



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 1, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 1, 2012, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Susan M. Webb	Finance Director
Everett Moore	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

#### Call to Order

Mr. Vincent called the meeting to order.

#### M 230 12 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting "Job Applicants' Qualifications", "Pending/Potential Litigation" and "Land Acquisition" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea

#### Minutes

The minutes of April 24, 2012 were approved by consent.

#### Corre- spondence

Mr. Moore read the following correspondence:

**BIG BROTHERS BIG SISTERS OF DELAWARE, INC.,  
GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of grant for the Bowl for Kids' Sake Fundraiser.**

**DELAWARE SHORE U16 SOFTBALL TEAM.**

**RE: Framed picture of the team in appreciation of grant.**

**Food Bank of Delaware** Patricia Beebe, President and Chief Executive Officer, and Larry Haas, Development Director, of the Food Bank of Delaware were in attendance and presented information on the following:

- Food Bank of Delaware Presentation (continued)**
- the Food Bank of Delaware’s Impact in Sussex County
  - the issue of food security in Sussex County
  - the Food Bank of Delaware’s Capital Campaign to extend their Milford Branch to allow them to meet demands for food assistance, provide job training to residents of Kent and Sussex Counties, and ensure that children receive proper nutrition in order to learn and grow. (Programs include The Culinary School, Children’s Nutrition Programs, and Volunteer Programs)

Ms. Beebe reported that, to date, their Capital Campaign has received funding in the amount of \$1.4 million and they are seeking additional funding in the amount of \$1.4 million prior to beginning construction. Ms. Beebe stated that they are looking for a one-time investment from Sussex County to help them meet their goals.

**Proclamation/ Soil & Water** The Council presented a Proclamation entitled “PROCLAIMING APRIL 29 THROUGH MAY 6, 2012 AS ‘SOIL AND WATER STEWARDSHIP WEEK’” to William Vanderwende and Debbie Absher of the Sussex Conservation District.

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

1. County Government Day – May 2, 2012

We are pleased to again sponsor the annual County Government Day on Wednesday, May 2, 2012. At 9:30 a.m., high school junior representatives from Sussex County Girls and Boys State will meet in the County Council Chambers. A mock County Council session will occur, with the representatives assuming leadership roles. It is always an interesting experience to watch student representatives tackle County issues as presented by County department heads. This program can be seen and heard on the County’s website.

2. 9-1-1 Awareness Day – May 10, 2012

On Thursday, May 10, 2012, Sussex County will host its annual 9-1-1 Awareness Day at the Emergency Operations Center located at 21911 Rudder Lane, next to the Georgetown airport. The event will

run from 9:00 a.m. to 2:00 p.m. and is open to the public. Displays and activities will include State Police helicopters, Sergeant Dan, State Farm Insurance, K9 demos, police cars, fire trucks, ambulances, paramedics, County and State Command Centers, bike safety, Smokey the Bear, Vince and Larry (the crash dummies), Delaware Electric Cooperative, Fire Marshal's Office safety displays, Delaware State Fire School, DEMA, DNREC, and 9-1-1 education and tours of the operations area. Information regarding the program is attached. The County would also like to thank Domino's Pizza, McDonalds, and Edy's Ice Cream for their sponsorship and for providing food for lunch.

Adminis-  
trator's  
Report  
(continued)

3. Delaware State Police Activity Report – March 2012

As per the attached Delaware State Police activity report for March, there were 4,550 total traffic arrests and 1,430 criminal arrests. Of that 1,430, 454 were felony and 976 were misdemeanor criminal arrests. Of the total hours on duty spent, 41 percent were spent on criminal investigations.

[Attachments to the Administrator's Report are not attachments to the minutes.]

Economic  
Develop-  
ment  
Comments

Mrs. Deaver stated that she attended a conference on April 30<sup>th</sup> regarding Broadband in Delaware and that it is a real opportunity for economic development. She reported that people in attendance questioned why the County's Economic Development Department consists only of one person and questioned what the County's economic development plan is.

Financial  
Review

Mrs. Webb presented a financial review for the period ending March 31, 2012.

Legislative  
Update

Hal Godwin, Deputy County Administrator, presented the following legislative update.

