



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 13, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 13, 2008 at 6:30 p.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 352 08 Amend and Approve Agenda

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to amend the Agenda by deleting "Proposed Lease Agreement – Office Space"; to change the order of the 7:30 p.m. Public Hearings as follows: Change of Zone No. 1651, Conditional Use No. 1783, and Change of Zone No. 1620"; 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 353 08 Approve Minutes

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to approve the minutes of April 22, 2008.

Motion Adopted: 5 Yeas.

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

American Legion

Cindy and Ashley Phillips were present on behalf of the Oak Orchard - Riverdale American Legion Post #28 Auxiliary. Mrs. Phillips provided a

**Post #28/
Presentation of
Poppies** **brief history of the poppy. The poppy, which is the National Symbol of Sacrifice, was adopted as the American Legion's official flower in 1921. Mrs. Phillips presented poppies to each Councilman to wear in honor of American veterans. She told the Council that the poppies are hand made by veterans and all money raised is used to help local veterans.**

**M 354 08
Adopt
Proclamation** **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the Proclamation entitled "PROCLAIMING THE MONTH OF MAY AS COMMUNITY ACTION MONTH"**

Motion Adopted: 5 Yeas.

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

**Safe Haven
Animal
Sanctuary** **Lois Fargo, one of the founders, and Anne Gryczon, Executive Director, of Safe Haven Animal Sanctuary of Sussex County, were in attendance to brief the Council on their new 19,000 sq. ft. "green" facility to be constructed on a 14 acre parcel on Shingle Point Road in Georgetown. Safe Haven is a no-kill shelter and sanctuary for animals. Once constructed, it will be a full-service facility for abandoned and abused animals with a strong adoption program and public education program.**

David Quillen, the architect for the project, gave a presentation on the "green" facility, which will create an eco-friendly environment for the animals and will save money and energy use. He stated that some of the elements incorporated in the design include geothermal heat, solar hot water, use of recycled materials, a climate controlling courtyard and a vegetative roof.

Ms. Gryczon invited the Council to the ground breaking of the Safe Haven Animal Sanctuary on May 29, 2008.

**Adminis-
trator's
Report** **Mr. Baker read the following information in his Administrator's Report:**

1. Nor'easter Storm May 12, 2008

Moderate tidal flooding occurred in Sussex County on the Inland Bays and Delaware beaches on May 12 and the morning of May 13, 2008. A number of road closures resulted from this flooding and nor'easter storm. Power outages, fallen trees, and flooding created some property damage. Various road closures occurred, especially in the areas near Slaughter Beach, Prime Hook, Oak Orchard, and Route 1 at the Indian River Inlet Bridge. (Copies of press releases on the storm were attached to the Report.)

We wish to thank the fire service volunteers, as well as the National

Guard and State and County employees, who worked during the storm to minimize its effects.

2. Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities – May 19, 2008 Meeting

Adminis-
trator's
Report
(continued)

Attached to the Report was a copy of the agenda for the May 19, 2008 meeting of the Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities. The meeting will be held at the Sussex County West Administrative Complex on North DuPont Highway in Georgetown at 10:00 a.m.

3. Proposed Fiscal 2009 Budget

Sussex County will unveil the proposed Fiscal 2009 budget on Tuesday, May 20, 2008, beginning at 10 a.m. in the County Council chambers of the County Administrative Office Building, 2 The Circle, Georgetown. The public is invited to attend. Comments will be accepted during a public hearing scheduled for 10:15 a.m. on June 17, 2008.

A special media briefing and presentation of the budget will be held at 8 a.m. on May 20, 2008 in Council Chambers, before the morning session. Media representatives are encouraged to attend this briefing in order to ask questions and review details of the proposal.

Copies of the proposed budget, as well as the budget letter, will be available at the meeting on Tuesday, June 17th. Those documents also will be made available on our Web site, www.sussexcountydela.gov, later in the day.

