



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 4, 2010

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 4, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
Michael H. Vincent	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
J. Everett Moore	County Attorney

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

Mr. Phillips called the meeting to order.

M 248 10 A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to amend the
Amend Agenda by deleting "Pending/Potential Litigation and Land Acquisition"
and under "Executive Session" and to approve the Agenda, as amended.
Approve

Agenda Motion Adopted: 5 Yeas.

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

Minutes The minutes of April 27, 2010 were approved by consent.

Corre- Mr. Moore read the following correspondence:
spondence

PEGGY GEISLER, SUSSEX CHILD HEALTH PROMOTION COALITION.

RE: Thanking Council for its support of their 2010 Spring Into Health Community Walk.

**MANUEL R. DAVIS, YOUTH ADVISOR, LOWER SUSSEX NAACP
YOUTH COUNCIL, HARBESON, DELAWARE.**

RE: Thanking Council for its recent financial support.

Appoint- ment	Mr. Baker reported that Robert Wheatley's term on the Planning and Zoning Commission will expire in June 2010.
M 249 10 Approve Appoint- ment to Planning and Zoning Commission	<p>A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to appoint Robert Wheatley to the Planning and Zoning Commission for a term of three years, until June 2013.</p> <p>Motion Adopted: 4 Yeas, 1 Nay.</p> <p>Vote by Roll Call: Mrs. Deaver, Nay; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</p>
Farmland Preservation Program	<p>Mr. Baker presented a letter from Ed Kee, Secretary of the Department of Agriculture. Mr. Kee is questioning the Sussex County Council regarding whether or not the County wishes to participate in the Farmland Preservation Program during this fiscal year (Fiscal 2010). Currently, Mr. Kee's office is evaluating various applications from farms throughout the County.</p> <p>Mr. Baker reported that, per Michael McGrath of the Department of Agriculture, the funding for Fiscal 2010 would include a \$3.00 Federal match for each \$1.00 locally provided toward the cost of the purchase of farm development rights. He also indicated that there is substantial interest again amongst farmers in Sussex County in the program. Per Mr. McGrath, the State is providing some funding, and last year the State averaged a 71 percent discount for the purchase of development rights. In other words, the development rights were purchased at approximately 29 percent of market value.</p> <p>Mr. Baker explained that, in the past, the County has committed funds for farmland preservation. Three hundred thousand dollars (\$300,000) was expended this year to help preserve approximately 200 acres of farmland. Since 2003, the County has participated in this program which has preserved 2,692 acres of farmland.</p> <p>Mr. Baker reported that the Fiscal Year 2010 Budget does not include funding for open space; however, there is \$1,135,000 remaining for the purchase of open space and/or preservation of farmland.</p> <p>Mr. Baker noted that, if the County elects to consider participating in this program, then at a later date, the Department of Agriculture will present a listing of available properties for the Council's consideration, on which a recommendation would be received from the Sussex County Land Trust.</p>

Mr. Cole stated that (1) there is a difference between farmland development rights and open space, (2) the purchase of open space with County tax dollars should permit public access to the property, (3) with the \$1.1 million, the County should keep the funding for the possible purchase of land by the County for open space, and (4) the purchase of land for public access should be a priority.

Farmland Preservation Program (continued) A question was raised as to whether or not the State and Federal governments match any funding allocated by the County for farmland preservation. Mr. Baker responded that the State has a small amount of funds available; however the amount of their contribution is unknown. Mr. Baker advised that Federal grant money is available at a 3:1 match.

Mrs. Deaver spoke in support of participating in the program since the County does not have a Transfer of Development Rights program.

M 250 10 Use Funds in Current Budget for Open Space (Failed) A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the \$1,135,000 in funding in the County's current budget be used for the purchase of open space lands versus the farmland preservation program.

Motion Failed: 2 Yeas, 2 Nays, 1 Abstention.

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

Mr. Baker was directed to obtain additional information from the State on the Farmland Preservation Program.

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

1. **Standard & Poor's Sussex County Bond Rating**

As per the attached notice, Standard & Poor's Rating Services has affirmed its 'AA' bond rating for Sussex County General Obligation Bonds outstanding. As per the report, Sussex County has "a modest, but diverse, local employment base," "a tax base still experiencing growth," "continued strong financial performance," and "low debt levels, due to self-supporting utilities, and a capital improvement plan not expected to increase debt pressures." Standard & Poor's and Moody's periodically review the County's bond ratings for outstanding general obligation debt.

2. **Sussex County Budget Process**

The County's Budget Committee has been working over the last few weeks on preparing the County Budget for Fiscal 2011. The Sussex County recommended budget will be presented on May 18, 2010,

with a public hearing to be scheduled on June 22, 2010. After the public hearing is closed, the County Council can take action on the budget.

