



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 29, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 29, 2008 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

M 318 08 Approve Agenda

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by deleting "Group Hospital Consultant Presentation" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

M 319 08 Approve Minutes

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to approve the minutes of April 8, 2008.

Motion Adopted: 5 Yeas.

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

Corre- spondence

Mr. Griffin read the following correspondence:

INDIAN RIVER BASEBALL BOOSTERS, DAGSBORO, DELAWARE.
RE: Letter in appreciation of Councilmanic Grant.

TREY TOWNSEND, BOY SCOUT TROOP 95, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Councilmanic Grant.

DELAWARE QUICK CHICKS, REHOBOTH BEACH, DELAWARE.

RE: Letter in appreciation of Councilmanic Grant.

**M 320 08
Adopt
Procla-
mation/
Foster
Grand-
parent
Day**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the Proclamation entitled “PROCLAIMING APRIL 27 THROUGH MAY 3, 2008 AS “NATIONAL VOLUNTEER WEEK” AND PROCLAIMING APRIL 29, 2008 AS “FOSTER GRANDPARENT DAY” IN SUSSEX COUNTY”.

Motion Adopted: 5 Yeas.

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

**M 321 08
Adopt
Procla-
mation/
RSVP
Day**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the Proclamation entitled “PROCLAIMING APRIL 27 THROUGH MAY 3, 2008 AS “NATIONAL VOLUNTEER WEEK” AND PROCLAIMING MAY 1, 2008 AS “RSVP DAY” IN SUSSEX COUNTY”.

Motion Adopted: 5 Yeas.

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

**M 322 08
Adopt
Procla-
mation/
Soil and
Water
Steward-
ship
Week**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt the Proclamation entitled “PROCLAIMING APRIL 27 THROUGH MAY 4, 2008 AS “SOIL AND WATER STEWARDSHIP WEEK”.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator’s
Report**

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

1. Golf Village Sanitary Sewer District Referendum

A referendum will be held on Thursday, May 1, 2008 from 1:00 p.m. to 7:00 p.m. at the Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware. The question of this referendum is whether or not to establish a proposed Golf Village Sanitary Sewer District. Please contact Mr. Gary Tonge at 855-7839 if you have any

questions.

2. **Lot Maintenance Ordinance**

Adminis-
trator's
Report
(continued)

On April 22, 2008 the Sussex County Council voted to amend the Lot Maintenance Ordinance by taking out of the Proposed Ordinance, portions that concern tall grass and weeds. The amended Ordinance did not delete the portion of §80-3 of the existing Ordinance pertaining to grasses and weeds exceeding 12 inches high. A vote was taken to amend the Ordinance this way; however, a vote was not taken to approve the amended ordinance, possibly due to the extensive discussion. For that reason, the upcoming agenda for May 6, 2008 will include the amended Lot Maintenance Ordinance again for final approval.

3. **Illegal Sign Progress Report**

As of April 29, 2008 a total of 906 illegal signs have been retrieved by the County's Planning and Zoning inspectors. Most of these signs were collected on the first Saturday that the Ordinance was in effect (March 29, 2008). We would like to thank the Planning and Zoning Department for their effective efforts to collect these signs.

4. **Land Use Plan Update**

On April 25, 2008 the Livable Delaware Committee met in Dover. The Committee approved a six-month extension of the County's Land Use Plan. We expressed the County's desire to complete the Land Use Plan process within 30-60 days. Kent County was also approved for a six-month time extension. Discussion was held regarding various Plan items. The addendum that listed possible changes to the Plan was also reviewed.

Financial
Report

Mrs. Webb presented the Financial Report for the period ending March 31, 2008.

Wastewater
Agreement

Mr. Godwin presented a Wastewater Agreement for the Council's consideration.

M 323 08
Approve
Waste-
water
Agreement/
Millville
Expansion
of the
BBSSD

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department and Whitman, Requardt and Associates, for Agreement No. 668 B, C and D, that Sussex County Council grants Substantial Completion, effective August 7, 2007, for regional sewer improvements located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yeas.

