

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 9, 2000

Call to Order The regular meeting of the Sussex County Council was held Tuesday, May 9, 2000, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

M 228 00 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve Amend and Approve Agenda the Agenda, with the following amendments:

The deletion of "Ellendale Sanitary Sewer District, Georgetown Treatment Agreement" under "Russell W. Archut, Assistant County Engineer"; and

The addition of "County Council Voting Procedures Regarding Conditional Use and Change of Zone Applications" under "Any Additional Business Brought Before Council";

and to Adopt the Agenda, as amended.

Motion Adopted: 5 Yea.

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

M 229 00 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve Approve Minutes the minutes of the May 2, 2000 meeting, as distributed.

Motion Adopted: 5 Yea.

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

Correspondence

Mr. Bayard read the following correspondence:

DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA, PENNSYLVANIA.

RE: Public Notice to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit.
Applicant: Tina L. Cooper
Waterway: Indian River Bay

DENTON MILLS PROPERTY OWNERS ASSOCIATION, MILLVILLE, DELAWARE.

RE: Request for sewer service for the community of Denton Mills.

CHRISTINE LECATES, SUSSEX CENTRAL SOFTBALL BOOSTERS, GEORGETOWN, DELAWARE.

RE: Request for Councilmanic Funding.

JOE MCCARRON, SUSSEX CENTRAL HIGH SCHOOL, GERMAN-AMERICAN EXCHANGE PROGRAM, GEORGETOWN, DELAWARE.

RE: Request for Councilmanic Funding.

BONNIE MOCK, SUSSEX CENTRAL HIGH SCHOOL BAND BOOSTERS, GEORGETOWN, DELAWARE.

RE: Request for Councilmanic Funding.

CHUCK PHILLIPS, THE ASSOCIATION FOR THE RIGHTS OF CITIZENS WITH MENTAL RETARDATION IN DELAWARE, GEORGETOWN, DELAWARE.

RE: Request for Councilmanic Funding.

Delaware Wastewater Facilities Advisory Council/ Loan and Grant

Secretary John Carney, Delaware Department of Finance; Secretary Nicholas DiPasquali, Secretary of the Delaware Department of Natural Resources and Environmental Control; Mr. Alan Farling, Division of Water Resources, Financial Assistance Branch; Jennifer Klecan, Division of Water Resources, Financial Assistance Branch; and Glenn Hastings, Division of Water Resources, were in attendance to discuss the Delaware Wastewater Facilities Advisory Council's consideration of a loan and grant funding request for Ocean View, Holts Landing, Cedar Neck, and the South Coastal Regional Wastewater Treatment Facility. Secretary Carney announced that the Department of Natural Resources and Environmental Control, in conjunction with the Wastewater Facilities Advisory Council, has approved a \$5,450,000 grant and a \$13,752,100 loan to Sussex County. This funding package, totaling over \$1.9 Million, is for the financing of the Ocean View Expansion of the Bethany Beach Sanitary Sewer District, the creation of the Holts Landing and Cedar Neck Sanitary Sewer Districts, and related regional facility upgrades. The additional wastewater will be treated at the expanded/upgraded

Delaware
Wastewater
Facilities
Loan and
Grant
(continued)

South Coastal Regional Wastewater Facility which is located south of Ocean View at the intersection of County Roads 362 and 368. The projects will eliminate approximately 2,133 septic systems and prevent future septic systems from being installed in these sewer districts which discharge to ground waters that feed the Inland Bays. Elimination of the septic systems will prevent an estimated 38,500 pounds per year of nitrogen from reaching the Inland Bays. This amount represents 16 percent of the nitrogen reduction needed to achieve the Total Maximum Daily Load (TMDL) for nitrogen in the lower Indian River, Indian River Bay, and Rehoboth Bay. Total cost of the projects is \$26,855,000 including other sources of funding from the County and a Rural Development loan/grant combination. It was noted that the State and the County have been working together on water and wastewater issues with the primary focus on upgrading facilities around the Inland Bays to improve water quality and the environment. The loan and grant funding provided by the State will make the sewer districts more affordable for the users.

