



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 15, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 15, 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 255 12 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting "Peninsula Clubhouse – Letter of Credit" under Michael Izzo and by deleting "Job Applicants' Qualifications" 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 May 8, 2012 were approved by consent.

Corre- spondence

Mr. Moore read the following correspondence:

**THE BETHANY BEACH 4TH OF JULY PARADE COMMITTEE,
BETHANY BEACH, DELAWARE.
RE: Letter in appreciation of grant.**

COASTAL CONCERTS, LEWES, DELAWARE.

RE: Letter in appreciation of grant.

BARBARA MESSICK.

RE: Letter in appreciation of the Tribute that was presented to her upon her retirement from the County.

**Inland
Bays
Foundation
Presen-
tation**

Harry Haon was present on behalf of the Inland Bays Foundation, a new organization formed in 2011. The mission of the Foundation is to help improve the quality of water in the Inland Bays. Mr. Haon presented a proposal regarding buffers for the Inland Bays and he requested a written response to the proposal from the Council. Mr. Haon noted that five other organizations from Sussex County support this proposal: Citizens Coalition, Sierra Club, Vicki York Realty, AARP Environmental Committee, and the League of Women Voters. (Mr. Haon submitted his comments in writing and his comments were made a part of the record.)

**Adminis-
trator's
Report**

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

1. **Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County**

The Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County will meet on Monday, May 21, 2012, at the Sussex County West Administrative Complex in Georgetown. A copy of the agenda is attached. Guest speaker at the meeting is Doug Tuttle, Policy Scientist with the University of Delaware Institute for Public Administration and Principal Investigator for the Delaware State Broadband Project, where he will be speaking on "*Broadband Technical Assistance for Community Service Organizations in Sussex County*".

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

**Wastewater
Agreement**

Hal Godwin, Deputy County Administrator, presented a Wastewater Agreement for the Council's consideration.

**M 256 12
Approve
Wastewater
Agreement/
Forest
Landing**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 343-6, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Forest Landing Communities, LLC, for wastewater facilities to be constructed in Forest Landing – Part of Phase 2D, located in the Miller Creek Sanitary Sewer District.

Motion Adopted: 5 Yeas.

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

Legislative Update **Hal Godwin, Deputy County Administrator, presented the following legislative update:**

Legislative Update (continued) **Senate Substitute No. 1 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**

This Bill has been tabled by the Sponsor and will probably be stricken.

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

Mr. Godwin reported that House Bill No. 298 has been stricken and replaced by House Bill No. 336 entitled AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE APPRAISERS.

Mr. Godwin reported that the primary sponsor of the Bill, Representative Ruth Briggs King, recommended rewriting this Bill due to resistance from some Senate members. Mr. Godwin reported that the changes would not have any effect on how the law would be applied; the changes were made mostly to the “Whereas” section at the beginning of the Bill.

A Committee hearing has been scheduled for June 6th.

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

Mr. Godwin stated that, to date, he has been unable to get a Committee hearing scheduled.

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

Mr. Godwin stated, to date, that he has been unable to get a Committee hearing scheduled.

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

Mr. Godwin stated that this Bill ran into some resistance at the Committee hearing on May 9th. Senator Peterson objected to the Bill based on the fact

that the County is possibly eliminating a hearing that offers employees an opportunity to be heard prior to any policy change. Mr. Godwin stated that he will work with Senator Peterson on this issue.

Senate Substitute No. 1 for Senate Bill No. 156 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO DOGS

**Legislative
Update
(continued)**

Mr. Godwin reported that Representative Jacques has asked if Sussex County would drop its objection to the Bill if he offered an amendment to remove Sussex County from the legislation.

Regarding the same issue, Mr. Godwin reported that another Bill, Senate Bill No. 211 entitled AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRUELTY TO ANIMALS, regarding the tethering of dogs, was introduced on May 3, 2012.

Synopsis: This Bill includes the tethering of any dog for extended periods of time within the definition of cruelty to animals. It also includes the tethering of very young dogs and nursing mother dogs within the definition of cruelty to animals.

Mr. Godwin asked if the Council wishes to ask to be excluded from this Bill also.

**M 257 12
Rescind
Objection
to Legis-
lation/If
Sussex
County is
Excluded**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to rescind Sussex County Council's objection to Senate Substitute 1 for Senate Bill No. 156 and Senate Bill No. 211 if Sussex County is excluded from the Bill.

Motion Adopted: 4 Yeas, 1 Abstention.

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

**Legislative
Update
(continued)**

House Bill No. 325 – 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

Mr. Godwin reported that this Bill passed the House on May 10th with a vote of 36 Yeas, 2 Nays and 1 Abstention.

House Substitute No. 1 for House Bill No. 227 – AN ACT TO AMEND TITLE 9, TITLE 22 AND TITLE 31 RELATING TO HOUSING

Mr. Godwin reported that this Bill is on the House Agenda on this date.

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

IMPROVEMENT PROTECTION

Mr. Godwin reported that he attended the Hearing on the legislation on May 9th and, on that date, the Bill was not released.

House Bill 322 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE ASSESSMENT OF PROPERTY

(continued) This Bill was released by the Committee on May 9th.