Substitute Bill for Senate Bill No. 167 – AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE LEGALITY OF ANY ORDINANCE, CODE, REGULATION OR MAP RELATING TO ZONING

**Synopsis:** If a municipality or county passes a land-use ordinance that violates state law, an aggrieved party has only 60 days to file a court challenge. After that, the ordinance cannot be challenged, nor can subsequent decisions based on that ordinance be challenged based on its invalidity. This Bill seeks to remove that bar, recognizing that the enactment of an ordinance that violates state law cannot be legitimized by the passage of time.

Mr. Godwin stated that he would like Mr. Moore to examine this Bill. Mr.

Godwin also asked the Council members to review the Bill and advise him of their position(s).

**House Bill No. 298 – AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE APPRAISERS**

**Synopsis:** This Bill removes the current §4019(e) from the Code and dismisses all standards that are applicable to municipal and county government assessments or assessors thereby adopted. The new §4019(e) clearly states that municipal and county assessors are not subject to the regulation of the Council on Real Estate Appraisers.

Legislative  
Update  
(continued)

Mr. Godwin reported that “we now have the Governor’s attention on this piece of legislation and I believe it is in our favor”.

Mr. Godwin stated that the Attorney General’s Office is now weighing in on this legislation.

This Bill has not passed either Chamber as of this date.

**House Bill No. 278 – AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO STATE TAXES**

**Synopsis:** This Bill allows school taxes and property taxes to be collected by tax intercept. The current law specifically prohibits school taxes from being collected by tax intercept. Currently millions of dollars of property taxes are owed by homeowners and such taxes are difficult to collect. Tax intercept programs have been successful in collecting child support and other obligations owed the State and will help collections for education and other taxes.

This Bill passed the House and has been assigned to Senate Committee.

**House Bill No. 281 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO CAPITATION TAX**

**Synopsis:** This Bill makes the Delaware law consistent in Sussex and Kent Counties by giving Sussex County government the same discretion as Kent County government to set its own capitation tax amount. As the law currently governs, Sussex County is required to set a minimum capitation tax amount of \$3.00. This Bill eliminates that requirement. New Castle County is not authorized to levy or collect a capitation tax.

This Bill passed the House and has been assigned to Senate Committee.

**House Bill No. 283 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SUSSEX COUNTY GOVERNMENT**

Legislative  
Update  
(continued)

**Synopsis:** This Bill makes the Delaware law consistent in Sussex and Kent counties by giving Sussex County government the same discretion as Kent County government to enact its personnel rules administratively. As the law currently governs, Sussex County is required to refer all proposed personnel rules to the County’s Personnel Board, which requires adequate public notice and a formal public hearing. After the Personnel Board review and recommendation, the law requires the county government to adopt the proposed rule by ordinance, which requires a second adequate public notice and a second formal public hearing. This Bill eliminates these requirements and allows Sussex County to enact its personnel rules administratively, the same as is allowed in Kent County.

This Bill passed the House and has been assigned to Senate Committee.

**House Bill No. 290 – AN ACT TO AMEND TITLES 3, 5, 6, 7, 9, 10, 11, 16, 23, 29 AND 30 OF THE DELAWARE CODE RELATING TO SHERIFFS AND SHERIFF DEPUTIES**

**Synopsis:** This Bill makes the Delaware law clear that the county sheriffs and their deputies do not have arrest authority. Historically, the sheriffs and deputies have not exercised arrest authority and the Attorney General’s office has given an opinion that the sheriff’s “power to arrest is no greater than that shared by any citizen”.

This Bill was stricken by the Sponsor on April 25, 2012.

**Senate Bill No. 149 – AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO CONSERVATION AND ENDANGERED SPECIES**

**Synopsis:** This Bill updates Title 7 Conservation, Chapter 6 Endangered Species, relating to conservation and endangered species. This Bill models the policies of neighboring states (i.e. Maryland and New Jersey). Provisions in this Bill define the powers and duties of listing and delisting of threatened and endangered species, rules and regulations, and implementation authority (DNREC).

Mr. Godwin stated that this Bill is not moving; no Hearings have been held.

