



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 17, 2007**

#### **Call to Order**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 17, 2007 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Dale R. Dukes</b>	<b>President</b>
<b>Finley B. Jones, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Lynn J. Rogers</b>	<b>Member</b>
<b>David Baker</b>	<b>County Administrator</b>
<b>Susan M. Webb</b>	<b>Finance Director</b>
<b>Hal Godwin</b>	<b>Assistant to the County Administrator</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

President Dukes called for a Moment of Silence for the victims and families of the recent tragedy at Virginia Tech.

#### **M 227 07 Amend and Approve Agenda**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the Agenda by:

- deleting “Airport Lease Assignments”
- deleting “AN ORDINANCE TO AMEND ORDINANCE NO. 1842 AMENDING CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY”
- deleting “Sussex Cyclists, Inc.” and “CHEER Beach Day” from “Grant Requests”.

**; and, to approve the Agenda, as amended.**

**Motion Adopted: 5 Yeas.**

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

**M 228 06  
Approve  
Minutes**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of March 20, 2007.**

**Motion Adopted: 5 Yea.**

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

**M 229 07  
Approve  
Minutes**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of March 27, 2007.**

**Motion Adopted: 5 Yea.**

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

**Corre-  
spondence**

**Mr. Griffin read the following correspondence:**

**BEEBE MEDICAL FOUNDATION, LEWES, DELAWARE.**

**RE: Letter in appreciation of the Council's sponsorship of the Beebe Medical Foundation's 18th Annual "Best of the Beach" Art Auction.**

**SUSSEX COUNTY ANIMAL ASSOCIATION, INC. & WHIMSICAL ANIMAL RESCUE, SEAFORD, DELAWARE.**

**RE: Letter in appreciation of Councilmanic Grant.**

**FIRST STATE RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC., DOVER DELAWARE.**

**RE: Letter in appreciation of the Sussex County Council providing \$25,000 to help fund the RC&D Council's Emergency Home Repair Project.**

**DELAWARE DUCKS UNLIMITED, DOVER, DELAWARE.**

**RE: Letter in appreciation of the Council's \$4,200.00 donation for the Greenwing Event.**

**RICKY YAKIMOWICZ, LEWES, DELAWARE.**

**RE: Letter thanking the Council for sponsoring him in the People to People Student Ambassador Program.**

**M 230 07**

**Adopt  
Procla-  
mation**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt the Proclamation entitled “PROCLAIMING THE WEEK OF APRIL 15 – 21, 2007 AS *NATIONAL LIBRARY WEEK*”.

**Motion Adopted: 5 Yea.**

**M 230 07**

**(continued)**

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

**The Proclamation was presented to Carol Fitzgerald, County Librarian.**

**Draft**

**Ordinance  
Permitting  
Multi-  
Family  
Conditional  
Uses**

**The Council discussed a draft ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 SECTION 22 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY”.**

**Mr. Baker stated that the proposal would allow multi-family conditional uses in growth areas; would prohibit multi-family conditional uses in non-growth areas (Level 4); would require proffering a fee for the multi-family units that exceed two units per acre; would not allow more than four units per acre; would require 40 percent open space; would require a 75 foot vegetated buffer; and would allow an expedited review of the development. The fees would be used to purchase open space for preservation or for passive recreation and for conservation easements. The purchase of land for conservation easements would be subject to the County Council’s approval by a 4/5ths super majority vote. The Sussex County Land Trust would act as a recommending body only at the discretion of the Sussex County Council.**

**Mr. Phillips suggested that the Council take a week to review the draft ordinance prior to considering its introduction.**

**Mr. Cole expressed concern about allowing higher density in the Environmentally Sensitive Development District. He stated that the ordinance may be a good one if the reference to Environmentally Sensitive Development District is taken out.**

**Mr. Griffin made several recommended changes to the draft ordinance. It was decided that the draft ordinance would be amended to reflect these changes and the new draft distributed to the Council for review.**

It was noted that a copy of the proposal would be sent to the Office of State Planning Coordination for their comments.