Group
Hospital
Consultant

Steve Fallon of Insurance Buyers' Council, Inc. stated that he was contracted by the County to perform a comprehensive review of the County's benefits program including cost, benefit levels, level of service, funding method, and provider discounts. He reported that the status of the program is sound; however, they did identify some contractual enhancements and minor changes which could save the County \$50,000.00, including an aggressive renewal of the insurance, restructuring of the fees from the service providers and a flat administrative fee renewal from the third-party administrator (Integra). In addition, they looked at ways to restructure the benefit program over the long term.

Mr. Fallon offered the following observations in regards to the County's current reinsurance program:

- Competitively priced
- Historically poor, but improving loss ratio
- County has increasingly absorbed increased risk/claim exposure in

**Group
Hospital
Consultant
(continued)**

higher specific reinsurance deductibles

- **\$100,000 aggregating specific deductible represents an extra layer of risk for the County**
- **Benefit levels are very rich**
- **Plan design does not encourage cost-effective behavior; the out-of-network benefits are extremely rich and do not encourage members to go to the in-network participating providers; emergency room benefits are extremely rich and don't provide the proper disincentive for members using the emergency room as a provider's office; and the prescription drug program**
- **Employee contributions are low and have not been adjusted for several years**
- **Aging population/large retiree component**

Mr. Fallon offered the following suggestions to control the County's health care costs long term:

- **Significant adjustments to the status quo**
- **Employees must become stakeholders with a financial interest in the cost and administration of employee benefits**
- **Employee Wellness Initiatives**
- **Continue to assess integration/effectiveness of Disease Management programs (County is currently using iNetico, a third party vendor)**
- **Plan design which encourages judicious use of services**
- **Increase member cost sharing: employee contributions, prescription drug co-pays, and medical plan design**

Mr. Fallon stated that these changes would provide a significant savings to the County.

Mr. Fallon presented Fundamental Plan Change Recommendations (long-term recommendations): introduce a "Triple Option" plan offering (cafeteria plan) and create incentives to drive enrollment in new "base plan".

Mr. Fallon presented Minimum Recommended Plan Changes: update current plan design to account for medical inflation (increase office visit co-pays, create co-pay differential, increase Emergency Room visit co-pay, introduce inpatient hospital co-payment, increase prescription drug co-pays, and increase in-patient penalty for non- pre-certification from \$250 to \$500. Also, create a greater differential for "out of network" care including 80 percent co-insurance and increased deductibles.

Mrs. Webb stated that they propose to incorporate short-term ideas into the Fiscal 2009 Budget, which will only minimally affect employees. She stated that the larger changes which would result in significant cost savings would require a policy change.

Mrs. Webb stated that suggested changes will be presented as part of the Fiscal 2009 Budget presentation on May 20th.

Wastewater Agreement

Mr. Godwin presented a wastewater agreement for the Council's consideration.

**M 355 08
Execute
Wastewater
Agreement/
Atlantic
East, LTD**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 671, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Atlantic East, LTD, for wastewater facilities to be constructed at Five Points Square, located in the West Rehoboth Expansion of the Dewey 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**

Legislative Update

Mr. Godwin presented an update on legislation before the General Assembly.

House Bill No. 30 - "AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO DELAWARE LAND PROTECTION ACT"

This Bill expressly prohibits the application and/or injection of wastewater or treated wastewater or disposal of biosolids and/or sludge from sewage treatment facilities.

Mr. Godwin stated that the content of the Bill refers to State-owned land and that if they were to change the wording to State-owned park land, then the County's use of State-owned agricultural production land would not be an offense.

This Bill passed the House in June 2007 and is currently in the Senate Executive Committee.

The Council maintains their position in opposition to the legislation.

House Bill No. 31 - "AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PLANNING AND COUNTY IMPACT FEES"

This Bill removes the prohibition against county governments establishing impact fees in certain areas of the county. Kent County government has passed an ordinance to create an impact fee to support emergency medical

services for all areas of the county but awaits repeal of this prohibition before the fee can be enacted.