At this point in time, the County Budget Committee does not anticipate staff pay reductions, as some other local governments have recommended. The Fiscal 2011 Budget will reflect savings made by various measures such as early retirements, cross-training and retraining of employees to handle new responsibilities, and many savings implemented during the last year and a half by County staff.

Adminis-
trator's
Report
(continued)

3. Substantial Completion

The Engineering Department granted Substantial Completion to Americana Bayside – Phase 10-A, Agreement No. 573, on April 28, 2010. The developer is Carl M. Freeman Communities, and the project is located on Blue Indigo Road in the Fenwick Island Sanitary Sewer District, consisting of 13 single-family lots. Included with this report is a fact sheet on the project.

4. Sussex County Council Prayer Breakfast Reminder

The 33rd Annual Sussex County Council Prayer Breakfast will be held May 11 beginning at 7:00 a.m. at the Delmarva Christian High School, 150 Airport Road, Georgetown, Delaware. Please contact Ms. Robin Griffith at 855-7743 for tickets in advance.

Legislative
Update

Mr. Godwin provided the following legislative update.

House Bill No. 308 – Allows the County Administrator to appoint animal control agents as constables.

Status: This Bill was passed in the Senate and now goes to the Governor for final signature.

House Bill No. 311 – Authorizes the State Attorney General to enforce laws relating to manufactured home communities.

Mr. Godwin advised that this legislation does not affect the County's authority.

Senate Bill No. 167 – Exempts from taxation by local government real property owned by Sussex County Habitat for Humanity. Central Delaware Habitat for Humanity, and Habitat for Humanity of New Castle County, as long as such property is not held for purposes of investment.

Mr. Godwin reported that, currently, Habitat owns no properties in Sussex County. Mr. Moore stated that there has recently been two transfers to

Habitat for Humanity; however, they will be sold almost immediately and once they are sold, they would be placed back on the tax rolls. Mr. Godwin noted that the County's exposure as a result of this legislation would be minimal.

Status: Signed.

**Legislative
Update
(continued)**

House Bill No. 333 – Allows County to enforce sewer connections through the J. P. Court.

Status: Bill has passed the House and has not yet been assigned to Senate Committee.

House Bill No. 370 - Requires license to perform marriages.

Status: Bill has passed the House but has not yet been assigned to Senate Committee.

Mr. Godwin stated that he is waiting for a return call from New Castle County Clerk of the Peace Ken Bolden and that he will continue to monitor the Bill. (The Sussex County Clerk of the Peace supports this Bill.)

House Bill No. 208 - Includes cats in the list of domestic animals which when attacked might cause a dog to be declared a potentially dangerous dog.

Status: This Bill has been stricken.

House Bill No. 194 – Casino Bill

Status: Bill remains on the Speaker's table, but could move to the House Floor for action in a moment's notice.

Mr. Godwin stated that he will continue to monitor this Bill.

Draft Legislation

Mr. Godwin reported that he is working with Mr. Moore on draft legislation that will change the word "Representative" (in front of the word "District") in Delaware State Code to "Council", with regard to the Planning and Zoning Commission appointments. Mr. Vincent asked that the draft legislation also include a reference to the Board of Adjustment appointments.

Mr. Godwin reported that he is working with Mr. Moore on draft legislation to adjust the County's tax warrant date. He noted that this is supported by County staff.

Mr. Godwin advised that the draft legislation, when prepared, will be submitted to the Council for direction and approval.

(continued) Mr. Baker commented on the Governor's proposal to transfer the responsibility of the Offices of the Register of Wills and Recorder of Deeds to the State. Mr. Baker stated that the County has put together a list of concerns to review, i.e. how much and where are the cost savings, loss of revenue, statewide software program, and why does the State believe they could run these offices more efficiently. These concerns will be discussed with the Governor's staff, possibly Jeff Bullock and Greg Patterson.

M 251 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to oppose the
Oppose transfer of authority of the Offices of the Register of Wills and Recorder of
Transfer of Deeds to the State of Delaware.
Authority

of Row
Offices

Motion Adopted: 4 Yeas, 1 Abstention.

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

Discussion/
Sale of
County
Property

Mr. Godwin reported that Bob Whiting approached the County about purchasing unused County land, which is the rear portion of a building lot in Ocean View that the County purchased for a sewer pumping station. Mr. Whiting offered \$25,000 for the property.