Patrick
Family
Foundation,
Inc./
Lease
Agreement/
Lockheed
Aircraft
Corporation

Mr. Calio, Director of Economic Development and Industrial Airpark, announced that the Harvey O. and Vera Patrick Family Foundation, Inc. is bidding on a contract with Lockheed Aircraft Corporation in Atlanta, Georgia, for the storage, maintenance, and resale of C-130 E-K airplanes at the Sussex County Airport. These aircraft are trade-ins from the United Kingdom and Australia. There is the potential of thirty-one airplanes being brought to the airport; however, the number of C-130's stored at the airport is not expected to exceed seven at any given time. If the contract is awarded, the planes would be stored on the airport's abandoned runway. Storage on the abandoned runway will be permitted for a period up to two years, or until new construction begins on the runway.

Mr. Stickels and Mr. Calio reviewed a Proposed Lease Agreement between Sussex County and the Harvey and Vera Patrick Family Foundation, Inc. for the premises known as the abandoned runway, for a term of five years commencing on the 1st day of June, 2000, and ending on the 31st day of April, 2005, at a rental amount of \$150.00 per plane, per month. The tenant will have the option of renewing the lease for one additional five-year term.

M 230 00
Authorize
Lease
Agreement/
Patrick
Family
Foundation

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the Sussex County Council authorizes the Sussex County Council President to execute a five (5) year lease with the Patrick Family Foundation, Inc., for storage at the Sussex County Industrial Airpark for the parking of C-130's at a rate of \$150.00 per month per plane, contingent upon approval from the County's insurance consultant and legal department, and the successful execution of an agreement between the Patrick Family Foundation, Inc., and Lockheed Martin Corporation of Atlanta, Georgia.

M 230 00
(continued)

Motion Adopted: 5 Yea.

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

Town of
South
Bethany

Mr. Stickels informed Council that the Town of South Bethany has requested that the County perform Building Code inspections and plan review for single-family dwellings and commercial buildings in the Town.

M 231 00
Authorize
Sussex
County to
Perform
Building
Code
Inspections/
South
Bethany

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council authorizes the Sussex County Building Code Department to provide commercial and residential inspections for the Town of South Bethany.

Motion Adopted: 5 Yea.

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

Committee
Appointment

Mr. Stickels advised that the term of office of J. Bruce Mears on the Building Code Appeal Board has expired.

M 232 00
Reappoint-
ment to
Building
Code
Appeal
Board

A Motion was made by Mr. Cole, seconded by Mr. Jones, to reappoint Mr. J. Bruce Mears to the Building Code Appeal Board for a term of four years.

Motion Adopted: 5 Yea.

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

Adminis-
trator's
Report

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

1. Paramedic Station 106 Ribbon Cutting

The Sussex County Council will be hosting a ribbon cutting for Paramedic Station 106 on Monday, May 15, 2000. The ceremony will take place at 12:00 noon at Paramedic Station 106, located at the Seafarer's Village Shopping Center, Long Neck Road. The general public is encouraged to attend. Light refreshments will be served.

2. FY 2001 Budget

Adminis-
trator's
Report
(continued)

The FY 2001 budget will be presented on Tuesday, May 16, 2000, at 10:00 a.m. in the Council Chambers during the County Council's regularly scheduled meeting. A special press briefing will be held at 8:00 a.m. in the Council Chambers. The budget hearing will be held on Tuesday, June 20, at 10:30 a.m. in the Council Chambers.

M 233 00
Adopt
Proclamation

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to Adopt the Proclamation entitled "PROCLAIMING THE WEEK OF MAY 14 THROUGH MAY 20, 2000, AS 'EMERGENCY MEDICAL SERVICES WEEK'".

Motion Adopted: 5 Yea.

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

EMS
Week

Mr. Torbert, Paramedic Director, reviewed a list of activities planned for the observance of "Emergency Medical Services Week".

Old
Business/
C/Z
No. 1399

Change of Zone No. 1399 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.50 ACRES, MORE OR LESS", filed on behalf of James R. and Judy R. Powell. The Planning and Zoning Commission held a Public Hearing on this application on March 23, 2000; the Planning and Zoning Commission recommended approval of this application since the site is located in a Development District; since the buildings already exist on the site; and since the owners propose to retrofit an existing commercial structure that has a history of commercial uses. The County Council held a Public Hearing on this application on April 11, 2000, at which time action was deferred to await a recommendation from the Commission.