**Un-numbered Bill – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE ASSESSMENT OF PROPERTY**

**Synopsis:** This Bill makes the Delaware law consistent by giving Sussex County government the ability to properly administer the Board of Assessment appeals process. As the law currently governs, Sussex County is required to have the Board meet for 15 days in March regardless if there is an actual appeal request. This Bill eliminates that requirement.

**Mr. Godwin reported that this Bill is to be introduced in the House on this date.**

**House Substitute 1 for House Bill 227 – AN ACT TO AMEND TITLE 9, TITLE 22 AND TITLE 31 RELATING TO HOUSING**

**Legislative  
Update  
(continued)**

**Synopsis: This substitute bill requires that the selection process by which public financial assistance is allocated applications for new dwelling units shall include universal design standards. Public financial assistance includes a contract with a State agency, real estate donated by the State, State tax credits, grant assistance from State funds, State loan guarantees, federal funds administered by the State, its agency, local governments or municipalities and funding from location governments and their agencies. The substitute bill clarifies that the requirements do not apply to renovating structures or to homeowners' residences. In selecting a bid, the extent of universal design's use may form a basis to award the contract based on the best value, rather than lowest bidder. The bill sets up a 41-point scale covering the key elements of universal design and the substitute bill allows for fractions of a point based on the degree to which the project uses a universal design feature.**

**This Bill does not have a fiscal note. Mr. Phillip asked Mr. Godwin to ask for one.**

**Mr. Godwin asked the Council members to let him know if they feel that the Bill causes a problem with policy as the County has remained neutral on this Bill.**

**This Bill will be heard in Committee on May 2nd.**

**Senate Bill 195 – AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO HOME CONSTRUCTION AND IMPROVEMENT PROTECTION**

**Synopsis: This Bill provides for disclosure materials and information to be distributed where additional density or bonuses have been granted by the local government. It also provides for penalties for failures to provide these materials at the discretion of the local jurisdiction.**

**This Bill was introduced recently. Mr. Godwin stated that he would like Mr. Moore to examine this legislation and he also asked the Council members to review the legislation and advise him of their positions.**

**Bird Haven  
Chapter 96  
Sussex  
Community  
Improve-  
ment**

**Patti Deptula, Assistant Director of Public Works, reported that, on February 28, 2012, the Council authorized the Sussex County Engineering Department to proceed with an election for the subdivision of Bird Haven. On March 21, 2012, the Council held an election for the Bird Haven Sussex Community Improvement project; the results of the election were favorable in proceeding with the project, with seven (7) Yes votes cast and three (3)**



**M 235 12 Community Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$400.00 (\$300.00 from Mr. Vincent’s Community Grant Account and \$100.00 from Mr. Phillips’ Community Grant Account) to Gators Softball for tournament expenses.**

**Motion Adopted:      5 Yeas.**

**M 235 12 (continued)**      **Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**M 236 12 Community Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent’s Community Grant Account to the Greater Seaford Chamber of Commerce for Heritage Weekend.**

**Motion Adopted:      5 Yeas.**

**Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**M 237 12 Community Grant**      **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Cole’s Community Grant Account to The Mid-Atlantic Symphony Orchestra for operating expenses.**

**Motion Adopted:      5 Yeas.**

**Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**M 238 12 Community Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$5,000.00 (\$2,500.00 each from Mr. Phillips’ and Mr. Cole’s Community Grant Accounts) to The Freeman Stage at Bayside for transportation costs for a “Kids Series” production.**

**Motion Adopted:      5 Yeas.**

**Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**Introduction of Proposed Ordinances**      **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOWING SERVICE AND LANDSCAPING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED,**



**SUSSEX COUNTY, CONTAINING 3.374 ACRES, MORE OR LESS” (Conditional Use No. 1933) filed on behalf of Mark A. Giblin.**

**Introduction of Proposed Ordinances (continued)** Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GARAGE FOR STORAGE/WAREHOUSING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.872 ACRES, MORE OR LESS” (Conditional Use No. 1934) filed on behalf of Darin McMahon/Passive Income, LLC.

**The Proposed Ordinances will be advertised for Public Hearing.**

**Additional Business** Under Additional Business, Mr. Cole commented on discretionary funding/community grants and the lack of guidelines, i.e. lack of consistency in the amount of funding given to individuals/organizations. Ms. Webb advised that a grant policy was adopted in 2009. Mr. Vincent asked Mrs. Webb to propose some guidelines for Community Grants for the Council’s consideration at a future meeting.