Mr. Godwin presented the following facts:

- County purchased lot in September 1999 for \$42,000.00; the property is deeded to Sussex County.
- Lot size is 75 feet by 342 feet.
- County Engineering Department requires 75 feet by 75 feet for the pump station.
- The remainder of the lot (75 feet by 187 feet) could be released.
- The Town of Ocean View requires all lots to be a minimum of 14,000 square feet, which would measure 75 feet by 187 feet; this would only release a small lot of 75 feet by 155 feet.
- A variance would be needed from the Town of Ocean View in order to subdivide this lot to leave the County the smaller portion (75 feet by 75 feet) yielding the desired 75 feet by 267 feet, as per Mr. Whiting's request. It is recommended that the cost of the variance be paid by the buyer.
- The property was appraised under both lot sizes.
- Mr. Whiting had the property appraised.
- Legally, the County may be required to offer this property for sale to the general public similar to a sheriff's sale.

Mr. Moore stated that selling surplus property is not addressed in the

County Code but it is addressed in State Code. The State Code outlines steps the State needs to take in order to dispose of surplus property. Mr. Moore stated that he believes this information would be a good guideline for the County to follow and he recommended the following: determine whether or not it is surplus property; look to other political subdivisions for any interest prior to it being offered to any individuals; and offer the surplus property at an auction.

**Discussion/
Sale of
County
Property
(continued)** Mr. Moore suggested that the County develop a procedure for selling surplus property similar to the recent RFP on the Airport properties.

Michael Izzo, County Engineer, stated that minimum land required for the pump station is 75 by 100 and he stated that, in his opinion, the remainder of the lot is surplus.

Mr. Cole stated that any costs associated with the purchase of this surplus property should be paid by the purchaser, including the cost of any variances; that there should be a minimum bid amount; and that there should be a deed restriction that the lot cannot be used for a residence.

Staff was directed to proceed with investigating the sale of this surplus property.

**Discussion/
Adequate
Public
Facilities
Ordinances** Mr. Godwin presented for the Council's review various examples of Adequate Public Facilities Ordinances which are currently employed by different local governments, including Kent and New Castle Counties, and one draft ordinance from the City of Lewes. The Council discussed holding a workshop on this issue, to include Paul Driscoll of URDC, the County's Land Use Consultant, and also to include Sarah Keifer, Kent County Planning Director, and Connie Holland, Office of State Planning Coordination.

Mr. Phillips referenced his request that an economic impact ordinance be drafted and he stated that he is hesitant to move forward with an Adequate Public Facilities Ordinance prior to discussing an economic impact ordinance.

**M 252 10
Schedule
Workshop** A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council schedule a workshop within the next 30 to 45 days to discuss a proposal to draft an adequate public facilities ordinance.

**Discussion
Continued** The Council held a lengthy discussion on a draft economic impact ordinance and a draft adequate public facilities ordinance, during which time President Phillips passed the gavel to Vice President Vincent.

**M 253 10
Amendment
to Motion
M 252 10/** A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend Mr. Cole's Motion by adding "and to direct staff to bring forth examples of ordinances relating to economic impact/cost analysis after which a workshop will be scheduled to discuss adequate public facilities and

Bring Forth Examples of Economic Impact Ordinances	economic impact/cost analysis of new regulations.” Motion Adopted: 3 Yeas, 2 Nays. Vote by Roll Call: Mrs. Deaver, Nay; Mr. Wilson, Yea; Mr. Cole, Nay; Mr. Vincent, Yea; Mr. Phillips, Yea
Vote on M 252 10	A Vote was taken on the original Motion (M 252 10), as amended. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea
Gavel	Vice President Vincent turned the gavel back over to President Phillips.
Local Law Enforcement Grant	Mr. Godwin presented a request from the City of Milford for a Local Law Enforcement Grant in the amount of \$2,536.00 for dispatcher chairs. The City of Milford had a prior allocation in the amount of \$7,189.00; approval of this allocation will result in a remaining grant balance of \$5,275.00.
M 254 10 Approve Local Law Enforcement Grant	A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to approve a Local Law Enforcement Grant to the City of Milford in the amount of \$2,536.00 for dispatcher chairs. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea
Old Business/ C/U No. 1785	The Council considered Conditional Use No. 1785 filed on behalf of David J. and Erin E. Dekowsky. The Planning and Zoning Commission held a Public Hearing on this application on August 13, 2009 at which time action was deferred. On October 14, 2009, the Commission recommended that the application be approved with conditions. The County Council held a Public Hearing on this application on September 15, 2009 at which time action was deferred. Lawrence Lank, Director of Planning and Zoning, recommended the following additional condition: The project shall be substantially underway within three years of the adoption of this ordinance.

Mr. Lank stated that the purpose of this additional condition is to provide additional notice of the time period a conditional use is valid. Mr. Lank suggested that this condition be added to all conditional uses as they are approved.