M 234 00
Adopt
Ordinance
No. 1374
(C/Z No.
1399)

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1374 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.50 ACRES, MORE OR LESS" (Change of Zone No. 1399) filed on behalf of James R. and Judy R. Powell.

Motion Adopted: 5 Yea.

M 234 00
(continued)

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

Findings
of Fact

The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the property has a long history of various commercial activities, including a commercial feed house, a general store, and an antiques and crafts shop. The change of zone will cure a longstanding non-conformity and will bring the property into conformity with the Comprehensive Plan.
2. The change of zone will have no adverse impact of any sort on the surrounding area.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Proposed
Ordinance

Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FLORIST SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 0.9908 ACRES, MORE OR LESS" (Conditional Use No. 1344) filed on behalf of Brent M. Adams, Jr. The Proposed Ordinance will be advertised for Public Hearing.

Proposed
Ordinance

Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 39,883 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1408) filed on behalf of AAA Storage Limited Partnership. The Proposed Ordinance will be advertised for Public Hearing.

Conflict
of Interest/
Zoning
Changes/
Suspend
Policy

Mr. Stickels announced that Councilmen Rogers and Cole have a potential conflict of interest with the applications scheduled for Public Hearing on this date; Change of Zone No. 1400 and Change of Zone No. 1401 filed on behalf of Olde Towne Pointe, L.L.C. In accordance with a procedure adopted by the Sussex County Council in 1995, "The County Council shall not consider the adoption of any ordinance unless at least four (4) voting members of the County Council are present."

Policy
(continued)

Mr. Stickels asked Council if they wished to consider suspending the requirement for these two public hearings.

M 235 00
Suspend
Policy/
Voting
Require-
ments/
C/Z's
and
C/U's

A Motion was made by Mr. Jones, seconded by Mr. Dukes, that the Sussex County Council, having met in public session, suspends the voting requirement of having a minimum of four County Councilmen to vote on issues regarding change of zone or conditional use; this suspension of procedure is exclusively for the Public Hearings scheduled for Change of Zone No. 1400 and Change of Zone No. 1401, filed on behalf of Olde Towne Pointe, L.L.C.

Motion Adopted: 3 Yea, 2 Abstentions.

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

M 236 00
Grant
Conditional
Acceptance/
The
Retreat

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, that the Sussex County Council grant Conditional Acceptance for the wastewater facilities constructed in The Retreat, located in the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 237 00
Council-
manic
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$100.00 from Mr. Phillips' Councilmanic Account, to Mammography of Delaware for the fundraiser "Fifth Annual Pink Ribbon Golf Classic".

Motion Adopted: 5 Yea.

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

M 238 00
Council-
manic
Grant

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$200.00 from Mr. Jones' Councilmanic Account to the Delaware 4-H Foundation for Morgan Coble to participate in the Habitat for Humanity trip to New Orleans, Louisiana.

Motion Adopted: 5 Yea.

M 238 00
(continued)

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

M 239 00
County
Council
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$1,000 from County Council Grants to The Association for the Rights of Citizens with Mental Retardation in Delaware to address housing needs of individuals with mental retardation in Sussex County.

Motion Adopted: 5 Yea.

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

M 240 00
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$500.00, \$200.00 each from Mr. Phillips' and Mr. Jones' Councilmanic Accounts and \$100.00 from Mr. Rogers' Councilmanic Account, to the Sussex Central High School German-American Exchange Program for expenses.

Motion Adopted: 5 Yea.

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

M 241 00
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$500.00, \$100.00 from each Councilmanic Account, to the Sussex Central Softball Boosters for expenses associated with hosting the Blue/Gold All-Star Softball Game.

Motion Adopted: 5 Yea.

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

M 242 00
Council-
manic
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$750.00, \$250.00 each from Mr. Jones', Mr. Phillips', and Mr. Cole's Councilmanic Accounts, to the Sussex Central High School Band Boosters for the enhancement of the band program.

Motion Adopted: 5 Yea.

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

Citizen's
Concern

Mr. Daniel Kramer, resident of Greenwood, addressed Council regarding the Woodbridge School District Referendum. Mr. Kramer complained that he was required to remove his signs in opposition to the referendum that he placed in the Greenwood Library. Mr. Kramer noted that there are no laws or regulations prohibiting the placement of signs in the library; in fact, the Woodbridge School District had a sign in the library advertising the referendum.