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

**Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

Funding Request **Mr. Godwin presented the following request for funding through the Revenue Sharing for Local Law Enforcement Grant Program:**

(continued)	City of Seaford \$ 469.00 Safety partition and shipping costs for new police vehicle
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M 324 08 Approve Local Law Enforce- ment Grant	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the Revenue Sharing for Local Law Enforcement Grant in the amount of \$469.00 to the City of Seaford.
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Motion Adopted:	5 Yeas.
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Vote by Roll Call:	Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
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Commercial Lease Agreement/ Georgetown Air Services	Jim Hickin, Director of Airport and Industrial Park, presented a new Lease Agreement with Georgetown Air Services, LLC, for office space in the Airport Terminal Building. The original Lease expired in July 2007. Mr. Hickin reported that the Lease would be for a 5-year term and the initial rent would be \$460.00 monthly, with CPI increases annually.
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M 325 08 Amend and Restate Commercial Lease Agreement with Georgetown Air Services	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the Sussex County Council authorizes its President to execute the amended and restated Commercial Lease Agreement with Georgetown Air Services, LLC, for office space located in the Airport Terminal Building, as presented by Jim Hickin, Director of Sussex County Airport and Industrial Park.
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Motion Adopted:	5 Yeas.
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Vote by Roll Call:	Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
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Old Business/ C/Z No. 1654	The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.00 ACRES, MORE OR LESS” (Change of Zone No. 1654) filed on behalf of Peninsula Square, LLC.
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The Planning and Zoning Commission held a Public Hearing on this application on March 27, 2008 at which time they deferred action. On April

16, 2008, the Commission recommended that the application be approved.

The County Council held a Public Hearing on this Application on April 15, 2008 at which time they deferred action.

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing and decision.

**M 326 08
Adopt
Ordinance
No. 1967
(C/Z
No. 1654)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1967 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.00 ACRES, MORE OR LESS" (Change of Zone No. 1654) filed on behalf of Peninsula Square, LLC.

Motion Adopted: 5 Yeas.

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

Requests

Mrs. Webb presented grant requests for the Council's consideration.

**M 327 08
Community
Investment
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$1,850.00 from Mr. Rogers' Community Investment Grant Account for the *Best of the Beach* Art Auction Fundraiser.

Motion Adopted: 5 Yeas.

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

**M 328 08
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$375.00 (\$75.00 from each Youth Activity Grant Account) to the Sussex Chix Softball Team for expenses.

Motion Adopted: 5 Yeas.

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

**M 329 08
Youth
Activity
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Youth Activity Grant Account) to the Trinity Foundation for a Community Walk Fundraiser.

Motion Adopted: 5 Yeas.

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

Additional Business Under Additional Business, Daniel Kramer raised questions about the Proposed Ordinance relating to lot maintenance and the (amending) Motion adopted at the April 22nd Meeting.

M 330 08 Go Into Executive Session At 10:45 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Rogers, to recess the Regular Session and to go into Executive Session for the purpose of discussing land acquisition.

Motion Adopted: 5 Yeas.

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

Executive Session At 10:46 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Sussex County Council Chambers for the purpose of discussing land acquisition. The Executive Session concluded at 11:01 a.m.

M 331 08 Reconvene Regular Session At 11:02 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

Public Hearing/ Extension of the Bay View Estates SSD/ the Ritter Brinker Annexation A Public Hearing was held to consider extending the Bay View Estates Sanitary Sewer District (BVESD) to include five parcels of land along and east of Road 395 (Williamsville Road), being in Baltimore Hundred, Sussex County, State of Delaware (the Ritter – Brinker Annexation). The Proposed Expansion consists of 59 acres and includes the lands of Harriett Ritter, Eric and Michelle Ritter, and James and Carolyn Brinker (3 parcels) all of who are requesting annexation into the District. The owners of the parcels will be responsible for system connection charges of \$5,376.00 per EDU, based on rates from July 1, 2007 through June 30, 2008.

John Ashman, Director of Utility Planning, advised the Council that the inclusion of the Brinker parcels was contingent upon the receipt of a check for the expansion and that the check has been received.

Mr. Ashman reported that no correspondence has been received since the posting of the Public Hearing Notice and no requests have been received to be included or excluded from the boundaries.

Mr. Ashman advised that the Department has requested and received a letter from Harriet Brinker stating that the larger parcel is not slated for development and it is strictly for a single family dwelling. The Department has responded to that letter informing her that, should the parcel be subdivided beyond the single-family dwelling, they may be responsible for improvements to the existing pump station in Bay View Estates.

Public
Hearing/
Extension
of the
Bay View
Estates
SSD/
the
Ritter
Brinker
Annexation
(continued)

Public comments were heard.