Old
Business/
C/U
No. 1785
(continued)

Questions were raised regarding the definition of the term “substantially underway” and whether the definition is included in the County Code.

Mr. Lank stated that he would have to research the matter and he suggested that “substantially constructed” could be used.

It was noted that, as a matter of practice, there has been a definition applied.

Mr. Lank noted that “substantially underway” would include condominium units, site work performed, entrances constructed, utilities in place, building permit issued, construction started, etc.

M 255 10
Adopt
Ordinance
No. 2115
(C/U
No. 1785)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2115 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (12 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 15.16 ACRES, MORE OR LESS” (Conditional Use No. 1785) filed on behalf of David J. and Erin E. Dekowsky, with the following conditions:

1. The maximum number of townhouse units shall not exceed six (6).
2. The property and project will be served by public water from a licensed public utility company with public sewer service by Sussex County meeting all County Engineering Standards.
3. Approximately 85 percent of the natural wooded area on the property will be preserved.
4. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s standards and determinations.
5. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.
6. Stormwater management, erosion and sedimentation control systems shall be constructed in accordance with State and County requirements using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
7. The Applicant shall form a condominium association to be responsible for the maintenance of streets, roadways, buffers, storm water management areas and community areas. The condominium

documents shall note if the ornamental pond area is filled and the filling of the pond shall be disclosed to any buyers by deed restriction.

8. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
9. One sign, lighted or not by the Applicant's choice, shall serve the project. The sign is not to exceed 32 square feet per side.
10. Prior to Final Site Plan approval, the Applicant shall inform the Office of Planning and Zoning and the Planning and Zoning Commission as to the status of the 85 percent natural wooded area to be preserved. This condition is for the purpose of an update to the stated objective of the Applicant to place approximately 12 acres in deed restriction, a conservation easement or under the administration of the Sussex County Land Trust.
11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals.
12. The project shall be substantially underway, as defined in the subdivision ordinance, within three years of this approval.

M 255 10
Adopt
Ordinance
No. 2115
(C/U
No. 1785)
(continued)

Motion Adopted: 4 Yeas, 1 Nay.

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

Airport
Advisory
Committee
Update

Jim Hickin, Director of Industrial Park and Airport Operations, provided an update on the Airport Advisory Committee. The Committee has met two times; the first meeting was organizational in nature with a review of the By-Laws and the appointment of officers. Garrett Dernoga was elected President and Jeff Reed was elected Vice President. During the second meeting, FAA grant assurances were reviewed and airport policies were discussed.

Requests

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

M 256 10
Community
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$125.00 (\$25.00 from each Community Grant Account) to the Miss Delaware Scholarship Organization for their Golf Classic fundraiser.

Motion Adopted: 5 Yeas.

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

M 257 10
Community

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$1,000.00 from Mr. Vincent's Community Grant Account to St. John's

Grant **Church for the Seaford Community Food Closet.**

Motion Adopted: 5 Yeas.

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

**M 258 10 A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give
Community \$2,500.00 from Mr. Vincent's Community Grant Account to the Nanticoke
Grant Little League for operating expenses.**

Motion Adopted: 5 Yeas.

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

**M 259 10 A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give
Community \$1,000.00 from Mr. Cole's Community Grant Account to the Bethany
Grant Beach 4th of July Parade Committee for expenses.**

Motion Adopted: 5 Yeas.

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

**Additional Under Additional Business, Mrs. Deaver stated that she believes it is time
Business for the Council to look at 100 foot buffers off of wetlands in Sussex County,
as recommended by DNREC.**

Under Additional Business, Mr. Cole referenced the list of Top 100 Delinquencies for County property taxes which was previously distributed to the Council. Mr. Cole questioned if those listed will be unable to obtain building permits, submit zoning applications, etc. as part of the County's Cleans Hands Ordinance. Mr. Cole was informed that this is true and that anyone with any amount of delinquency would be unable to do so. It was noted that, in the County's pursuit to reduce delinquencies, one of the methods selected was to post these delinquencies on the internet. Prior to the posting, everyone on the list will first receive a letter of warning that if they do not respond with payment in full, or agree to be put on a payment plan, their delinquency will be posted on the County's website.

**M 260 10 At 11:54 a.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to
Go Into recess the Regular Session and to go into Executive Session for the purpose
Executive of discussing issues relating to personnel.
Session**

Motion Adopted by Voice Vote.

Executive Session	At 11:55 a.m., an Executive Session was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to personnel. The Executive Session concluded at 12:01 p.m.
M 261 10 Reconvene	At 12:03 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.
Action	Mr. Moore announced that no action was required on Executive Session items.
M 262 10 Adjourn	A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 12:05 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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