

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 31, 1998

Call to Order The regular meeting of the Sussex County Council was held Tuesday, March 31, 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 133 98 A Motion was made by Mr. Collins, seconded by Mr. Jones, that
Approve the Agenda be approved with an amendment to add Conditional
Agenda Use No. 1229, Fun Sport, Inc.
With
Amend- Motion Adopted: 5 Yea.
ment

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

M 134 98 A Motion was made by Mr. Jones, seconded by Mr. Collins, to
Approve approve the minutes of the previous meeting, dated March 24,
Minutes 1998.

Motion Adopted: 5 Yea.

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

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

THE CENTER FOR THE INLAND BAYS, LEWES, DELAWARE.
RE: Invitation to a workshop on Setting Pollution Limits for
Delaware's Inland Bays.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL,
DIVISION OF AIR & WASTE MANAGEMENT, DOVER, DELAWARE.
RE: Legal Notice of a Public Hearing on a new proposed regu-
lation, Regulation No. 38 - Emission Standards for Hazardous
Air Pollutants for Source Categories.

RE: Revised Legal Notice on the effective date of Regulation
No. 37 - Regulations Governing the Control of Air Pollution.

RE: Notice of Public Workshop on Regulation No. 38 - Emission
Standards for Hazardous Air Pollutants for Source Categories.

Corre- SEAFORD CHRISTIAN ACADEMY STUDENTS, SEAFORD, DELAWARE.
spondence RE: Drug Free Workbooks.
(con't)

BRIDGEVILLE SENIOR CENTER, BRIDGEVILLE, DELAWARE.
RE: Invitation to attend "Volunteer Recognition Month" luncheon.

DELORES SPRINGER, CHAIR, PINK RIBBON GOLF CLASSIC, MILLSBORO,
DELAWARE.
RE: Letter of appreciation for Mr. Collins' Councilmanic Grant.

KLASSICAL KIDS BALLET, FRANKFORD, DELAWARE.
RE: Councilmanic Grant funds returned due to the fact that
Klassical Kids Ballet has disbanded.

SHARON S. JOSEPH, SECRETARY, HARBESON IMPROVEMENT ASSOCIATION,
MILTON, DELAWARE.
RE: Letter petitioning Council to update and extend street
lights in Harbeson and extended areas.

E. SCOTT BRADLEY, YOUNG CONAWAY STARGATT & TAYLOR, LLP,
GEORGETOWN, DELAWARE.
RE: Letter of appeal to the Sussex County Council of the
Planning and Zoning Commission's denial of Norris Niblett's
request for an extension of time to submit a final sub-
division plan for Bacon Grove (Subdivision Application No.
96-22).

M 135 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, to
Adopt the Proclamation entitled "TUNE OUT TV VIOLENCE ON
Procla- APRIL 5, 1998 AND PUT TELEVISION TO WORK FOR CHILDREN".
mation

Motion Adopted: 5 Yea.

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

Airport Mr. Stickels, County Administrator, presented for Council's
Terminal consideration a proposal to submit an application to USDA
RDA Rural Development in the amount of \$730,000 for the purpose
Loan of funding the construction of a new airport terminal.

M 136 98 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to
Authorize authorize the County Administrator to apply for a loan from
RDA USDA Rural Development in the amount of \$730,000 for the
Loan airport terminal project.

Applica- Motion Adopted: 5 Yea.
tion/
Airport

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

Condi-
tional
Use No.
1229/
Fun
Sport,
Inc.

Mr. Stickels, County Administrator, advised that written comments have been received regarding Conditional Use No. 1229, Fun Sport, Inc. Following a Public Hearing held on March 17, 1998, the record was left 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.

M 137 98
Extend
Time/
Public
Hearing
Record/
Condi-
tional
Use No.
1229/
Fun
Sport,
Inc.

A Motion was made by Mr. Collins, seconded by Mr. Jones, based on the recommendation of the County Attorney, to extend the period of time that the Public Hearing record of Conditional use No. 1229, Fun Sport, Inc., be left open, from the close of business on March 31, 1998 to the close of business on April 15, 1998 during which time the applicant and the opposition will have an opportunity to comment on the new information submitted.

Motion Adopted: 4 Yea, 1 Abstention.

