

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 4, 2000

Call to Order The regular meeting of the Sussex County Council was held Tuesday, April 4, 2000, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Lynn J. Rogers	President
Dale R. Dukes	Vice President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

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

M 161 00 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve
Approve the Agenda, as distributed.
Agenda

Motion Adopted: 5 Yea.

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

M 162 00 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to approve
Approve the minutes of the March 28, 2000, meeting, as distributed.
Minutes

Motion Adopted: 5 Yea.

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

Corre- Mr. Bayard read the following correspondence:
spondence

SISTER MARY ALAN, CSSF, ASSISTANT PRINCIPAL FOR ATHLETICS, ST. ANTHONY HIGH SCHOOL, JERSEY CITY, NEW JERSEY.

RE: Letter in appreciation of Council's support of Slam Dunk to the Beach Basketball Tournament.

Correspondence
(continued)

REPRESENTATIVE MICHAEL N. CASTLE, CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

RE: Letter to follow-up on a meeting earlier this year on H. R. 1000, the “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” (AIR-21).

SENATOR JOSEPH R. BIDEN, JR., UNITED STATES SENATE, WASHINGTON, D.C.

RE: Letter to the Honorable Christopher S. Bond, Chairman, Subcommittee on VA, HUD and Independent Agencies, Committee on Appropriations, United States Senate, to request \$15 million in funding for the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

EDWARD AND ESTHER CROSS, LAUREL, DELAWARE.

RE: Letter commending Lawrence Lank, Director of Planning and Zoning, and his staff.

M 163 00
Adopt
Proclamation

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt the Proclamation entitled “TUNE OUT TV VIOLENCE ON APRIL 5, 2000, AND PUT TELEVISION TO WORK FOR CHILDREN”.

Motion Adopted: 5 Yea.

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

Administrator's
Report

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

1. Delaware Solid Waste Authority

The Delaware Solid Waste Authority will be holding a public meeting regarding the progress being made at the Southern Solid Waste Management Center in Sussex County on April 4, 2000, at 7:30 p.m. The meeting will be held at the site of the Sussex County Landfill on Route 20. Discussion will pertain to the new Cell 4 construction and a general update of what has been happening at the landfill in recent months.

2. Sussex County Department of Libraries

I would like to remind everyone that the Sussex County Department of Libraries provides a children's story telephone line. Parents or children may call 856-3535, 856-3536, or 856-3537 anytime of the day to hear children's stories.

Report
(continued) The Sussex County Department of Libraries receives over 41,000 calls per year on the story line.

Rural Development Loan Application David Baker, Finance Director, requested permission to apply for a loan for approximately \$2 million from Rural Development for two projects for the South Coastal Regional Wastewater Facility. The two projects include the replacement of a 1989 micro-strainer filter at the South Coastal Regional Wastewater Facility with an estimated cost of \$1,500,000 and a force main for the Muddy Neck area which will run to the headworks at the South Coastal Regional Wastewater Facility for an estimated cost of \$500,000. These projects will help accommodate the increased flows resulting from new users and storm surges. The loan, which will be revenue supported debt, is for a term of 40 years at a 4 1/2 percentage rate; the annual cost will be \$108,000 annually. This funding has been included in the Engineering Department's Fiscal 2001 budget request. New users in the sewer district, not existing users, will pay for these infrastructure improvements; there will be no increase in rates as a result of these improvements.

M 164 00 Authorize Rural Development Loan Application A Motion was made by Mr. Jones, seconded by Mr. Dukes, that the Sussex County Council authorizes the Finance Department to apply for a loan from Rural Development to fund a filter project and a force main project for the South Coastal Regional Wastewater Facilities.

Motion Adopted: 5 Yea.

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

Rural Development Loan Mr. Stickels advised Council that they will have two additional opportunities to vote on these projects: (1) at a Public Hearing relating to the adoption of an Ordinance authorizing the loan and (2) at a Public Hearing relating to the adoption of the Fiscal 2001 Budget.

Old Business C/Z No. 1398 Change of Zone No. 1398 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1 HIGH DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.05 ACRES, MORE OR LESS" filed on behalf of Bayside Development Group, Inc. was discussed. The County Council held a Public Hearing on this application on March 28, 2000, at which time action was deferred and the record remained open for the limited purpose of receiving comments on the letter from the Sussex County Engineering Department relating to the capacity of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Old
Business
(continued)

The Planning and Zoning Commission held a Public Hearing on this application on March 9, 2000, at which time they recommended approval of the application.