Mr. Kramer was advised that the County has a policy that does not permit the placement of political signs or signs in favor of or in opposition to an issue, i.e. referendums, in the public libraries. Under the County's policy, signs are only permitted which provide public notice outlining the date, time and place of an activity that is to take place.

Mr. Kramer expressed his opinion that, since the policy is not in writing, it is not enforceable.

Draft
Policy/
Signs in
Libraries

Mr. Stickels was directed by Council to draft a policy relating to the hanging of signs in the public libraries. Until such time as a policy is drafted and adopted by Council, the terms of the current (unwritten) policy will remain in effect.

M 243 00
Recess

A Motion was made by Mr. Dukes, seconded by Mr. Jones, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Dukes called Council back into session at 1:30 p.m.

Councilmen
Absent

Mr. Cole and Mr. Rogers were not present for the Public Hearings due to a possible conflict of interest.

Public
Hearing
(C/Z
No. 1400
and
C/Z
No. 1401)

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 AND C-1 GENERAL COMMERCIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 188.24 ACRES, MORE OR LESS" (Change of Zone No. 1400) filed on behalf of Olde Towne Pointe, L.L.C., and 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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.0 ACRES, MORE OR LESS" (Change of Zone No. 1401) filed on behalf of Olde Towne Pointe, L.L.C.

Public
Hearings
(C/Z
No. 1400
and
C/Z
No. 1401)
(continued)

The Planning and Zoning Commission held a Public Hearing on these applications on April 6, 2000, at which time they recommended that the applications be approved; Change of Zone No. 1400 was recommended for approval with 26 stipulations.

Mr. James Fuqua, Jr., Attorney, and Mr. Michael Lynn, were in attendance to present the components of the proposed project. The total site area is 198.3 acres, of which 178.8 acres are zoned AR-1 Agricultural Residential and 19.4 acres are zoned C-1 General Commercial; that the proposed applications include a MR-RPC Medium Density Residential – Residential Planned Community of 188.3 acres with B-1 Neighborhood Business uses on an area of 5.6 acres within the community, and a B-1 Neighborhood Business District containing 10.0 acres at the intersection of Savannah Road and Old Orchard Road; that the proposed zoning housing yield provides for 260 single-family home sites, 110 town-homes, 144 apartments, and 72 flats, for a total of 586 units with a net density of 3.1 units per acre; that the density is similar to the current zoning of AR-1 Agricultural Residential and C-1 General Commercial if fully developed; that they propose to connect to the West Rehoboth Sanitary Sewer District; and that Tidewaters Utilities will provide central water. Mr. Lynn stated that the proposed low-density project is located in a Development District; that it is a thematic community which identifies period architecture, an integration of architecture with land planning, that a town center is proposed as well as a residential mix, business shopping integration, amenities, and open space; and that they have attempted to establish a community that could function without complete dependence on the automobile. Mr. Lynn addressed the economic impact of the project; traffic impact; and the impact the project will have on schools and emergency services.

Mr. Fuqua presented proposed conditions for the project.

There were no public comments in support of the application.

Public comments were heard in opposition to the application. Comments focused on concerns regarding non-conformance with the Sussex County Comprehensive Plan; the Memorandum of Understanding between Sussex County and the Delaware Department of Transportation (DelDOT); traffic; and stormwater run-off and drainage.

The Public Hearing was closed.

Mr. Bayard discussed the letter received from DelDOT pertaining to two topics that were not raised at the Planning & Zoning Commission hearing, as follows:

Public
Hearings
(continued)

1. That the applicant dedicate a 60 foot right of way and an area for a stormwater management pond through the site east of S269A for the potential future realignment of S269A.

2. That the applicant escrow \$200.00 from each settlement to be used as a contribution to the realignment of S269A to Wescoats Corner. At such time, the project is advertised for bids by the Department, the developer shall be required to escrow the balance of unsold unit contributions. This final contribution shall be required within 90 days of project advertisement.

Mr. Bayard recommended that, since this letter was dated and received May 9, 2000, both the applicant and the opposition should have some time to comment.


It was the consensus of Council that written comments in response to this letter will be received through 4:30 p.m. on May 23, 2000.

Action was deferred.

M 244 00
Adjourn

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 4:00 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of Council