This Bill was passed and signed on May 15, 2007.

Legislative
Update
(continued)

House Bill No. 39 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO PLANNING AND ZONING”

This Bill increases the number of members from five (5) to seven (7) on the Sussex County Planning and Zoning Commission.

This Bill passed the House in April 2007 and is currently in the Senate Executive Committee.

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

This Bill increases the size of Sussex County Council from 5 members to 7 members.

This Bill passed the House in January 2008 and is in the Senate Executive Committee.

Previously, the Council voted 3 to 2 to endorse this Bill.

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

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

Senator Ennis submitted a substitute Bill last year which changes the character of the Bill so that it will only take away Realty Transfer Tax for new subdivisions that were approved in Level 4 Growth Areas.

The Council maintains their position to oppose this legislation.

Mr. Dukes stated that, as President of the Delaware League of Local Governments, a list was developed by the Administrators/Executives of the three counties outlining the uses of Realty Transfer Tax revenues. Mr.

Legislative
Update
(continued)

Dukes then sent a letter to all of the legislators. Mr. Dukes reported that New Castle County would have to give up \$5.8 million (a 14 percent tax increase); Kent County would have to give up \$1.8 million (a 6.5 percent tax increase); and Sussex County would have to give up \$4.8 million (a 36 percent tax increase). To date, no response has been received from any of the legislators.

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

This Bill authorizes Sussex County to collect a surcharge in an amount not to exceed 2.25 percent of the construction value applicable to each building permit to provide funding for the local share of any school capital construction program, fire companies and farmland preservation.

This Bill passed the House but was defeated in the Senate on June 30, 2007.

House Bill No. 186 – “AN ACT TO AMEND TITLES 9 AND 22 RELATING TO LAND USE AND THE ABILITY OF LOCAL GOVERNMENTS TO PERMIT SUBDIVISION OF PROPERTY”

This Act addresses sprawl by preventing county and local governments from permitting new subdivisions in the following areas: (1) outside any county or local growth zone or (2) within Investment Level 4 areas as defined in the Delaware Strategies for State Policies and Spending.

The Council maintains its position in opposition to this legislation.

House Bill No. 189 – “AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO TAX DITCHES”

This Bill terminates tax ditch construction easements that may be up to 250’ or wider on each side of a tax ditch, once the tax ditch has been constructed. This Bill authorizes an expedited process for the Division of Soil and Water Conservation to modify tax ditch maintenance easements or rights-of-way when permanent structures and accessories have been allowed or approved to be built within the easement or right-of-way. This Bill recognizes the rights of property owners to protect their lands and improvements from previously unrecorded easements or rights-of-way. This Bill also clarifies that once a tax ditch has been dissolved, all easements and rights-of-way granted in connection with the tax ditch also dissolve.

This Bill passed the House in June 2007 and is currently in the Senate Finance Committee.

Mr. Godwin reported that the Senate has organized a study committee to work on this Tax Ditch issue and he stated that he believes the Bill will have to be rewritten in order to pass the Senate.

House Bill No. 233 – “AN ACT TO AMEND TITLES 9 AND 22 OF THE DELAWARE CODE RELATING TO LAND USE PLANNING AND EDUCATION”

This Bill extends the School Impact Fee Program applicable in New Castle County (Title 9 of the Delaware Code, § 2661) and municipalities in New Castle County to the rest of the State.

Legislative
Update
(continued)

This Bill would not allow the County to approve any subdivisions until the school district in the affected area signs off in regards to capacity.

The Council maintains its position in opposition to this legislation.

House Bill No. 239 – “AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO GROWTH MANAGEMENT, PUBLIC SERVICES, FACILITIES AND INFRASTRUCTURE”

This Bill centralizes growth management and planning in the Office of State Planning and creates specific minimum standards for determining the adequacy of public facilities and services for water, health care, transportation, storm water management, schools, and wastewater transmission, treatment and disposal.

Mr. Godwin stated that this legislation centralizes all land use management with the Office of State Planning Coordination.