**Adminis-  
trator's  
Report**

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

1. **Oak Orchard Sanitary Sewer District Boundary Extension Public Hearing**

**Adminis-  
trator's  
Report  
(continued)**

The Sussex County Engineering Department will be conducting a Public Hearing at the Indian River Volunteer Fire Hall, Route 5, Oak Orchard, Delaware, on Saturday, April 21, 2007, at 9:00 a.m. The purpose of the hearing is to extend the boundaries of the Oak Orchard Sanitary Sewer District.

2. **911 Address Verification Via Internet**

We are pleased to announce that the Information Systems and Addressing Departments have completed establishing on the County's website a process where County property owners can verify their 911 addresses. Attached is a copy of the County's webpage to submit the verification form. We are encouraging County property owners to verify their addresses via Internet, telephone, or mail to enable us to attach the address to specific telephone numbers. In the near future, an ad campaign with a mailing regarding this matter will also occur.

The County's website is [www.sussexcountysde.gov](http://www.sussexcountysde.gov). A link is on the County's website to "Verify Your 911 Address Online."

3. **Delaware State Police Activity Report for February 2007**

Attached is the most recent report from the Delaware State Police regarding Sussex County activity for February 2007. As noted on the report, 3,444 complaints were addressed. Also, 1,184 criminal arrests occurred, plus 3,757 traffic arrests.

4. **Delaware Department of Transportation Public Workshops**

Attached are schedules for Public Workshops being held by the Delaware Department of Transportation pertaining to the Delaware Capital Transportation Program 6-Year Plan and also the Sussex County Transportation Plan Update. The 6-Year Plan meeting will be held Wednesday, April 18, 2007, from 4:00 to 7:00 p.m. at the Georgetown Administration Building. The Transportation Plan Update meetings will be held at the Bridgeville Fire Hall on Monday, April 23, 2007, from 5:00 to 7:30 p.m., and at the Rehoboth Beach Convention Center on Wednesday, April 25, 2007, from 5:00 to 7:30 p.m.

**5. Beneficial Acceptance**

**The Engineering Department has granted Beneficial Acceptance to the following projects:**

**Adminis-  
trator's  
Report  
(continued)**

- **Nassau Grove, L.L.C. – Phase I, Agreement No. 511-1, was granted Beneficial Acceptance on April 2, 2007. The developer is K Hovnanian Homes of Delaware, L.L.C., and the project is located southwest of the intersection of Route One and County Road 265 in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of 122 units (MR-RPC).**
- **Forest Landing, Phase 1A (on-site), Agreement No. 343-1, was granted Beneficial Acceptance on April 3, 2007. The developer is Forest Landing Development, L.L.C., and the project is located at the intersection of County Road 368 and County Road 84 in the Miller Creek Sanitary Sewer District, consisting of 20 townhomes.**
- **Cadbury at Lewes (correct revision due to bench mark error), Agreement No. 693, was granted Beneficial Acceptance on April 9, 2007. The developer is Cadbury at Lewes, Inc., and the project is located on Gills Neck Road in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of one healthcare building with 40 assisted-living units and 40 skilled nursing rooms, 84 unassisted-living apartments, 48 cottages, and a community center.**

**Included with this report is a fact sheet on each of the projects.**

**Proposed  
Resolution/  
EPA  
Grant**

**Mrs. Webb presented a Proposed Resolution that would authorize the County Administrator and the County Finance Director to transact and sign documents relating to the securing of funds from a Federal grant administered by the Environmental Protection Agency. Mrs. Webb explained that the \$250,000 grant is for the South Ocean View Sanitary Sewer District, which is currently under construction.**

**M 231 07  
Adopt  
Resolution/  
EPA  
Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt the Resolution that the Sussex County Council, at a regularly scheduled meeting held on April 17, 2007, at the Sussex County Administrative Offices, does hereby name and appoint the following persons as their authorized representatives to transact and sign any and all documents related to the securing of funds from the Federal grant awarded to Sussex County, Delaware as administered by the Environmental Protection Agency.**

**Motion Adopted: 5 Yea.**

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

**Livable  
Delaware  
Funding**

Mr. Godwin reported that the State of Delaware, through the Office of State Planning Coordination, has set aside Livable Delaware funding in the amount of \$150,000 to assist municipalities and counties in their planning efforts. Counties and municipalities are eligible to receive up to a 50 percent match to a limit of \$10,000 of project costs.