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

Adminis-
trator's
Report

Mr. Stickels, County Administrator, submitted the following information in his County Administrator's Report:

1. Airport Committee Meeting

The next Airport Committee meeting will be held on Wednesday, April 1, 1998 at the Sussex County Offices West Complex Building, Route 113, Georgetown, Delaware, First Floor Conference Room, at 10:00 a.m.

2. West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District Lawsuit

On March 27, 1998, the Delaware Supreme Court ruled in favor of the County in the case of Kerns vs. Dukes. The Court, in response to a question posed to it by the Third Circuit Court of Appeals, held that the courts of Delaware have jurisdiction which "...encompasses the Property Owners' § 1983 claims..." and "... also encompasses state law claims ... equivalent to that available in federal court on their CWA [Clean Water Act] claims, should they prevail."

This case began in March 1996 when the Property Owners filed a suit in federal court seeking injunctive and declaratory relief against the County and the State as a result of the establishment of the expansion district in 1989, the construction of Phases I and II, and the commencement of operation in December 1995. On the Motion of the County and the State, the lawsuit was dismissed from federal court in

Adminis-
trator's
Report
(con't)

November 1996. The Property Owners appealed to the Third Circuit and that Court certified a question to the Delaware Supreme Court in July 1997. The Third Circuit assumed that this lawsuit was the sort barred by the Tax Injunction Act and was concerned as to whether Delaware courts could provide the Property Owners with a "plain, speedy and efficient remedy."

Now that the Delaware Supreme Court has ruled that state courts have jurisdiction over the Property Owners' suit, the case returns to the Third Circuit for a final decision on the dismissal of the suit by the District Court.

(Mr. Schrader, Assistant County Attorney, was in attendance to review this lawsuit in more detail.)

Agree-
ment/
Wilmington
Trust
Company

Mr. Baker, Finance Director, presented for Council's consideration a Collateralization Agreement between Sussex County and the Wilmington Trust Company. The County currently has a Collateralization Agreement with the Wilmington Trust Company in the form a letter; the Agreement presented by Mr. Baker is in legal contract form.

M 138 98
Approve
Agree-
ment/
Wilmington
Trust
Company

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council approves a depository pledge and security agreement with the Wilmington Trust Company which specifies the terms for the collateralization of Sussex County Council deposits at Wilmington Trust Company.

Motion Adopted: 5 Yea.

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

Employee
Pension
Plan

Mr. Baker, Finance Director, reported on the results of the Actuarial Valuation for the Sussex County Employee Pension Plan as of January 1, 1998. The recommended contribution, taking into account a 2 percent COLA increase assumption, is \$768,720.00, or 8.80 percent of payroll. These figures compare to the 1997 recommended contribution of \$790,505.00, or 9.43 percent of payroll. The recommended contribution and the contribution rate decreased for the following reasons:

1. The excellent return on assets offset the increase in the contribution. The rate of return on Market Value of Assets was 17.57 percent, over 900 basis points above the assumed rate of 8 percent. The gain on assets caused a decrease in the contribution of \$103,000.
2. Slightly offsetting the increase was a loss on liabilities. The total population remained relatively constant, decreasing

Employee
Pension
Plan
(con't)

from 472 to 467. The average salary for continuing actives increased 8.55 percent, well above the assumed rate of 5.00 percent. These demographic changes increased the contribution by approximately \$81,000.

3. During 1997, retirees on average were given a 2.00 percent COLA increase, which was the assumed increase. The COLA had little effect on Plan costs for 1998.

Mr. Baker highlighted the fact that in 1998 the Pension Fund will be 84.30 percent funded in comparison to 26.19 percent funded in 1988.

Mr. Baker reported on the status of the Sussex County Council Pension Fund as of December 31, 1997. Mr. Baker noted that 1997 was a good year for the pension fund; the County experienced a return of 17.30 percent. Stock/Equity Funds earned 50% and Bonds earned 50%. The County has three different investment managers: Wilmington Trust Company, Fidelity Investments and the State of Delaware (Local Government Retirement Investment Pool). Investment performance with these three managers was as follows:

Wilmington Trust	\$7.9 Million	16.91%
Fidelity Investments	\$1.5 Million	17.79%
State of Delaware	\$2.2 Million	18.67%

Mr. Baker noted that investments are currently allocated as follows: Stock/Equity Funds at 50 percent and Bonds at 50 percent. Mr. Baker presented a proposal recommended by the Pension Committee to raise the investment allocations to Stock/Equity Funds at 60 percent and Bonds at 40 percent; investment managers would be given the flexibility of lowering these percentages by 10 percent.