Carolyn Brinker spoke in support of the Proposed Expansion. She stated that when Bay View Estates Sanitary Sewer System was installed, pipes were installed in their front yard; that they have a failing sewer system; and that the Ritter's are building a new home and they wish to hook up to the BVESD instead of installing a new sewer system. Ms. Brinker stated that they have no plans to develop the property as it is their personal residence.

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

M 332 08
Adopt
Resolution
R 016 08

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Resolution No. R 016 08 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE BAY VIEW ESTATES SANITARY SEWER DISTRICT (BVESD) TO INCLUDE CERTAIN LOTS, PIECES OR PARCELS OF LAND SITUATED ALONG AND EAST OF COUNTY ROAD 395, BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas.

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

M 333 08
Recess

At 11:13 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Jones called the Council back into session at 1:38 p.m.

Public
Hearing
(C/U
No. 1733)

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 MULTI-PURPOSE SPORTS FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.8683 ACRES, MORE OR LESS" (Conditional Use No. 1733) filed on behalf of

Edward A. O'Brien and Janet L. O'Brien.

The Planning and Zoning Commission held a Public Hearing on this application on April 10, 2008 at which time the Commission deferred action. On April 24, 2008, the Commission recommended that the application be approved with the following conditions:

**Public
Hearing
(C/U
No. 1733)
(continued)**

- 1. The storm water management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- 2. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all storm water management areas and erosion and sedimentation control facilities.**
- 3. All entrances shall comply with all of DelDOT's requirements.**
- 4. Any outdoor sport courts are to be utilized during daylight hours only and are to be fence enclosed. Any outside lighting is to be used for security purposes only and shall be screened from neighboring properties and only installed on the building.**
- 5. There shall be only one (1) sign on the premises that shall not exceed 32 square feet on each side.**
- 6. The hours of operation on this site shall be limited to 6:30 a.m. to 10:00 p.m. seven (7) days per week.**
- 7. The maximum capacity of the building shall be 40 persons.**
- 8. There shall be no outside piped music on the outdoor sports court.**
- 9. Parking shall be confined to the parking lot. No parking is to occur on Old Mill Road. No parking is to be permitted in the front yard setback.**
- 10. No alcohol is allowed on the premises.**
- 11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated April 10 and 24, 2008).

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

The Council found that Edward O'Brien, the Applicant, was present with Eugene Lawson, Attorney. They stated that they propose a facility for indoor sports and meeting facilities (the Nassau Valley Racquet Club); that the hours of operation would be 6:30 a.m. to 10:00 p.m. seven (7) days per week; that the targeted market would be for people age 50 years and over, although it would be open to people of all ages; that they propose three indoor and one outdoor sports areas; that the outdoor sports area would not be lighted and therefore, would be for daytime use only; that the proposed use will have a minimal effect on traffic in the area; that they propose a 22,800 square foot building; that there would be a single story main building and a two-story core building; that they envision two indoor

Public
Hearing
(C/U
No. 1733)
(continued)

tennis courts; that the center core building would have locker and shower rooms, and a small sports retail area; that the core building would act as a buffer to segregate the tennis courts activity from a multi-purpose court; that there would be no tournaments held at this facility; that there would be no outside speakers; that there would be no noise problems as the building would be insulated; that DelDOT had no concerns with the project; that it would not be a major sports facility; that the facility would be by membership or hourly use; that they plan a wholesome, family-owned and run project that will improve the area; that a nursery is proposed for users people using the facility; that a daycare facility is not proposed; that the property adjoins an existing C-1 property; and that there is a great need for this type of facility.

Public comments were heard.

Alex Justiniani, who is to be the General Manager of the Facility, spoke in support of the Application and he stated that there is a need for the proposed use.

The Council found that Ellen Carta, Susan Bunting, Howard Millman, and Michael Carta spoke in opposition to the Application. Ellen Carta stated that information they obtained earlier regarding the project proposed more activities than those being proposed at this Hearing and she questioned the validity of that information. The opposition expressed concerns that 1.86 acres is not enough; that 20 parking spaces are not enough; that traffic will increase; that traffic will be going out onto Old Mill Road and onto Route One where there are already traffic problems; that there are already traffic problems on Nassau Bridge. They expressed concerns about the use of the outside courts; the types of games that could be played on the outside courts; noise; the lack of direct access to Route One; security; the height of the outside courts; the number of people that could be using the courts and the facility at one time; the size of the property versus the number of people using the site; the commercial appearance of the proposed building in a residential area; that Old Mill Road is a dead end road; the number of accidents on Route One and Old Mill Road; the time it takes to get out onto Route One to go south; that the project should be on Route One or in another commercial area – not in a residential area; that there will have to be lighting for the parking lot which will be a nuisance to the area residents; and they questioned what would happen to the property/building if the use fails. Susan Bunting stated that she is planning to build on a nearby parcel on Old Mill Road; that there is a 1.87 acre parcel between the proposed sports facility and her property; that she is concerned about the safety of her child due to increased traffic; that it is a residential area; and that the use is not compatible with a residential area.