**Livable  
Delaware  
Funding  
(continued)**

Mr. Godwin announced that he has submitted an application to the State Planning Office, signed by the Council President, to apply for the \$10,000 grant; however, a Resolution adopted by the County Council is also required.

Councilmembers expressed concern about stipulations or “strings” attached to the funding. Mr. Godwin advised that he spoke with Brian Hall, Circuit Rider Planner for Sussex County. Mr. Hall stated that there aren’t any requirements in regards to the details of the County’s planning process associated with the grant funding. Mr. Dukes questioned if this comment has been put in writing.

Mr. Phillips commented that there are many municipalities who need the funding more than the County does and that he would prefer that the County yield the funds to those municipalities.

No action was taken on this issue.

**Legislative  
Update**

Mr. Godwin presented the following legislative update:

1. House Bill No. 16 – “AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE POWER AND DUTIES OF STATE POLICE”.

This legislation would clarify that State Police have independent statewide authority not referenced to the powers of Sheriff. The language being eliminated dates back to 1925 and was prior to the definition of Police Officer created in 1969 which clearly defines who is a police officer. Sheriffs do not have the same authority as police officers and are not included in the definition of police officer. This bill was described as a “housekeeping bill”.

The bill has been introduced in the House and assigned to a Committee.

2. House Bill No. 17 – “AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DEFINITION OF LAW ENFORCEMENT OFFICER”.

This legislation eliminates sheriffs and their regular deputies from

the definition of law enforcement officer. Sheriffs do not have police powers under the Delaware Code and should not be included in the definition of law enforcement officer. This bill was described as a “housekeeping bill”.

Mr. Phillips asked Mr. Godwin to provide the Sussex County Sheriff with copies of the proposed legislation and to ask for his comments.

Legislative  
Update  
(continued)

3. House Bill No. 30 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO DELAWARE LAND PROTECTION ACT”.

This legislation expressly prohibits the application or injection of wastewater or treated wastewater or disposal of biosolids and/or sludge from sewage treatment facilities on State-owned parks, fish and wildlife areas, forest lands, or historical properties.

Four amendments have been proposed to the legislation. One Amendment would exclude Sussex County from the application; one Amendment would exempt State-owned lands located within one mile of the perimeter boundaries that are currently being used for land application of treated wastewater; and one Amendment would allow existing wastewater treatment and disposal uses of State-owned land to continue, permits State agencies to be efficient and cost-effective in the purchase and utilization of State-owned land for multiple public benefits, and promotes serving growth in designated growth zones and will offer environmentally responsible wastewater disposal options to municipalities faced with Total Maximum Daily Load limitations.

In response to questions raised by the Council, Mr. Godwin stated that, if the bill is passed in its current form, the County would have to purchase significant land for disposal of treated water since the County’s Wolfe Neck Treatment Plant currently sprays all of its effluent on State-owned farm land.

This legislation has been discussed in Committee and some of the amendments have been discussed. This bill could come up any day on the House floor for consideration; when it does, all four amendments will have to be discussed and voted on.

Mr. Godwin advised that he has distributed a package of the County’s position on this Bill to all 41 State Representatives.

3. House Bill No. 31 – “AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PLANNING AND COUNTY IMPACT FEES”.

**This legislation removes the prohibition against county governments establishing impact fees in certain areas of the county.**

**This bill is being proposed to help Kent County.**

**This bill has passed the House and it is currently in Senate Committee.**

**Legislative  
Update  
(continued)**

- 4. House Bill No. 39 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO PLANNING AND ZONING”. This legislation increases the number of members on the Sussex County Planning and Zoning Commission from five to seven.**

**This bill is in the Senate Executive Committee.**

- 5. House Bill No. 42 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SUSSEX COUNTY COUNCILMANIC DISTRICTS”.**