M 139 98
Approve
Invest-
ment
Alloca-
tions/
Employee
Pension
Plan

A Motion was made by Mr. Jones, seconded by Mr. Collins, that the Sussex County Council approves the Pension Committee's recommendation to authorize the Wilmington Trust Company and Fidelity Investments to invest in Equities in the 50 percent to 60 percent range, up to a 60 percent level; Fixed Income or Bond Investments would thus be maintained in the 40 percent to 50 percent range.

Motion Adopted: 5 Yea.

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

Deferred Compensation Program Mr. Baker reviewed the County's Deferred Compensation Program. Currently, the providers for this service are selected through the NACo Deferred Compensation Program. Mr. Baker advised that a survey was distributed to County employees participating in the program to see if they would be interested in additional choices of deferred compensation providers. Results of the survey were affirmative. The Pension Committee has recommended that the County proceed with a professional services evaluation procedure to select two to three deferred compensation providers.

M 140 98 A Motion was made by Mr. Jones, seconded by Mr. Collins, that Select Additional Deferred Compensation Providers the Sussex County Council approves the Pension Committee's recommendation to begin a professional services evaluation procedure to select a maximum of two or three other deferred compensation providers to allow additional choices for County employees; this procedure will be subject to approval by the Assistant County Attorney.

Motion Adopted: 5 Yea.

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

Waste-water Facilities Mr. Green discussed the construction of wastewater facilities at Sea Chase located in the West Rehoboth Sanitary Sewer District and Nanticoke Crossing located in the Long Neck Sanitary Sewer District.

M 141 98 A Motion was made by Mr. Jones, seconded by Mr. Cole, based Execute Agreements/Sea Chase upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Mear-Mac, Inc. for wastewater facilities to be constructed at Sea Chase, located in the West Rehoboth Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 142 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, based Grant Conditional Acceptance/Nanticoke Crossing upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, that the Sussex County Council grant Conditional Acceptance for the wastewater facilities constructed in Nanticoke Crossing, located in the Long Neck Sanitary Sewer District.

Motion Adopted: 5 Yea.

M 142 98 Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;
(con't) Mr. Jones, Yea; Mr. Collins, Yea;
Mr. Dukes, Yea

Public Hearing/ A Public Hearing was held to consider extending the Dagsboro-
DFSSD Frankford Sanitary Sewer District (DFSSD) to encompass a
Extension certain piece, parcel, or tract of land owned by Sophia
Middleton. There were no public comments and the Public
Hearing was closed.

M 143 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, to
Adopt Adopt Resolution No. R 013-B 98 entitled "A RESOLUTION TO EXTEND
Resolu- THE BOUNDARY OF THE DAGSBORO-FRANKFORD SANITARY SEWER DISTRICT
tion No. (DFSSD) TO ENCOMPASS A CERTAIN PIECE, PARCEL, OR TRACT OF LAND
R 013-B OWNED BY SOPHIA MIDDLETON, LYING CONTIGUOUS TO THE DFSSD,
98 SITUATE, LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY,
DELAWARE".

Motion Adopted: 5 Yea.

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

Proposed Mr. Cole introduced the Proposed Ordinance entitled "AN
Ordinance ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX
COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO AN AR-1
AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF
LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX
COUNTY, CONTAINING 6.43 ACRES, MORE OR LESS" (Change of Zone
No. 1337) filed on behalf of Hilda Louise Norwood and Delores
P. N. Handy). The Proposed Ordinance will be advertised for
Public Hearing.

Proposed Mr. Cole introduced the Proposed Ordinance entitled "AN
Ordinance ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1
AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT TO STIP-
ULATION NO. 1 TO CONDITIONAL USE NO. 1028, RELATING TO SQUARE
FOOTAGES OF FLOOR SPACE, FOR MEDICAL OFFICES TO BE LOCATED
ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND
REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.33 ACRES, MORE
OR LESS" (Conditional Use No. 1243) filed on behalf of
H.L.M.M., L.L.C. The Proposed Ordinance will be advertised
for Public Hearing.

M 144 98 A Motion was made by Mr. Cole, seconded by Mr. Rogers, to
Council- give \$400.00, \$300.00 from Mr. Cole's Councilmanic Account
manic and \$100.00 from Mr. Collins' Councilmanic Account, to the
Grant Indian River High School for the girls volleyball team.