The Council maintains its position in opposition to this legislation.

House Bill No. 244 – “AN ACT TO AMEND TITLES 9, 22 AND 29 OF THE DELAWARE CODE RELATING TO THE TRANSFER OF DEVELOPMENT RIGHTS AND THE CREATION OF SPECIAL DEVELOPMENT DISTRICTS”

This Bill provides two major components for better land use planning and development in Delaware. First, the Bill sets up a process for the transfer of development rights ("TDR") and sets up a TDR bank. Second, the Bill provides for the creation of Special Development Districts--districts which are created to provide for financing of infrastructure needed for the development of the District and which must utilize TDRs. These two components working together should address several problems. They will help save open space by encouraging the transfer of development rights and by providing for higher density where development does occur. They will also provide more funding for the construction of needed infrastructure so that this burden does not fall entirely on existing property owners.

This Bill is on the House Ready List.

House Bill No. 280 – “AN ACT TO AMEND TITLES 9 AND 17 OF THE DELAWARE CODE RELATING TO DESIGN AND CONSTRUCTION

**STANDARDS FOR ROADS AND STREETS IN SUSSEX COUNTY AND
THROUGHOUT THE STATE’**

Legislative
Update
(continued)

This Act requires all subdivision roads in Sussex County and throughout the State to meet the design and construction standards adopted by the Department of Transportation for roads dedicated to the public use. New Castle County and Kent have already adopted the State standards. In Sussex County, however, subdivision roads submitted under the current Planning and Zoning approval process may be designed and constructed to less stringent County standards. Road which are constructed to Sussex County standards first must be reconstructed and improved at the expense of adjacent homeowners before dedication to the public use can occur. This Act eliminates such problems by requiring that all subdivision roads in Sussex County and throughout the State be designed and constructed according to the standards adopted by the Department of Transportation.

Representative Schwartzkopf, the primary sponsor of the Bill, has allowed the County time (until June) to update their standards. The County Engineering Department is currently working on this project.

This legislation is on the House Ready List.

**House Bill No. 306 – “AN ACT TO AMEND TITLES 9 AND 22
RELATING TO LAND USE REQUIRED NOTICE FOR COUNTY
ZONING CHANGES, AND THE ABILITY OF LOCAL GOVERNMENTS
TO CREATE OVERLAY DISTRICTS”**

This Act clarifies that local governments may use overlay zones as planning and land use regulation tools without violation of the uniformity requirements in the Delaware Code, and clarifies the definition of, and notice requirements for, zoning changes and rezonings.

Mr. Godwin stated that, last year, he informed the legislators that the County could not support this legislation unless it had amendments that would provide property advertisements. He stated that it is his understanding that an Amendment is being drafted.

Mr. Griffin stated that the Opinion of the Chancery Court in the Farmers For Fairness Case pointed out the fact that, although County’s have created overlay zones, the authorizing legislation granting counties the authority to develop zoning only authorizes counties to establish districts, not overlay zones. Mr. Griffin commented that the three counties should push corrective legislation that would give counties the ability to use overlay zones as a planning tool. Mr. Griffin noted that the overlay zones created in the past are not being disputed.

**House Bill No. 311 - “AN ACT TO AMEND TITLE 7 OF THE
DELAWARE CODE ESTABLISHING A NEW CHAPTER 71 AND
CHAPTER 72 ENABLING SUSSEX COUNTY TO CREATE TAX**

Legislative
Update
(continued)

**INCREMENT FINANCING DISTRICTS AND TO UTILIZE TAX
INCREMENT FINANCING TO FUND COSTS RELATED TO
DEVELOPMENT AND REDEVELOPMENT AND TO CREATE
SPECIAL DEVELOPMENT DISTRICTS AND TO UTILIZE SPECIAL
DEVELOPMENT DISTRICT FINANCING TO FUND COSTS RELATED
TO DEVELOPMENT AND REDEVELOPMENT”**