**This legislation increases the size of the Sussex County Council from five members to seven members.**

**This bill is in the House Housing & Community Affairs Committee. A hearing has not yet been held.**

**Mr. Cole stated that he supports the legislation.**

**Mr. Phillips stated that he would support two at-large members.**

**Mr. Rogers stated that he would like proof that additional members are needed.**

**Mr. Jones and Mr. Dukes stated that they do not support the legislation.**

- 6. House Bill No. 111 – “AN ACT TO AMEND TITLES 9, 22 AND 30 RELATING TO LAND USE AND THE APPLICABILITY OF LOCAL GOVERNMENTS’ REALTY TRANSFER TAXES”.**

**This Act prevents local governments from collecting Realty Transfer Tax on conveyances that occur: (1) outside any county or local growth zone or (2) within Investment Level 4 areas as defined in the Delaware Strategies for State Policies and Spending. Conveyances located in rural areas that are exempt from local government realty transfer taxes will be subject to a 3 percent State transfer tax. Any money collected by the State from conveyances of real property in rural areas shall be divided equally between the General Fund and the Transportation Trust Fund.**



This legislation is scheduled for Committee hearing on April 25th; the time has not yet been determined.

Legislative  
Update  
(continued)

Mr. Baker advised that this bill would transfer the County's portion of Realty Transfer Tax in Level 4 areas, or non-growth areas, for new and existing development, to the State of Delaware. As proposed, it would have major, detrimental consequences on Sussex County finances and the local governments' ability to provide essential services to the public. As introduced, this legislation would take the 1.5 percent portion of the current Realty Transfer Tax formula, which is the County's share, from Level 4 areas (80 percent of the land) – for new and existing development – and instead, provide that revenue to the State. This legislation would cause the County to lose approximately \$9 million in Realty Transfer Tax revenue during the upcoming 2008 fiscal year. If this revenue is eliminated, the County would have to consider cutting services and/or increasing taxes.

It was the consensus of the Council to oppose House Bill No. 111.

7. House Bill No. 118 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE GENERAL POWERS OF THE GOVERNMENT OF SUSSEX COUNTY”.

This legislation authorizes Sussex County to collect a surcharge in an amount not to exceed 2.25% of the construction value applicable to each building permit to provide funding for the local share of any school capital construction program, fire companies, and farmland preservation. The legislation would add approximately \$3,000 to a \$900 building permit in Sussex County.

This legislation is enabling legislation only.

The Bill is currently in Committee.

Delaware  
Seashore  
State  
Park/  
BBSSD/  
MOU  
with  
State of  
Delaware/  
Amendment

Russell Archut, Assistant County Engineer, presented Amendment No. 1 to the County's Memorandum of Understanding with the State of Delaware for the Delaware Seashore State Park at the Indian River Inlet. In July 1999, the Council approved a Memorandum of Understanding (MOU) to provide wastewater service to the State Park. The State abandoned their existing treatment plant on the site; constructed a pumping station and force main to connect to the County's facilities; and turned their facilities over to the County. At that time, they wanted the County to take over the operation of their other facilities at the Inlet; however, the County found that the majority of the facilities did not meet County requirements and standards. Since that time, the State has made improvements to the system. The State is now requesting that the County take over the operations of the system. Mr. Archut advised that the system now meets County requirements; however, he noted some of the facilities still do not meet

County requirements and would not be accepted. He further noted that the State would be required to pay the same service charges as other users in the Bethany Beach Sanitary Sewer District.

**M 232 07  
Execute  
Amendment  
to MOU  
with State  
M 232 07  
(continued)**

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 authorizes its President to execute Amendment No. 1 to its Memorandum of Understanding with the State of Delaware Department of Natural Resources and Environmental Control, for the Delaware Seashore State Park, to transfer ownership of the wastewater collection and transmission system to Sussex County.

**Motion Adopted: 5 Yea.**

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

**Millville  
Pumping  
Station/  
Escrow  
Agreement**

Mr. Archut presented an Escrow Agreement for providing wastewater service through Millville Pumping Station #3. This is the fourth Escrow Agreement associated with the project and it provides developer funding to help pay for the regional infrastructure in the Millville area. Mr. Archut advised that the Engineering Department is recommending that the County enter into an Escrow Agreement with Linder and Company, Inc. (the developer of Bethany Bay) and Bay Forest, LLC. The Agreement will cover the design, construction and inspection of the facilities at a total cost of \$2,060,000.00. Upon execution of the Agreement, (1) Bethany Bay would be permitted to make a temporary connection to Bay Forest, allowing them to take their existing treatment plant off-line, (2) the design would begin immediately, and (3) Linder & Co. would be permitted to make application to Sussex County Planning and Zoning for an additional 100 units (a condition of approval, based on a central sewer requirement). Mr. Archut reported that Linder & Co. would be required to pay for all of the improvements associated with the construction; in addition, any necessary improvements to the Bethany Bay sewer system will also be their responsibility.