Mr. Archut, Assistant County Engineer, addressed Council and reviewed the letter submitted by the County Engineering Department in relation to Change of Zone No. 1398. Mr. Archut's comments included the fact that, according to plans, eighteen sewer lines will have insufficient capacity at build-out; however, there is sufficient money (impact fees) to make improvements. Further, currently there is capacity to handle the project; there will be capacity for projects in the future on a "first come first serve" basis.

Mr. Phillips presented an issue for discussion; tying development with preservation. He discussed the fact that this property is located in the Development Zone and therefore the request for high density is being considered. He expressed concern that a property located outside of the Development Zone would not have the ability to obtain the same high density. He expressed that this appears to be a transfer of development equity from properties outside the growth zone and further; that it punishes owners of agricultural property outside of the Development District. Council debated the issue; it was suggested that a workshop be scheduled for further discussion.

M 165 00
Adopt
Proposed
Ordinance
(C/Z
No. 1398)

A Motion was made by Mr. Jones, seconded by Mr. Cole, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1 HIGH DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.05 ACRES, MORE OR LESS" (Change of Zone No. 1398) filed on behalf of Bayside Development Group, Inc.

Motion Denied: 4 Nay, 1 Yea.

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

Delaware
Seashore
State
Park
Project

Mr. Hawkes, Director of Utility Engineering, discussed a proposed change order to Sussex County Project No. 99-14 entitled "Delaware Seashore State Park Pumping Station No. 65". Mr. Hawkes explained that the developer has asked that four additional days be added to the substantial completion date.

M 166 00
Approve
Change
Order/
Delaware
Seashore
State
Park
Project

A Motion was made by Mr. Cole, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 2 to the Contract with David A. Bramble, Inc., extending the substantial completion date for Sussex County Project No. 99-14 entitled "Delaware Seashore State Park Pumping Station No. 65" from April 3rd to April 7th, with no change in the contract amount.

Motion Adopted: 5 Yea.

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

Proposed
Ordinance

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1 HIGH DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.90 ACRES, MORE OR LESS" (Change of Zone No. 1404) filed on behalf of Robin Sea Chase, L.L.C. The Proposed Ordinance will be advertised for Public Hearing.

Complaint
Relating to
Ordinance
No. 1327
(C/Z
No. 1383)
Central
Storage
at
Long
Neck

Mr. Phillips discussed a complaint made by the Woodlyn Estates Homeowners Association, Inc. regarding Ordinance No. 1327 (Change of Zone No. 1383) filed on behalf of Central Storage at Long Neck which was approved by the Sussex County Council on July 13, 1999. Mr. Stickels advised that, during the Public Hearing, the applicant made comments that he would maintain a 50 foot setback buffer of trees. The complaint relates to the fact that Central Storage of Long Neck "instructed their contractors to remove the wooded lands with the agreed to fifty foot "boundary" between our two property lines".

It was noted that the application was for a change of zone and therefore is not limited by stipulations. Council members expressed concern that applicants appear before Council and make representations regarding their plans and when those plans change, the County has no recourse. Mr. Cole suggested that Council place applicants under oath as does the Board of Adjustment

Mr. Bayard explained that this situation is different in that a promise was made by the developer, in writing, to the Homeowners Association.

Mr. Bayard and Mr. Schrader will review the issue relating to the 50 foot setback buffer of trees and report back to Council. In the meantime, the site plan for the project will not be approved.

Complaint (continued) Mr. Bayard, Mr. Schrader, and Mr. Berl will discuss the issue relating to applicants testifying under oath when seeking zoning approval.

M 167 00 Grant A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$2,500.00 from Grants to the Sussex County Return Day, Inc. for roof repairs on the Sussex County Return Day office building.

Motion Adopted: 4 Yea, 1 Abstention

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

M 168 00 Recess At 11:08 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Location of Meeting The Public Hearing scheduled for 1:30 p.m. was relocated to the Sussex County Senior Services (CHEER) Community Center located at 5 Sand Hill Road, Georgetown.

Reconvene At 1:30 p.m. Mr. Rogers called Council back into session.

Public Hearing CMF Bayside, L.L.C. (C/Z No. 1393) 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 MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 887.03 ACRES, MORE OR LESS" (Change of Zone No. 1393) filed on behalf of CMF Bayside, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on March 16, 2000, at which time action was deferred. Mr. Bayard announced that, as of this date, the Planning and Zoning Commission has not yet made a recommendation and for this reason, the Sussex County Council will not be able to take action on this application until a later date.

