PROCLAIMING MARCH 17, 1998  
Procla- IN RECOGNITION OF BEATRICE "BEA" SIMONDS, A LIFE-LONG RESIDENT  
- mation/ OF SUSSEX COUNTY".  
Beatrice  
"Bea"  
Simonds

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Adminis- Mr. Stickels, County Administrator, read the following informa-  
- trator's tion in his County Administrator's Report:  
Report

1. Water Utility Legal Notice

I have received notification from the Department of Natural Resources and Environmental Control (DNREC) that an application has been filed by Pine Crest Water Company for a Certificate of Public Convenience and Necessity to provide public water service to its existing water service area comprised of Pine Crest, Holly Ridge, and Elmer Cox developments, all situate on Cedar Neck, Sussex County, Delaware. The application may be inspected by appointment at the offices of the Department of Natural Resources and Environmental Control, Suite 200, 5 East Reed Street, Dover, Delaware 19901. For additional information or an appointment to inspect the application, individuals should contact A.J. Farling at 302-739-5081.

A public hearing will not be held on this application unless DNREC receives a request to hold a hearing no later than April 3, 1998. I see of no reason why the County Council should oppose this application.

2. Mayor Guy N. Longo

The City of Seaford will be honoring Mayor Longo at a dinner on March 21, 1998, at the Seaford Country Club. Mr. Dukes and I will be attending the dinner representing the County. Mr. Longo served the City of Seaford for 20 years, six years as a Council member and 14 years as Mayor beginning in 1984.

Adminis-  
trator's  
Report  
(con't)

3. Comprehensive Land Use Plan

Printed copies of the Sussex County Comprehensive Land Use Plan are available in the Planning and Zoning Office. The general public may purchase copies for \$35.00. Copies will be made available to all municipalities in the County. Municipalities may obtain a copy by exchanging a copy of their land use plan at no cost. Copies have also been made available to each of the 14 libraries in the County.

4. St. Patrick's Day

In honor of St. Patrick's Day, an Irish Quartet will be performing at 1:00 p.m. today in the County Administrative Office Building atrium area.

Old  
Business  
C/U  
No. 1226

Conditional Use No. 1226 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-2 AGRICULTURAL RESIDENTIAL DISTRICT FOR USED CARS AND PARTS SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.76 ACRES, MORE OR LESS" filed on behalf of Douglas H. Hitchens. A Public Hearing was held on this application on March 10, 1998 at which time action was deferred.

M 127 98  
Adopt  
Proposed  
Ordinance  
C/U  
No. 1226

A Motion was made by Mr. Collins, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-2 AGRICULTURAL RESIDENTIAL DISTRICT FOR USED CARS AND PARTS SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.76 ACRES, MORE OR LESS" (Conditional Use No. 1226) filed on behalf of Douglas H. Hitchens.

Motion Denied: 4 Nay, 1 Yea.

Vote by Roll Call: Mr. Cole, Nay; Mr. Rogers, Nay;  
Mr. Collins, Yea; Mr. Jones, Nay;  
Mr. Dukes, Nay

Findings  
of Fact

The findings of fact and recommendations of the Planning and Zoning Commission were incorporated into the record. The County Council found that the Proposed Conditional Use was not in accordance with the Comprehensive Plan, and did not promote the health, safety, morals, convenience, order prosperity and welfare of the present and future inhabitants of Sussex County. The County Council further found that the proposed Conditional Use is not for the general convenience and welfare of the inhabitants of Sussex County. Specifically, the Council found that the surrounding area is primarily agricultural and residential in use, and the proposed use would be out of character with the area. The Council found that the proposed use would have a negative impact on the residential area. The hours of operation sought by the applicant were not consistent with other area land uses.

Citizen's Comments Mr. Wolfgang von Baumgart submitted to Council for consideration a Proposed Motion and Proposed Ordinance relating to the establishment of an interim Sussex County Public Integrity Research and Advisory Commission and a permanent Sussex County Public Integrity Commission. Council will take the matter under advisement.

M 128 98 A Motion was made by Mr. Cole, seconded by Mr. Collins, to Recess recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene Mr. Dukes called Council back into session at 1:30 p.m.

Public Hearing (C/U No. 1227) 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 A CORN MAZE RECREATIONAL ACTIVITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS, OF A 63.75 ACRE PARCEL" (Conditional Use No. 1227) filed on behalf of Daniel W. Magee, t/a Magee Farms. The Planning and Zoning Commission deferred action on this request at their February 26, 1998 meeting. The Public Hearing was closed and action was deferred.

Public Hearing (C/U No. 1229) A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR EXPANSION OF EXISTING RECREATIONAL FACILITIES TO ENLARGE WADING POOL AND TO ADD A GO-CART TRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 42,000 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1229) filed on behalf of Fun Sport, Inc. The Planning and Zoning Commission deferred action on this request at their February 26, 1998 meeting. Numerous public comments were heard in opposition to this application. The Public Hearing was closed; however, the record will remain open for a period of two weeks, until March 31, 1998, for submission of material including but not limited to additional information from the Division of Natural Resources and Environmental Control. Mr. Rogers did not participate in this Public Hearing due to a possible conflict of interest.