Mr. Archut explained that the design phase is estimated to take approximately nine months. The developer has a deadline for completing the additional 100 units before December 31, 2010, after which date any remaining land would have to be turned over to the Homeowners Association. In addition, the zoning approval only allows the construction of 50 units per year. For this reason, a clause has been inserted in the proposed Escrow Agreement stating that, if there is a delay in the design and construction of the facilities (through no fault of the developer), then they could start getting building permits after ten months.

Mr. Archut advised that, if the Council approves the Escrow Agreement, the next step would be to approve an Amendment to the County's Contract

with Whitman, Requardt & Associates for design services, which the Escrow Agreement would pay for at a cost of \$381,720.00.

**M 233 07**  
**Authorize**  
**Execution**  
**of Escrow**  
**Agreement/**  
**MPS No. 3**  
**M 233 07**  
**(continued)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the President of the Sussex County Council is hereby authorized to execute an Escrow Agreement with Linder and Company, Inc. and Bay Forest, LLC, for the design, construction and inspection of Millville Pumping Station No. 3 and associated facilities.

**Motion Adopted: 5 Yea.**

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

**M 234 07**  
**Execute**  
**Amendment**  
**to Contract**  
**with**  
**WR&A/**  
**Millville**  
**Expansion**  
**Area/**  
**Millville**  
**Pumping**  
**Station**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorizes its President to execute Amendment No. 34, dated July 26, 2006, to its original Contract with Whitman, Requardt and Associates, LLP, to provide the final design services for facilities associated with the Millville Expansion Area – Millville Pumping Station No. 3 Escrow Agreement

**Motion Adopted: 5 Yea.**

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

**South**  
**Ocean**  
**View SSD/**  
**Change**  
**Order for**  
**Road**  
**Project**

Mr. Archut presented Change Order No. 2 for the South Ocean View Sanitary Sewer District Project. He reported that a request has been received from the Homeowners Association in Shady Dell Park to have their roads paved in conjunction with sewer project work.

Mr. Archut reported that sufficient funds remain in the budget for the South Ocean View Project to pave these roads; the funds will come from unused grant money which was provided for the project.

Mr. Archut recommended the paving of the unpaved streets in Shady Dell Park and Quaint Acres. The Engineering Department is recommending 2 inches of crusher run and 2 inches of hot mix with a minimum width of 16 feet wide. The paving will provide additional protection for the new sewer facilities.

The cost of the proposed Change Order is \$485,838.40. It was noted that Representative Gerald Hocker has committed \$100,000 to the project from his Discretionary Fund for road projects.

**M 235 07**  
**(DIED)**

A Motion was made by Mr. Phillips to defer action for one week. The

**Motion died for the lack of a second.**

**M 236 07  
Approve  
Change  
Order/  
South  
Ocean  
View SSD  
M 236 07  
(continued)**

A Motion was made by Mr. Cole, seconded by Mr. Jones, based upon the recommendation of the County's Consulting Engineer, Whitman, Requardt and Associates, LLP, and the Sussex County Engineering Department, that Change Order No. 2 for Sussex County Contract No. 06-02, South Ocean View Sanitary Sewer District with Edward McGinn General Contractors, Inc. be approved in the amount of \$485,838.40, which increases the contract total from \$4,198,972.04 to \$4,684,810.44, contingent upon the approval of the State of Delaware Water Pollution Control Revolving Fund; further, the President of the Sussex County Council is authorized to execute an Agreement with the State of Delaware to apply legislative discretionary funds to the project.

**Motion Adopted: 5 Yea.**

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

**Action  
Deferred**

Action was deferred on the grant request from the American Cancer Society.