This Bill enables Sussex County to take advantage of the opportunity to have development and redevelopment infrastructure impact costs financed through the establishment of tax increment financing districts (TIF) and the use of tax increment financings and the establishment of special development districts (SDD) and the use of special development districts financings. TIFs and SDDs can be used effectively to encourage development and redevelopment by steering growth to desired areas. TIF and SDD funding is obtained through the issuance of TIF Bonds and SDD Bonds, respectively, which are not required to be backed by the full faith and credit of Sussex County. The payment for these bonds comes from an increase in real estate tax imposed only on the taxable property within the TIF and SDD. Thus, those directly benefiting from the growth and development bear the burden of paying for it, and other County real estate taxpayers are unaffected. TIFs and SDDs are implemented through agreements between Sussex County and the developers of projects within the TIF or SDD desiring to utilize the TIF or SDD funding mechanism. The nature of the development and redevelopment and infrastructure associated with a project within a TIF or SDD is subject to the approval of Sussex County. Impact associated with development and redevelopment which would not be covered by typical land use approval can be incorporated into TIF and SDD financings. TIFs and SDDs are utilized in forty-eight states to reduce the financial burden of states, counties and municipalities in dealing with redevelopment and new development financial impacts. Additionally, the General Assembly adopted Chapter 17, Title 22, known as the Municipal Tax Increment Financing Act and Chapter 18 relating to Special Development Districts granting authority to municipalities with a population in excess of 50,000 people the power to utilize TIFs and SDDs. Several Delaware municipalities have amended their charters to allow TIFs and the creation of SDDs.

Mr. Godwin stated that this legislation was introduced in March through Representative Short. Since then, it was requested that an amendment be added to exempt Level 4 areas. The Farm Bureau objected to this amendment and as a result, Mr. Godwin advised Representative Short that the Council would no longer support this Bill. The Farm Bureau will continue to work with Representative Short on amendments to this Bill.

This Bill is on the House Ready List.

**House Bill No. 312 – “AN ACT TO AMEND TITLE 9 OF THE
DELAWARE CODE CONCERNING THE MANNER OF VOTING UPON
SUBURBAN COMMUNITY IMPROVEMENTS”**

Legislative
Update
(continued)

This Bill enables eligible voters to vote upon Suburban Community Improvements by absentee ballots, as prescribed by County government. Currently an eligible voter must appear in person, without the possibility of voting by absentee ballots, as prescribed by county government. In addition, the amendment to § 507(b) gives greater flexibility in scheduling elections. Currently there is a conflict in the scheduling requirements with the election being held within 20 to 30 days after county government action, but with 30 days advance notice of the election; by allowing up to 60 days to conduct the election, the conflict with the 30 day advance notice requirement is eliminated.

The Council supports this legislation.

This legislation is on the House Ready List.

House Bill No. 339 – “AN ACT TO AMEND TITLES 11 AND 13 OF THE DELAWARE CODE RELATING TO MARRIAGE LICENSES”

This Bill would add a \$30 fee on to all marriage licenses issued in Delaware. The money raised would go to fund domestic violence programs. Domestic violence programs are in need of new sources of funding because of cuts in federal funding of the Violence Against Women Act. Approximately 30 other states have added fees to marriage licenses to pay for domestic violence programs. Based on the marriage licenses issued in 2006, the most recent year for statistics, this would raise approximately \$170,000.

The Sussex County Clerk of the Peace opposes this legislation since it will add an additional \$30.00 fee to every marriage license issued and it is not guaranteed that the money will come back to Sussex County.

The County opposes this legislation.

House Bill No. 376 – “AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO DELAWARE AGRICULTURAL LANDS PROTECTION”

Paragraph (1) of this Bill proposes to allow agricultural land owners to receive reclaimed wastewater effluent on their lands without a conditional use permit.

Paragraph (2) of this Bill allows any agricultural land owner to lease his land to a public or private wastewater treatment entity for a treatment facility.