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

M 334 08
Close

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to close the public record on Conditional Use No. 1733 filed on behalf of Edward A.

**Public
Record/
C/U
No. 1733**

O'Brien and Janet L. O'Brien.

Motion Adopted: 5 Yeas.

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

**M 335 08
Defer
Action
on C/U
No. 1733**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1733 filed on behalf of Edward A. O'Brien and Janet L. O'Brien.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
C/U
No. 1735**

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 AN AIRPORT AND HELIPORT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 28.55 ACRES, MORE OR LESS" (Conditional Use No. 1735) filed on behalf of Richard and Sonya West.

The Planning and Zoning Commission held a Public Hearing on this application on April 10, 2008 at which time the Commission deferred action. On April 24, 2008, the Commission recommended that the application be approved subject to the following conditions:

- 1. Any landings of airplanes or helicopters shall be limited to the hours between dawn and dusk, and shall be further limited to visual flight conditions only, as defined by the Federal Aviation Administration.**
- 2. Any lighting on runways shall be limited to those necessary for directional purposes.**
- 3. With the exception of agricultural aerial spray applications, no commercial activities or flights, including by not limited to banner towing, shall be permitted.**
- 4. Storage of fuel or hazardous materials shall be limited to such temporary storage necessary for agricultural aerial spray applications and shall be in compliance with all Federal, State and local laws or ordinances.**
- 5. Use of the airport by emergency, police and Medivac agencies shall be permitted at anytime.**

Public
Hearing/
C/U
No. 1735
(continued)

6. No more than nine (9) landings per day shall be permitted, with the exception of landings and takeoffs necessary for agricultural aerial spray applications.
7. The landing strip shall remain grass or dirt.
8. No more than one (1) additional hangar, not to exceed 10,000 square feet in size shall be permitted on the site. The location of the hangar shall be shown on the Site Plan.
9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
10. Access to the site shall be from Route 17 only.

(See the minutes of the meeting of the Planning and Zoning Commission dated April 10 and 24, 2008.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

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

Mr. Abbot reported that the West Airport has been in existence for thirty years; however, the Planning and Zoning Department cannot find any record of where the use was ever applied for or approved. Mr. Abbott reported that this application was filed due to complaints received by the Department in regards to helicopters landing on the site. Mr. Abbott stated that, in the County Code, an Airport and Landing Strip is listed as one type of conditional use and a Heliport and Heli-stops are listed as another type of conditional use.

Mr. Abbot reported that a Fax was received from Allen Chorman, President of Allen Chorman & Son, Inc., dated April 29, 2008 in support of the application. In his faxed letter, Mr. Chorman advised that his company has been flying out of Mr. West's Airport for over 30 years without incident or any complaints and that without Mr. West's airstrip, they would not be able to service the farmers in the area.

Mr. Griffin reported that letters in opposition to the project were received from Michael and Amelia Strucich, Brian C. and Patricia G. Lewis, and David Weidman, Attorney.

The Council found that Tim Willard, Attorney, was present with Richard and Sonya West, the Applicants, their daughter, Anita West Warner, and Allen Chorman, an aerial sprayer. They stated that the property was purchased in 1974 and it was used only as a farm at that time; that the