Public Hearing (C/U No. 1230) 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 A MANUFACTURED HOME SALES FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.80 ACRES, MORE OR LESS" (Conditional Use No. 1230) filed on behalf of B & M Builders, Inc. The Public Hearing was closed.

M 129 98 A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Ordinance No. 1219 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MANUFACTURED HOME SALES FACILITY TO BE LOCATED

M 129 98  
(con't)

ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.80 ACRES, MORE OR LESS" (Conditional Use No. 1230) filed on behalf of B & M Builders, Inc., with the following conditions:

1. Concrete walkways shall be provided.
2. Lighting shall be directed away from neighboring properties, and so that they do not impact motorists.
3. One unlighted sign, not exceeding 32 square feet, may be permitted.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Findings  
of Fact

The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use will serve community convenience and will serve an area need, without any adverse impact of any sort. The site is located in a mixed residential-commercial area and the character and trend of development is toward commercial.
2. The proposed use is consistent with the purposes and goals of the Comprehensive Land Use Plan.
3. The findings of fact and recommendation of the Planning and Zoning Commission are incorporated herein.

Public  
Hearing  
C/U  
No. 1231

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 A SPRAY DRYING TESTING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 4.61 ACRES, MORE OR LESS" (Conditional Use No. 1231) filed on behalf of Paul A. Schmidtchen. The Public Hearing was closed.

M 130 98  
Adopt  
Ordinance  
No. 1220

A Motion was made by Mr. Jones, seconded by Mr. Collins, to Adopt Ordinance No. 1220 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SPRAY DRYING TESTING FACILITY TO BE LOCATED

M 130 98  
(con't)

ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 4.61 ACRES, MORE OR LESS" (Conditional Use No. 1231) filed on behalf of Paul A. Schmidtchen, with the following conditions:

1. The use must comply with all EPA and DNREC regulations for air quality control measures.
2. One unlighted sign, not exceeding 32 square feet may be permitted.
3. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Findings  
of Fact

The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use will serve area agricultural and food production businesses and thereby serve the purposes and goals of the Comprehensive Land Use Plan.
2. With the permits required of the applicant and the conditions imposed in this ordinance, there will be no adverse impact of any sort.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Public  
Hearing  
(C/Z  
No. 1333)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32.25 ACRES, MORE OR LESS" (Change of Zone No. 1333) filed on behalf of William D. and Karen L. Simpson and the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECREATIONAL VEHICLE PARK/CAMPGROUND AND BOAT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32.25 ACRES, MORE OR LESS" (Conditional Use No. 1232) filed on behalf of William D. and Karen L. Simpson. The Public Hearing was closed.

M 131 98 A Motion was made by Mr. Jones, seconded by Mr. Collins, to  
Adopt Ordinance No. 1221 entitled "AN ORDINANCE TO AMEND THE  
Ordinance COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL  
No. 1221 RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DIS-  
(C/Z TRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTI-  
No. 1333) MORE HUNDRED, SUSSEX COUNTY, CONTAINING 32.25 ACRES, MORE OR  
and LESS" (Change of Zone No. 1333) filed on behalf of William D.  
Ordinance and Karen L. Simpson; and  
No. 1222

(C/U To Adopt Ordinance No. 1222 entitled "AN ORDINANCE TO GRANT A  
No. 1232) CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL  
DISTRICT FOR A RECREATIONAL VEHICLE PARK/CAMPGROUND AND BOAT  
STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND  
BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32.25  
ACRES, MORE OR LESS" (Conditional Use No. 1232) filed on be-  
half of William D. and Karen L. Simpson, with the following  
conditions:

1. A full-time manager or caretaker shall reside on the site. The manager or caretaker and immediate family shall be the only year-round residents of the campground.
2. No tent camping shall be permitted, except for scout and church groups.
3. The campground and boat storage shall be lighted when in operation, but designed to have minimum impact on neighbors and campers.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.
5. Tenant restrictions shall be submitted with the site plan.
6. No RV sales or camper sales shall be permitted on site.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;  
Mr. Collins, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

Findings of Fact The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the change of zone represents a downzoning which is land use encouraged by the State of Delaware in its Quality of Life legislation and Sussex County in its Comprehensive Land Use Plan.

Findings  
of Fact  
(con't)

2. The change of zone will have no adverse impact of any sort.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Findings  
of Fact

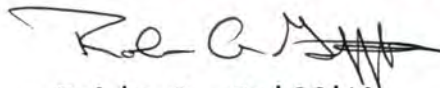
The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use will meet a growing area need for additional campground space in eastern Sussex County without adverse impact of any sort on the neighborhood or the surrounding area.
2. The proposed use meets the purposes and goals of the Comprehensive Land Use Plan, in that it promotes tourism.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

M 132 98  
Adjourn

A Motion was made by Mr. Collins, seconded by Mr. Rogers, to adjourn at 4:43 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith  
Clerk of the County Council