Paragraph (3) of this Bill permits any land owner who is already in land preservation or agricultural preservation to lease his land to a public or private wastewater entity for a treatment facility and/or disposal site for treated effluent.

This Bill was introduced on April 23, 2008. A new substitute Bill was drawn up on May 1, 2008.

This Bill allows the County to spray treated wastewater on privately-owned land.

**Legislative
Update
(continued)**

Mr. Godwin stated that he has heard that this Bill is aimed at the fact that Kent County Levy Court has adopted a measure in their Comprehensive Plan that denies private purveyors from offering community wastewater treatment systems.

Senate Bill No. 206 – “AN ACT TO AMEND TITLES 9 AND 22 OF THE DELAWARE CODE RELATING TO REZONING OF SCHOOL DISTRICT PROPERTIES”

The State and public school districts, which are political subdivisions of the state, acquire property for school purposes that may eventually be sold if no longer needed for such purposes. Those proceeds are then potentially available for further school district or other public purposes. In such cases, counties and municipalities, which are both also political subdivisions of the State, should not be permitted to downzone these properties for open space or other purposes, without fully reimbursing the State and school district for the loss in value. After all, taxpayers indirectly own the investment in these properties.

This Act provides a structured process to determine the amount of the repayment, if a county or municipality’s land use decision reduces the fair market value of school property.

This Bill would require municipalities to compensate a school district if they downzone their property.

Representatives Bunting and Schwartzkopf are the sponsors of this legislation.

Senate Bill No. 259 - “AN ACT TO AMEND TITLE 9 AND TITLE 22 OF THE DELAWARE CODE RELATING TO PUBLIC NOTICE”

Once a comprehensive plan is adopted or altered by a County or municipality, zoning changes follow unless variances are granted. This Act attempts to ensure that property owners know to show up and express their views before it reaches the variance stage.

This legislation was introduced on May 8, 2008.

Mr. Godwin stated that he plans to have legislation introduced within the next week which will allow the County to build wastewater treatment plants outside of a District’s boundaries.

Mr. Phillips stated that, in the future, when a Legislative Report is scheduled to be on the Agenda, he would like for copies of the legislation to be distributed to the Councilmen prior to the meeting.

**MPHU
Program
Update
and
Rental
Program
Proposal**

William Lecates and Brandy Bennett of the Sussex County Community Development and Housing Office discussed the Moderately Priced Housing Unit Program.

Mr. Lecates stated that the Working Group has been discussing with David Baker and Hal Godwin, a revolving application process. He explained that there would still be a complete and thorough review of all applications before they are brought before the Council; however, applications would not be rushed due to a deadline. In addition, it would give the Community Development and Housing Department more of an opportunity to review proposals with the municipalities.

It was the consensus of the Council to agree to the proposed change to the MPHU application process.

Mr. Lecates presented a proposal for a Sussex County Rental Program. He stated the Working Group believes it is a valuable tool that Sussex County needs since 54 percent of the renting population in Sussex County cannot afford a fair market rent. Mr. Lecates pointed out that the Comprehensive Plan suggests that more needs to be done with housing programs.

Mr. Lecates distributed a Program Proposal which states that a suitable rental program could be developed to address the wide variety of needs throughout the County.

Mr. Lecates reported that the members of the Working Group have dwindled and they need to form a new Working Group.

It was the consensus of the Council to direct the Department to pursue a Rental Program for the purpose of review and consideration by the Council, contingent upon the completion and approval of the Comprehensive Plan.

The Community Development and Housing Department will report back to the Council in July 2008.

**Argo's
Glade
Subdivision/
Letter of
Credit for
Completion**

Michael Izzo, County Engineer, reported that the development group (Tousa Homes, Inc.) of the 25-lot subdivision known as Argo's Glade has filed for bankruptcy. Citicorp North America is holding a \$285,000 Letter of Credit for the project, which is a security to finish the project; they have notified the County that the Letter of Credit will expire on May 18, 2008.