Public
Hearing/
C/U
No. 1735
(continued)

airstrip has existed for over 30 years; that it is largely utilized for aerial application of fertilizers and pesticides; that they were given a violation notice by a Zoning Inspector for the helicopter use; that the site is located in an AR-1 District; that the use is consistent with the AR-1 zoning; that the use is a permitted Conditional Use in the AR-1 District; that the use has been a service use for spray planes, Medivac and police use (a public use); that the use is consistent with the Comprehensive Plan; that the site is an appropriate location for such a use; that the site is located in a Low-Density Area according to the Comprehensive Plan; that DelDOT supports the use; that the use is of a public/semi-public character which serves the agriculture uses in the area; that the applicants and their daughter are licensed pilots; that typical use of the property is by family members, spray application pilots, and guests; that the airstrip measures 75-feet by 3,000-feet; that the applicant still tills the property around the airstrip; that a 60-foot wide easement is reserved to access the property; that a 15-foot access easement exists to the property from West Airport Road, which was a part of the farm purchase in 1974; that DelDOT did not require a Traffic Impact Study; that DelDOT and the Delaware Aviation Advisory Committee support the use; that DelDOT would support a public use facility in Southeastern Sussex County; that a need exists for heliport facilities, agricultural spraying use, and landing fields; that the site has been utilized for aerial spraying for over 30 years; that the site is the only available airstrip for aerial spraying in the area; that fuel for spray planes costs \$5.00 per gallon and that the planes use 40 gallons per hour when spraying; that the spray planes use the facility twice per year, approximately 2 weeks in the spring and 2 weeks in the summer; that they normally use two planes for the aerial spraying each time; that the use is a modest use in an isolated area; that Mr. West is the owner/operator of the airport and he keeps a log book of all activities; that the State Police probably use the field once per month; that there has never been a fatality at the airport; that the Applicants have never charged a fee for use of the airport; that the Applicants are providing a service to local farmers at no charge by allowing the aerial spraying service to utilize the airport; that the site is needed for fungicide application in the area; that the airport is depicted by the FAA on maps; that the State has given the airport an identifier number (DE-21) and it is a designated airstrip; that they are not paving the runway and that they are not building warehouses; that the site is not designated as a reliever field; that the Applicants belong to a group known as the "Flying Farmers"; that the Applicants attend safety seminars; that waterfowl have never been hit by aircraft landing or taking off from the airstrip; that aircraft are supposed to be 500-feet above persons, buildings and obstacles when flying, not when taking off or landing; that no fuel is stored on site; that no chemicals are stored on site; that no noise studies have been performed; that when the airport was created, there were very few homes existing in the area; that a hangar exists for storage of their personal plane; that they use tie-downs for parking guests' planes; that the runway has been lit in the past, but is not currently; that spray fertilizing is an advantage when soil conditions are poor for truck fertilizing; that spray fertilizing also prevents disease from field to field by tractors and farm equipment; that spray

Public
Hearing/
C/U
No. 1735
(continued)

fertilizing saves time in application; that fertilizers and pesticides are hauled in by truck when needed; that the airstrip is used regularly by the Applicants, their daughter, and family friends living in Bethany and South Bethany; that fuel is not stored on the site, but purchased at the Sussex County Airport, Hudson Airport and Ocean City Airport; that they may build an additional hanger space for family members, not commercial hangar space; that banners have not been towed from the site for several years and the use is not proposed now; that the only major change in the use is the heliport; that the Applicant's live within one-half mile of the site and they can see the site from their home farm; that the Applicants always know the condition of the field; that if they build an additional hangar, it will not exceed 80-feet by 80-feet; that the frequency of helicopter landings are rare, sometimes none in a months' time, sometimes one in a months' time; that helicopters are also used for agricultural spraying; that no expansion of the Airport's current use is being requested; that once a year, they hold a Fly-In at the site; that small airstrips have closed due to population growth in areas; that general aviation has decreased in volume; that noise abatement procedures have helped; that the Applicants have tried to be considerate of neighbors and area residents; that permission must be granted by the owner to land at an airstrip based on Federal mandates; that pilots are instructed to avoid flying over homes when taking off and landing; that the Applicants are trying to bring their use into compliance; that it is not intended that the airport become a public airport; and that the use of the airport for emergency purposes saves response time.

The Applicant proposed the following conditions: (1) Any landing of planes or helicopters shall be limited to the hours of 6:00 a.m. to 10:00 p.m.; (2) All lighting on the runways and heliport shall be limited to those necessary for directional purposes; (3) The airport and heliport shall be for private use unless approved for public use by State and Federal aviation laws and regulations; (4) The air landing field shall not be used for any planes towing banners; (5) No storage of fuel or hazardous material shall be stored on the property unless in accordance with State and Federal laws and regulations; (6) The applicant shall provide heliport and landing field permission to all emergency police and Medivac agencies upon request; 7. No more than 9 planes shall land on the field per day, except during crop dusting activities; (8) One day per year, the Applicant shall be permitted to have a Fly-In for guests; (9) No more than 2 helicopter landings shall be permitted per week, except for emergency services.