**Introduction  
of Proposed  
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PUBLIC UTILITIES, BUILDINGS, TREATMENT PLANTS, DISPOSAL SITES, WELL SITE, WATER STORAGE TANK, AND WATER TREATMENT PLANT TO SERVE AS A REGIONAL FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2 TRACTS OF LAND TOTALING 18.43 ACRES, MORE OR LESS" (Conditional Use No. 1747) filed on behalf of Artesian Water Co, Inc. The Proposed Ordinance will be advertised for Public Hearing.

**Introduction  
of Proposed  
Ordinance**

Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRIC SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.3 ACRES, MORE OR LESS" (Conditional Use No. 1748) filed on behalf of Delaware Electric Cooperative. The Proposed Ordinance will be advertised for Public Hearing.

**Additional  
Business**

Under *Additional Business*, Daniel Kramer referenced the draft ordinance that was previously discussed and he stated that the number of units should not be limited to four.

**Recess**

At 8:40 p.m., Mr. Dukes declared a five-minute recess.

**Reconvene**

**Mr. Dukes called the Council back into session at 8:45 p.m.**

**Public**

**Hearing**

**(C/U**

**No. 1680)**

**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 BUSINESS PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.2905 ACRES, MORE OR LESS” (Conditional Use No. 1680) filed on behalf of Samir Ghabra**

**Public**

**Hearing**

**(C/U**

**No. 1680)**

**(continued)**

**Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 22, 2007 at which time they recommended that the application be denied since the conceptual site plan for 32,650 square feet of office space far exceeds the 3,000 square feet of office space referenced by the County Engineering Department; since the design of the parking is not in compliance with Codes and has been underestimated; and since there are too many buildings on too small of a parcel.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated March 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.**

**Tim Willard, Attorney, was present with the Applicant, Samir Ghabra. He stated that they did not have all the necessary details regarding the project during the Public Hearing before the Commission and that the office space was not designated in the original concept. He stated that the original design was designed with some flexibility and the design was for a business park or contracting business with warehousing.**

**Mr. Willard distributed a revised site plan and amended proposed conditions. He stated that the project was originally designed to consider contractor tenants with warehousing or professional offices.**

**Mr. Willard explained that their proposal is for a Business Park with eleven potential rental sites for contractors or service businesses; that the maximum number of buildings would be 4; that the office space is designated on the revised site plan; that the site is in a Level 2 Investment Area which is appropriate for commercial and office uses; that the occupants or tenants would include professional, service or contractor businesses with related warehousing; that the application is appropriate with the County’s rules and ordinances; that the use would be economically beneficial to the area; that the office space is proposed to be approximately 5,987 square feet; that 30 parking spaces would be provided, as required; that the County’s ordinance requires one parking space for every two**

warehouse employees and based on this calculation, 14 extra spaces are proposed; that the Business Park shall be served with one entrance off of Shady Road, as approved by DelDOT; that there would be no outside storage; that the application was advertised as a Business Park.

Mr. Cole referred to the concerns of the County Engineering Department. In response to a question raised by Mr. Cole, Mr. Willard stated that the County Engineering Department has not yet reviewed the revised plan.

**Public  
Hearing  
(continued)**

Mr. Phillips commented that the 5,987 square feet of office space still exceeds the 3,000 square feet of office space referenced by County Engineering. He also noted that the number of EDUs is doubled compared to the information submitted to the Engineering Department.

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

**M 237 07  
Defer  
Action  
(C/U  
No. 1680)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action for thirty days on Conditional Use No. 1680, filed on behalf of Samir Ghabra, to allow time for the Engineering Department to comment on the revised site plan.

**Motion Adopted: 5 Yea.**

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

**Public  
Hearing  
(C/U  
No. 1681)**

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 CAMPGROUND WITH AREA FOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 59.866 ACRES, MORE OR LESS” (Conditional Use No. 1681) filed on behalf of W. Edward Metz.

Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 22, 2007 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

The Applicant submitted an Exhibit Book identical to the one previously distributed to the Planning and Zoning Commission.