Mr. Bayard read into the record a letter from John E. Burris, Chair of the Delaware State Public Integrity Commission to Richard E. Berl, Assistant County Attorney, regarding a complaint that was filed alleging Council Member Dale R. Dukes had a conflict of interest and should not participate in the Public Hearing on Change of Zone No. 1393. At its March 30, 2000, meeting, the Public Integrity Commission concluded that "the remote and speculative financial interests in this particular matter do not preclude the Council Members from participating in the matter scheduled for April 4, 2000".

Public
Hearing
CMF
Bayside,
L.L.C.
(continued)

Mr. Lank, Director of Planning and Zoning, identified information and correspondence that had been submitted for the record.

Mr. Frank Kea of CMF Bayside, L.L.C. and Mr. James Fuqua, Jr., Attorney, were in attendance to present the components of the proposed project which includes 2,840 dwelling units; commercial/business areas; a town center area; recreational uses including tennis, swimming pools, a fitness center, an 18-hole golf course, walking and bike trails; and possibly an assisted living facility and a medical facility. The change of zone, if approved, would allow the developer to build a mixture of housing types and combine residential and commercial uses within one project. Mr. Fuqua noted that the density calculation complies with the method of calculation required by the Comprehensive Zoning Ordinance; that the net density could be 4.3 units per acre; and that the proposed density is consistent with other developments in the area.

Representatives of the applicant addressed Council and provided details regarding the following studies which have been performed: environmental, traffic impact, emergency evacuation, public water supply, sewer, geological, and archeological.

Mr. Phillips referenced the statement that “the existing land use is producing 8,691.3 pounds per year of nitrogen”. It was noted that this information is from a 1997 report. Mr. Phillips advised that since 1997, the State has passed the Nutrient Management Act which requires certain practices take place in agriculture and that the use of BMP’s will be a part of that. Mr. Phillips requested that Council be updated on the amount of nitrogen being produced with the BMP’s.

Mr. Fuqua concluded the applicant’s presentation by stating that the site is in a Development District; that the area will be developed whether it is one large development or many small developments; that the project is environmentally sensitive; that it will be a quality development; that it is the type of development to be encouraged; and that the applicant and his representatives have addressed every legitimate concern.

Public comments were heard in support of the application. Comments focused on the fact that the proposed project is a well planned community; that it will benefit the tax base of the school district without impacting the school population; that it will provide jobs to area residents; that it will provide economic growth to the area; that development of the site will improve the area; that the project is characteristic of “smart-growth”; that a large planned community is preferred over the scattering of developments; and that there will be little to no impact on the wetlands, shoreline, and the Bays.

Public
Hearing
(continued)

Public comments were heard in opposition to the application. Comments focused on concerns regarding high density; using the golf course as a buffer; traffic; evacuation routes; roadway capacity; police, fire, and emergency services; environmental impact; infrastructure; school overcrowding; water supply, quality of life; change in the rural character of the area; impact on the Inland Bays; and protection of natural resources and habitat life.

Representative Shirley Price made the following recommendations: that the density of the project be lowered; that there be mandatory phases of the project; that the developer be asked to place wetlands in a conservation district; that environmental impact statements be prepared; that a National Heritage inventory be required; and that a member of the Nutrient Management Commission comment on using the golf course as a buffer to the wetlands. Representative Price stressed the fact that this project would be a strain on the services provided by the State and the County.

It was noted that of the 285 people who registered their attendance at the meeting, 182 registered in support of the project; 75 registered in opposition to the project; and 38 registered no opinion.

It was the consensus of Council to request information from the Delaware Department of Transportation (DelDOT) to request statistics on the impact this project will have on Routes 1 and 54.

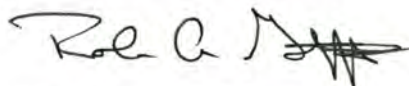
The Public Hearing was closed and action was deferred. It was the consensus of Council to leave the record open for the requested information from DelDOT and for any written comments for a period of one week; until the close of business on Tuesday, April 11, 2000.

It was noted that if the information from DelDOT has not been received by the close of business on Tuesday, April 11, 2000, the public hearing record will remain open for an extended period of time for the purpose of receiving the requested information.

M 169 00
Adjourn

At 9:20 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to adjourn the meeting. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the County Council