Mr. West stated that he received (verbal) approval for the airstrip 30+ years ago from a former Director of Planning and Zoning, Roland Derrickson.

Mr. Willard submitted proposed Findings of Fact for the Council's consideration.

Mr. Willard stated that the County Council should not get into Title Issues.

It was noted that any dispute over an easement issue would have to be settled among the parties involved or in the courts and that the application is for the 28 acres, and not the 15 foot easement strip.

Mr. Willard requested that the Council remove Condition No. 10 as recommended by the Planning and Zoning Commission which stated that “Access to the site shall be from Route 17 only.”

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Public comments were heard in support of the application by Barry Morin, Paul Yannucci, and Laura Marvel. Mr. Morin stated that everything that Mr. Willard and Mr. West presented is accurate; that emergency response vehicles would not have any problem accessing the site and that they run dump trucks and tractors to the site. Mr. Yannucci stated that anyone wishing to land at the Airport must ask for permission to land there; that there shouldn't be a number placed on the application as a maximum number of flights per day; that Mr. West flies for pleasure, but also for medical reasons; that the State Police land at the site; that longtime residents are used to farming operations; that newcomers are trying to change what farmers are doing; that it is questionable why a person would object to the activities if the activity was there when they purchased their property and why a longtime resident would object to the activity after 34 years of use. Laura Marvel stated that there is a lot of air traffic in the area and it not all from Mr. West's airstrip and that the use does not impact the area. Comments in support also included the following: that some of the neighbors have no objections to the airport or the noise associated with the airport; that some of the neighbors do oppose towing banners, skydiving and helicopter shuttle services; that some of the neighbors enjoy watching the planes coming in and out of the airport; and that the facility and the services provided are essential to the farming community to operate in southeastern Sussex County.

Public comments were heard in opposition to the application.

David Weidman, Attorney, was present on behalf of Richard and Sandra Curcey and other residents who live near the vicinity of the proposed airport/heliport. He referenced his previously submitted letter of opposition and attachments (dated April 25, 2008) which was made a part of the record.

Mr. Weidman stated that the Applicant has stated that he wishes to continue the use as it has existed in the past and, if that were the case, he and his clients would not be in attendance at this Hearing; that his clients do not wish to restrict Mr. Wests' use of their airstrip nor do they wish to restrict its use for crop dusting; and that they do not wish to restrict the movement of any operations aircraft. He stated that their opposition is to the individuals who have private planes or helicopters who do not live in the area.

Mr. Weidman stated that the application violates the Comprehensive Plan which designates this area as a low density, rural and agricultural area, in a

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Level 4 area of the State and therefore, it is impermissible and approval of the application would be arbitrary and capricious under Delaware Law; that there has been an increase in the use of the airstrip; that the use is a more intense use that should be directed toward growth areas; that the proposed site is a dirt airstrip that is currently accessed by a 15 foot wide dirt road; that the airstrip is surrounded by low-density, single-family homes; that there are telephone poles carrying high voltage wires along Route 17 adjacent to the site; that at least ten of the single-family homes near the airstrip are in the takeoff/landing flight path on the north, south and east sides of the site; that he is concerned about DelDOT's comments; that if this is approved, a massive expansion could occur; that the use increases the risk of a fatal or catastrophic aircraft crash; that the use would severely and detrimentally impact the quality of life for the surrounding residents, e.g. noise level, pollution, decrease in property values; that if the use is approved and the number of (9) maximum flights is adopted, there could be over 3,000 flights per year in and out of the airport, which greatly expands the past illegal use of the property; and that if the use is approved, the Council should give consideration to the conditions suggested in his letter of opposition dated April 25, 2008.

Mr. Weidman submitted and reviewed a map identifying the people that oppose the expansion of the use. The map was submitted into the record.

Mr. Weidman referenced the 15 foot right-of-way and the "easement" and he stated that there is a License Agreement recorded in the land records (Book 3140, Page 218). He stated that it is not an easement, it is a License Agreement, and the problem is that the Licensor can terminate it at any time. In regards to the 60 foot right-of-way off of Route 217, it is an easement and it is recorded in Book 3140, Page 213. This information was submitted into the record.