**Public  
Hearing  
(C/U  
No. 1681)**

Tim Willard, Attorney, was present with Michael Metz, Marty Metz, and Chuck Adams. They stated that the application is for a campground containing 172 camp sites and 21 cabin sites; that central on-site wastewater treatment and disposal is proposed and is subject to DNREC approval; that a small retail area is proposed for the campground; that they propose that the campground will be open seasonally, from April 1 through November 1; that a community center and management center is proposed; that tenants would be allowed to maintain their campers on the site; that the campers must be portable; that Phase II of the project would consist of 30 campsites and an area set aside for boat and RV storage; and that they propose to maintain a quality campground with specific rules.

Mr. Willard reported that eight letters from neighbors were received in support of the application. The letters were included in the Exhibit Book which was distributed to the Council.

Mr. Cole questioned if any percentage of the site would be set aside for transient campers and he recommended that a reference to transient campers be included in the conditions, if the application is approved.

Marty Metz stated that they propose that 60 percent of the sites would be for seasonal campers and 40 percent of the sites would be for transient campers.

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

**M 238 07  
Defer  
Action on  
C/U  
No. 1681**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1681 filed on behalf of W. Edward Metz.

**Motion Adopted: 5 Yea.**

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

**Public  
Hearing  
(C/U  
No. 1682)**

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 PET GROOMING SERVICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.80 ACRES, MORE OR LESS" (Conditional Use No. 1682) filed on behalf of Tim Haines.

Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 22, 2007 at which time they recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

(continued) Tim Haines was present on behalf of his application. He stated that the record of the Planning and Zoning Commission states correctly his intent and that he agrees to the proposed conditions recommended by the Commission.

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

M 239 07  
Approve  
Ordinance  
No. 1897  
(C/U  
No. 1682)

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to approve Ordinance No. 1897 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PET GROOMING SERVICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.80 ACRES, MORE OR LESS" (Conditional Use No. 1682) filed on behalf of Tim Haines, with the following conditions:

1. Days and hours of operation shall be from Tuesday through Friday from 9:00 a.m. to 5:00 p.m. and Saturday from 9:00 a.m. to 1:00 p.m. One workday may have extended hours until 7:00 p.m.
2. One non-lighted sign, not exceeding 32 square feet per side or facing, may be permitted.
3. Any lighting on the premises shall be directed downward and away from neighboring properties.
4. The Applicant shall comply with all DelDOT requirements including entrance permits.
5. No dumpsters outside of that normally used by a residence will be permitted.
6. The Final Site Plan shall include a parking plan and a landscape plan.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yea.

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

Public  
Hearing  
(C/U  
No. 1683)

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 BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING



**AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 72.72 ACRES, MORE OR LESS” (Conditional Use No. 1683) filed on behalf of Wayne Baker, LLC.**

**Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 22, 2007 at which time they deferred action.**

**Public  
Hearing  
(C/U  
No. 1683)  
(continued)**

**(See the minutes of the meeting of the Planning and Zoning Commission dated March 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.**

**Mr. Lank distributed a site plan and an Exhibit Book which were submitted by the Applicant.**

**Mr. Lank advised that one additional letter was received following the Public Hearing before the Commission; the letter was written by Sheila Setzer. In her letter, Ms. Setzer expressed several concerns including (1) relocating the entrance to the proposed dirt pit and (2) creating a berm on the Lawson Road frontage to minimize noise and dirt from the trucks and to make the project more aesthetically pleasing.**

**Wayne Baker was present on behalf of his application along with Dennis Schrader, Attorney, and Mark Davidson and J.C. Owens of Design Consultants Group. They stated that the Applicant is proposing a 20-acre borrow pit on 66 acres of the 834.99 acre tract; that the property has previously been cleared and is currently being used for agricultural purposes, forest and reforestation; that the total disturbance area for the borrow pit and buffers is approximately 25 acres; that the depth of the pit is proposed to be approximately 25 feet; that the borrow pit would be located approximately 600 feet from Lawson Road and Avalon Road; that a cemetery is located on the site and that the cemetery would have a 100 foot buffer from the pit area; that it is estimated that it will take 8 – 10 years to excavate the borrow from this pit; that they estimate 25 trucks per day on 200 days of the year; that they propose to use the existing logging road as the entrance (on Lawson Road); that they propose to improve the road from the proposed entrance to the intersection of Avalon and Lawson Roads; that the site plan shows an alternative entrance on Avalon Road; that DelDOT discourages the alternative entrance location on Avalon Road; that DelDOT discourages truck traffic leaving the site to utilize Avalon Road in the southeast direction; that a stabilized construction entrance would be installed as required by the Sussex Conservation District; that a security gate across the entrance is proposed; and that once the borrow pit has been excavated to its maximum depth, the borrow pit would be turned into a conservation wildlife pond.**