Motion Adopted: 5 Yea.

M 144 98 Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;
(con't) Mr. Collins, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

M 145 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, to
Council- give \$150.00 from Mr. Collins' Councilmanic Account to the
manic Town of Laurel for the annual Fourth of July fireworks dis-
Grant play.

Motion Adopted: 5 Yea.

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

M 146 98 A Motion was made by Mr. Collins, seconded by Mr. Cole, to
Council- give \$1,000.00 from Mr. Collins' Councilmanic Account to the
manic Town of Dagsboro for the Katie Helm Memorial Park.
Grant

Motion Adopted: 5 Yea.

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

M 147 98 A Motion was made by Mr. Jones, seconded by Mr. Rogers, to
Council- give \$1,000.00, \$800.00 from Mr. Dukes' Councilmanic Account
manic and \$200.00 from Mr. Jones' Councilmanic Account, to the
Grant Boys & Girls Clubs of Delaware, \$500.00 to be used for the
Prevention Program and \$500.00 to be used for the Agri-
cultural Learning Project.

Motion Adopted: 5 Yea.

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

M 148 98 A Motion was made by Mr. Collins, seconded by Mr. Jones, 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 A Public Hearing was held on the Proposed Ordinance entitled
(C/U "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1
No. 1233) AGRICULTURAL RESIDENTIAL DISTRICT FOR A PLUMBING AND HEATING
CONTRACTOR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND
LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CON-
TAINING 4.47 ACRES, MORE OR LESS" (Conditional Use No. 1233)
filed on behalf of Eddie French. There were no public com-
ments and the Public Hearing was closed.

M 149 98 A Motion was made by Mr. Jones, seconded by Mr. Rogers, to
Adopt Ordinance No. 1223 entitled "AN ORDINANCE TO GRANT A
Ordinance No. 1223 CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL
(C/U DISTRICT FOR A PLUMBING AND HEATING CONTRACTOR BUSINESS TO
No. 1233) BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.47 ACRES,
MORE OR LESS" (Conditional Use No. 1233) filed on behalf of
Eddie French, with the following conditions:

1. Outside storage of materials shall be restricted to the area behind the building.
2. Business hours shall be from 7:30 a.m. to 5:00 p.m. six (6) days per week with no Sunday hours.
3. One (1) on-premise ground sign, not exceeding 100 square feet per side or facing, may be permitted.
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.

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 is located on a site in an area that is a mix of agricultural residential and general commercial development. The proposed use is consistent with the character and trend of development in the area and as a result, there will be no adverse impact upon the character of the neighborhood, property values, traffic or the environment in the area.
2. The proposed use will enable the applicant to expand his growing business and better serve the community at a better, safer location.
3. The proposed use will meet the purposes and goals of the Comprehensive Land Use Plan.
4. The findings of fact and recommendation of the Planning and Zoning Commission are incorporated herein.

Public Hearing 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 SCHOOL BUILDING AND

Public Hearing (C/U No. 1234) (con't) ANCILLARY BUILDINGS AND GROUND IMPROVEMENTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 43.25 ACRES, MORE OR LESS" (Conditional Use No. 1234) filed on behalf of The Jefferson School. There were no public comments and the Public Hearing was closed.

M 150 98 Adopt Ordinance No. 1224 A Motion was made by Mr. Jones, seconded by Mr. Cole, to Adopt Ordinance No. 1224 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SCHOOL BUILDING AND ANCILLARY BUILDINGS AND GROUND IMPROVEMENTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 43.25 ACRES, MORE OR LESS" (Conditional Use No. 1234) filed on behalf of The Jefferson School, with the following condition:

1. 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.

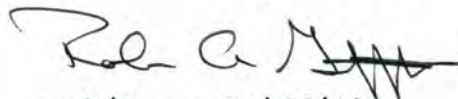
Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;
Mr. Collins, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

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 is to relocate permanently an existing successful private school, to enable the school to grow and to locate and open a charter school. Students from all parts of the County attend the existing school.
2. The proposed use meets the purposes and goals of the Comprehensive Land Use Plan and, with careful site planning, will have no adverse impact on the character of the neighborhood, property values, traffic or the environment in the area.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

M 151 98 Adjourn A Motion was made by Mr. Collins, seconded by Mr. Jones, to adjourn at 2:07 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the County Council