Mr. Weidman stated that Mr. West's parcel is subject to three options, which were introduced into the record of the Planning and Zoning Commission and he asked the Council to consider the options. A copy of the recorded Option was submitted into the record at the Public Hearing before the Planning and Zoning Commission.

Mr. Weidman concluded by asking the Council to respect the residents in the area and their right to live the way they have with the airport being used largely for agricultural use, emergency aircraft use, and maybe an occasional private plane owned by someone else.

The Council found that Rick Evans, Michael Izzo, Jo Brown, Sandra Curcey, Lulu Daisey, and Nancy Hitch were present and spoke in opposition to the application. They stated that they are not opposed to the use as it exists; that they oppose transit use of the site; that banners have come in and out in the last 5 years; that they have no problem with crop dusting; that the use should be limited to a specific number of aircraft; that they oppose nighttime activities; that they oppose directional lighting; that

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they oppose helicopter use and banners; that they are concerned about the lack of jurisdiction by the State and Federal governments; that they are opposed to a shuttle service being established for passengers; that they oppose commercial use; that they do support agricultural business use; that if the use is approved, conditions should be imposed and enforced to protect area residents; that the adjoining residents are concerned about ownership of the 15 foot right-of-way and its use; that trucks hauling chemicals should not be permitted to use the 15-foot right-of-way when a 60-foot right-of-way is approved for access to the site; that they are concerned that DelDOT commented on West Airport Road, rather than Route 17; that there should be some concern about power lines in the area; that they are concerned about the types of pesticides and chemicals being sprayed; that documentation on the type of chemicals is needed; that the type of chemicals being sprayed should be posted on the site so that the neighbors know what is being sprayed; that the Applicant ignored several violations issued by the County; that the Applicant stated that he does not want to change anything, but he has reduced the size of the farm from 114 acres down to 28 acres; that helicopter use should be limited to emergency use only; that the daily flights should be limited; that no one objects to emergency landings; that there are no objections to the crop dusting use; that safety precautions are needed; that touch and go landings should be prohibited; that there should be no Flight School Training at the site as it is a commercial use; that helicopter touring or training should not be permitted; that access to the site should be limited to Route 17; that a Certified Market Analysis was performed on one property near the airstrip; that the Analysis showed that the market value of the homes in the area could go down 20 percent as a result of the additional air traffic; that an “operation” represents one landing or one take-off; that the use should be limited to a total number of operations per day; that in the conditions, the word “operations” should replace the word “landings”; that private airstrips are not regulated and should be reserved solely for the use of aircraft based at the airstrip for pilots familiar with the area; that other aircraft should be directed to the Sussex County Airport where proper safety zones and navigation aides are in place; that DelDOT does not currently regulate privately owned airports; that DelDOT has not and does not plan to conduct inspections of private airports as it falls outside of DelDOT’s legal mandate; that the regulation is left to County governments that must approve local land use variances for the operations of such facilities; that State Representative Dan Short has stated that there is a need to review the operations of private airports in Delaware and standards should be established for their safe operation and steps taken to ensure compliance; that before the use is expanded, standards need to be in place; that lights should not be needed if the use is restricted from dusk to dawn; that an Airport Committee could work out a lot of the problems between the neighborhood and the Applicant; and that as a result of the pilots trying to avoid neighboring lots, they are performing dangerous maneuvers.

Mr. Izzo submitted modifications to the proposed conditions, in writing. The submission was made a part of the record.

Jo Brown referenced the email that she sent to Councilman Phillips. The email was made a part of the record.

Sandra Curcey submitted letters of opposition from people who were unable to attend the meeting. The letters were made a part of the record.

(continued) There were no additional comments and the Public Hearing was closed.

**M 336 08
Defer
Action on
C/U
No. 1735** **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AIRPORT AND HELIPORT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 28.55 ACRES, MORE OR LESS” (Conditional Use No. 1735) filed on behalf of Richard and Sonya West, and to leave the record open for thirty days for the receipt of the following:**

- **information on any FAA regulations regarding the private airstrips’ impact on neighboring property owners**
- **comments from the Roxana Fire Company on emergency response vehicles’ access to the airstrip via the 15-foot easement**
- **recommended stipulations developed by County Staff that would avoid assigning a maximum number of flights**

; thereafter, the record will remain open for a period of fifteen days to allow for a review of any information received regarding the three issues and to allow for the submission of written comments in response to that information.

Motion Adopted: 4 Yeas, 1 Nay.

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

**M 337 08
Adjourn** **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn at 4:48 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

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