Mr. Izzo reported that, although the subdivision is almost built out, one

of Work additional layer of pavement is still needed and several “punch-list” items are still outstanding. Mr. Izzo also reported that since there is no entity remaining to complete the work, the County must acquire the funds necessary to complete the work. It is estimated that \$50,000 to \$75,000 will be needed.

M 356 08
Authorize
Drawing
of Funds
from
Letter of
Credit
for Argo’s
Glade
Subdivision A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council hereby finds that Touse Homes, Inc. has failed to satisfactorily perform the required construction of the project known as Argo’s Glade and that the County Council hereby authorizes its President to take all action necessary to draw funds from Letter of Credit No. 61634164 issued by Citicorp North America, Inc., in such amounts as may be required by the County in order to complete or procure the completion of construction of the Project, in accordance with the plans approved by the County Engineer.

Motion Adopted: 5 Yeas.

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

Introduction
of Proposed
Ordinances Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPOST FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 45.384 ACRES, MORE OR LESS” (Conditional Use No. 1793) filed on behalf of Blue Hen Organics, LLC. The Proposed Ordinance will be advertised for Public Hearing.

Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (30 UNITS) IN ASSOCIATION TO A 183 LOT CLUSTER SUBDIVISION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 162.95 ACRES, MORE OR LESS” (Conditional Use No. 1794) filed on behalf of VESCO, LLC. The Proposed Ordinance will be advertised for Public Hearing.

Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR COMMERCIAL GREENHOUSES AND A RETAIL GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.5 ACRES, MORE OR LESS” (Conditional Use No. 1795) filed on behalf of Steven Krebs / Kreative Garden Center. The Proposed Ordinance will be

advertised for Public Hearing.

**M 357 08
Delay
Executive
Session
M 357 08
(continued)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to move the scheduled Executive Session to the end of the meeting (following the Public Hearings).

Motion Adopted: 4 Yeas, 1 Abstention.

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

**Public
Hearing
(C/Z
No. 1651)**

At 8:12 p.m., a Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 78.228 ACRES, MORE OR LESS” (Change of Zone No. 1651) filed on behalf of Caldera Properties – Indian River V, LLC)

Lawrence Lank, Director of Planning and Zoning, reported that, on April 24, 2008, the Planning and Zoning Commission opened and continued their Public Hearing on this Application until July 10, 2008, at the request of the Applicant and the Opposition.

Mr. Lank reported that, prior to the Public Hearings, the Applicant provided an Appendices and an Exhibit Booklet containing an Executive Summary and Narratives. This information was distributed to the Council.

James Fuqua, Attorney, was present on behalf of the Applicant. He stated that the Applicant and the Opponent have been working to resolve some issues and he requested that the Public Hearing be continued so that the Public Hearing on the Application does not have to be re-advertised.

Michael Malkiewicz, Attorney, was present on behalf of Barbara Murray, the adjoining land owner. He stated that they agree with the Applicant’s request to continue the Public Hearing to allow time for them to work together on matters regarding preserving the environment.

There were no other persons present who wished to speak in regards to the application.

**M 358 08
Continue
Public
Hearing**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to continue the Public Hearing on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL

on C/Z
No. 1651

PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 78.228 ACRES, MORE OR LESS” (Change of Zone No. 1651) filed on behalf of Caldera Properties – Indian River V, LLC until September 9, 2008.

M 358 08
(continued)

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/Z
No. 1783)**

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 RAILROAD LOOP FOR AGRICULTURAL USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 68.6 ACRES, MORE OR LESS” (Conditional Use No. 1783) filed on behalf of Allen’s Hatchery, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on April 24, 2008 at which time the Commission recommended that the application be approved.