Under Additional Business, Robert Davis of Captains Grant asked for the Council’s help in correcting problems in Captains Grant. Mr. Vincent asked the County Administrator to follow up on this complaint.

Bartow Van Ness, resident of Deal Island, Maryland, and a member of the Maryland Sheriff’s Association, commented on the importance of the County Sheriff.

Eric Bodenweiser asked the Council to distance themselves from the reintroduction of the State legislation relating to the Sheriff.

**M 239 12 Go Into Executive Session** At 11:31 a.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to personnel.

**Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**

**Executive Session** At 11:33 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to personnel. The Executive Session concluded at 11:50 a.m.

**M 240 12 Reconvene Regular** At 11:52 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.



Public  
Hearing/  
C/Z  
No. 1713  
(continued)

The Council found that Dennis Schrader, Attorney, and Jim Weller, Applicant, were present on behalf of the application. They stated that the application site is the old Sam Yoder Conditional Use parcel and an adjacent lot; that the 6.103 acre parcel is zoned B-1 Neighborhood Business and was previously a Conditional Use for meat cutting and sales; that the 0.851 acre parcel is zoned AR-1 Agricultural Residential and was previously a Conditional Use for a retail gift shop; that currently, the store site is vacant and there is a rental house on the property; that the Applicant acquired the properties since his Route 113 Ellendale property is located in a realignment portion of the future interchange for Route 113 and Route 16; that he proposes to move his current facilities on Route 113 to this site; that the site has already been developed with all agency approvals; that with a CR-1 zoning designation, the Applicant will be able to get his Motor Vehicles dealers license; that there will be no site or structural changes to the site; that a Traffic Impact Study was not required; that onsite, there is a private sanitary wastewater disposal system that will be adequate for the use; that there are two existing wells on site; that there are 51 parking spaces, more than what is required for the application; that the proposed use would be less intensive than the prior use and less traffic generated by the proposed use; that there are two approved entrances on site and turn lanes available; and that the Applicant does not intend to resell the property.

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

M 243 12  
Adopt  
Ordinance  
No. 2251  
(C/Z  
No. 1713)

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2251 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.954 ACRES, MORE OR LESS” (Change of Zone No. 1713) filed on behalf of Weller’s Utility Trailers.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea

Public  
Hearing/  
C/Z  
No. 1714

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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.61 ACRES, MORE OR LESS” (Change of Zone No. 1714) filed on behalf of William F. Godwin, Jr.

**The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on April 12, 2012 at which time the Commission deferred action. On April 26, 2012 the Commission recommended that the application be approved.**

**(See the minutes of the Planning and Zoning Commission dated April 12 and 26, 2012.)**

**Public  
Hearing/  
C/Z**

**Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.**

**No. 1714  
(continued)**

**The Council found that the William Godwin, Applicant, was present. Mr. Godwin stated that the application is for the rezoning of four parcels that he owns from AR-1 to GR; that each lot has a 150 foot frontage and is at least an acre; that one parcel (Lot 2) has a double-wide manufactured home on it and a LPP system; that DNREC has approved the same for the other three parcels; that the three vacant lots will only have one dwelling on them; that the proposal will not affect the traffic, roadways, utilities, or public services; that there are 12 double-wide manufactured homes and 4 single-wide manufactured homes in the vicinity of these properties; and that the proposed improvements will be compatible to the housing in the area.**

**There were no public comments and the Public Hearing and public record were closed.**

**M 244 12  
Adopt  
Ordinance  
No. 2252  
(C/Z  
No. 1714)**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to Adopt Ordinance No. 2252 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.61 ACRES, MORE OR LESS" (Change of Zone No. 1714) filed on behalf of William F. Godwin, Jr.**

**Motion Adopted: 4 Yeas, 1 Abstention.**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Abstained; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**[Mr. Phillips abstained due to a potential conflict of interest.]**

**M 245 12  
Adjourn**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to adjourn at 2:25 p.m.**

**Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;**

**Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**Respectfully submitted,**

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