Public  
Hearing  
(C/U  
No. 1683)  
(continued)

Mr. Davidson advised that a 100 foot landscaped buffer is required around the pond, however, Mr. Baker wishes to leave it open to continue to farm the buffer area.

Mr. Cole questioned if the number of truck trips should be restricted and he referenced DelDOT's comments in their December 27, 2005 letter which stated that "we are concerned that truck traffic to and from the pit could damage roads in the vicinity of the project. In order that the County might better understand the traffic that the pit would generate, we recommend that they require the applicant to provide this information to DelDOT and the County before the County acts on the conditional use application." Mr. Cole noted however, that there would be no way to enforce a condition on the number of truck trips.

Mr. Davidson advised that they have met with DelDOT since December 27, 2005. Mr. Davidson responded that DelDOT will require them to take core samples of the existing roadway; DelDOT will then perform a lab analysis; and DelDOT will tell them how thick the pavement must be. Mr. Davidson stated again that they estimate 25 trucks per day.

Mr. Cole suggested that a condition of approval should be that the permit would expire in ten years.

Mr. Lank requested that the applicant submit for the record a copy of the drawing of the Conservation/Wildlife Pond.

There were no public comments in support of the application.

Public comments were heard in opposition to the project.

David Swain spoke in opposition to the application. He stated that there are a lot of children in the neighborhood and that their safety is a concern; that Lawson Road cannot handle the additional truck traffic that the proposed project would create; that the road is already in poor condition; that the applicant owns a granary on Hollyfield Road and tractor trailers exit off of that property onto that road; that it would make more sense to direct borrow pit traffic via a dirt road out the same way – to a road that can handle the traffic and which would not impact residents on Lawson or Avalon Roads; and that if the project is approved, this alternative should be stipulated.

Trudy Belotti submitted a petition with 33 signatures in opposition to the project. The petition was signed by property owners on Lawson and Avalon Roads that are directly affected by the proposed project. The petition stated that the proposal would cause excessive truck traffic that will destroy Lawson Road from the borrow pit all the way to Zoar Road; that the safety of the residents of Lawson and Avalon Roads will be endangered as these are roads where families walk and bike; and that the project will harm the

**quality of life for the residents living in the area.**

**Public  
Hearing  
(C/U  
No. 1683)  
(continued)**

**She stated that, at the Public Hearing before the Planning and Zoning Commission, she made a lot of comments; however, she has since changed her mind and is now firmly against the application. She stated that, in accordance with the Sussex County Code, a borrow pit shall be surrounded by a landscaped unexcavated buffer strip of open space a minimum distance of 100 feet from any street lines and a minimum distance of 50 feet from all other property lines; that the buffer strip is to remain free of any buildings or streets; that the excavating, extraction or filling operation shall be controlled to offer reasonable protection to surrounding properties and the neighborhood, particularly in regard to odors, dust, air or water pollution and uses of roads or streets providing access to the site. She stated that a borrow pit is not in the best interest of the community; that they will have to put up with the noise for eight to ten years; that there will be constant truck traffic on the area roads; and that they would like to maintain their quiet, safe community.**

**David Pusey, a resident on Johnson Road, asked the Council to impose regulations to minimize the impact of the proposed project on the surrounding area, if the application is approved, and to consider requiring an alternative entrance to safeguard the area.**

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

**M 240 07  
Defer  
Action on  
C/U  
No. 1683**

**A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action on Conditional Use No. 1683 filed on behalf of Wayne Baker, LLC.**

**Motion Adopted: 4 Yea, 1 Absent.**

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

**Mr. Cole was out of the room during the vote.**

**M 241 07  
Adjourn**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to adjourn at 10:44 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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