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

Lawrence Lank, 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. Lank reported that, since the Public Hearing before the Commission, a letter was received by Fax, dated May 13, 2008, from Michael T. Scuse, Secretary of the Department of Agriculture. The letter stated that, if Conditional Use No. 1783 is approved, it would allow Allen’s Hatchery to install a railroad loop at the new facility in Seaford, Delaware; that Allen’s Hatchery is an integral component of Delaware’s animal agricultural economy/community; that the installation of this railroad loop is required for the future success of this facility’s operations; that during these tough economic times, operational improvements can make a big difference in a company’s bottom line; that whenever a government action can encourage the use of rail transportation, which is a better use of our precious energy resources, that opportunity should be taken; and that he strongly supports the conditional use application since it will enhance the overall agricultural economy.

Chick Allen, President and CEO of Allen’s Hatchery, Inc., was present on behalf of the application. He stated that they are requesting permission to build a railroad loop which is needed to serve the feed mill; that the

railroad is critical to the service of the company; and that it facilitates an additional outlet for farmers to market their grain.

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

**M 359 08
Adopt
Ordinance
No. 1969
(C/U
No. 1783)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1969 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RAILROAD LOOP FOR AGRICULTURAL USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 68.6 ACRES, MORE OR LESS” (Conditional Use No. 1783) filed on behalf of Allen’s Hatchery, Inc.

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/Z
No. 1620)**

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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.038 ACRES, MORE OR LESS” (Change of Zone No. 1620) filed on behalf of Bob’s Marine Service, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on April 24, 2008 at which time the Commission recommended that the application be approved.

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

Lawrence Lank, 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. Lank distributed Exhibit Books which were provided by the Applicant.

Robert Gibbs, Attorney, was present with Tracey Littleton, President of Bob’s Marine Service, Inc. They stated that Bob’s Marine Service, Inc. is desirous of expanding the existing boat sales and service facility; that they are proposing the change in zone so that the use can be expanded; that the business was incorporated in 1978 and has been at the current location since 1982; that this site is immediately adjacent to the existing facility; that

**Public
Hearing
(C/Z
No. 1620)
(continued)**

several business and commercial uses exist in the area; that the subject property is located immediately adjacent to an existing C-1 District that surround the Roxana Road/Atlantic Avenue intersection; that they propose to utilize the rear of the property for secure boat storage; that they propose leaving the front of the property for future expansion; that any expansion would be subject to site plan review by the Planning and Zoning Commission; that half of the property is residentially used and will remain in residential use for an undetermined amount of time; that the boat storage will not require any utilities; that they propose a lay-out of one boat per lot; that in regards to an 80 foot easement requirement, they are working on a maintenance agreement with tax ditch officials; that they are proposing a removable chain link fence approximately 25 feet from the center line of the ditch for clean-out purposes; that the subject property is served by an existing well and an existing septic system, neither of which will be utilized for the currently proposed use of the back portion of the subject property (boat storage); that central sewer service is not available to the subject property at this time; and that at such time as Sussex County extends central sewer service to the area, the on-site sewer system will need to be abandoned and a direct connection made to the County system at the owner's expense.

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

**M 360 08
Adopt
Ordinance
No. 1970
(C/Z
No. 1620)**

A Motion was made by Mr. Cole seconded by Mr. Dukes, to Adopt Ordinance No. 1970 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.038 ACRES, MORE OR LESS" (Change of Zone No. 1620) filed on behalf of Bob's Marine Service, Inc.

Motion Adopted: 5 Yeas.

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

**M 361 08
Recess
Regular
Session/
Go Into
Executive
Session**

At 8:47 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Cole, to recess the Regular Session and go into Executive Session for the purpose of discussing Pending/Potential Litigation.

Motion Adopted: 5 Yeas.

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

At 8:48 p.m., the Sussex County Council held an Executive Session in the

Executive Session **Caucus Room of the Council Chambers for the purpose of discussing Pending/Potential Litigation. The Executive Session concluded at 9:13 p.m.**

M 362 08 Reconvene **At 9:14 p.m., a Motion was made by Mr. Cole, seconded by Mr. Dukes, to come out of Executive Session and to reconvene the Regular Session.**

M 362 08 **Motion Adopted: 5 Yeas.**

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

M 363 08 Adjourn **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to adjourn at 9:14 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

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