Oak Orchard SSD Expansion Area No. 1/ Substantial Completion Michael Izzo, County Engineer, reported on two items related to the Oak Orchard Sanitary Sewer District, Expansion Area No. 1, Contract 09-10. In April, the County established rates for the District and allowed connections to begin. Mr. Izzo reported that there were three contracts on the project and the third contract has now been completed. The third contract was with Underground Utilities Corp. A date of completion was established to be April 18, 2012 and this was a contract overrun as the actual end of term of the contract was March 15, 2011. Therefore, there will be substantial penalties incurred by the contractor. Mr. Izzo reported that the negotiation process has been started with the contractor. Mr. Izzo asked the Council to grant Substantial Completion as of April 18, 2012.

M 258 12 Grant Substantial Completion/ Oak Orchard SSD Expansion Area No. 1 A Motion was made by Mr. Phillips, second by Mrs. Deaver, based upon the recommendation of the Engineering Consultants, George, Miles and Buhr, LLC, and the County Engineering Department, that the Sussex County Council grant Substantial Completion effective April 18, 2012, for Sussex County Contract No. 09-10, Oak Orchard Sanitary Sewer District Expansion Area 1 to Underground Utilities Corporation, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

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

Oak Orchard SSD/ Contract Amendment Mr. Izzo reported that the second issue is in regards to a Contract Amendment with the Consulting Engineer, George, Miles and Buhr, for the time period that they spent on the Contract above and beyond the time specified in the Contract. Mr. Izzo presented a proposed Contract Amendment in the amount of \$33,377.29.

M 259 12 Approve Contract Amend-ment/ Oak A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the County Engineering Department, that the Sussex County Council authorizes its President to execute Contract Amendment 5 with George, Miles and Buhr, LLC of Salisbury, Maryland, to provide additional Contract Administration and Resident Project Representation Services to accommodate the time period after the expiration of the contract

Orchard SSD term for the Sussex County Project No. 09-10, Oak Orchard Sanitary Sewer District, Area No. 1 and PS #326 and PS #327, at a net cost increase not to exceed \$33,377.29.

Motion Adopted: 5 Yeas.

M 259 12 (continued) **Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea

Lochwood Proposed Chapter 96 SCI Project Patricia Deptula, Assistant Director of Public Works, presented a proposed project (Lochwood Subdivision) for inclusion in the Chapter 96 Sussex Community Improvement (SCI) Program. Lochwood Subdivision is located northwest of Angola and consists of 244 buildable parcels/lots; the project scope includes all of the subdivision phases built. Mrs. Deptula reported that a petition form was drafted and mailed to the Lochwood property owners in August 2011. The County received back 124 valid petitions, representing 51 percent of the total buildable parcels within the proposed project. Total construction costs are estimated to be \$880,142.59; this includes a \$70,600.00 monetary donation from Stevan Class of Lochwood, LLC. The main project improvement being considered is the overlay of Type C hot mix on existing streets. The annual assessment per taxable property is estimated at \$324.43 for a 15 year time period, or an optional estimated one-time lump sum payment of \$3,607.14 would also be available. A Notice of Public Meeting was sent to all property owners on March 2, 2012 with the detailed cost estimate, project layout map, and table listing the annual assessment information for each billable parcel within the project. Mrs. Deptula reported that a public meeting was held with the Lochwood owners on March 24, 2012 to discuss the County's proposal.

Mrs. Deptula presented a Proposed Resolution to accept Lochwood into the Chapter 96 SCI Program; to approve the estimated annual assessment for the project; and to schedule an election.

M 260 12 Adopt R 008 12/ Lochwood Proposed SCI Project A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Resolution No. R 008 12 entitled "A RESOLUTION ESTABLISHING A DATE, TIME, PLACE AND JUDGE FOR AN ELECTION TO BE HELD TO CONSIDER THE LOCHWOOD PROPOSED CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT".

Motion Adopted: 5 Yeas.

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

Rudder Julie Cooper, Project Engineer, reported that the Rudder Lane Drainage

- Lane Project** **Improvements Project has been completed by Teal Construction. Ms. Cooper requested that the Council grant Substantial Completion and approve a Balancing Change Order. Ms. Cooper noted that a summary of the costs of the project was included in the Council’s agenda packets.**
- M 261 12** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant Substantial Completion, effective May 11, 2012, to Teal Construction, Inc. of Dover, Delaware, for Sussex County Project No. 09-24, Rudder Lane Drainage Improvements, and further, that**
- M 261 12** **Substantial Completion & Approve Balancing C/O for Rudder Lane Project** **Balancing Change Order No. 1 be approved in the amount of \$4,930.18, thereby increasing the contract amount from \$164,988.00 to \$169,918.18, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;**
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea
- Grant Request** **Mrs. Webb presented a grant request for the Council’s consideration.**
- M 262 12** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00**
Community Grant **from Mrs. Deaver’s Community Grant Account to Beebe Medical Foundation for the Best of the Beach Art Auction fundraiser.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;**
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea
- Additional Business** **Mr. Moore reiterated that the Additional Business portion of the meeting is for the purpose of allowing the public to bring matters before the Council; however, Council members should not engage in discussion. If the Council wants to discuss an issue, it must be placed on a future Agenda.**
- Under Additional Business, Dan Kramer, resident of Greenwood, commented on the complaints made earlier in the meeting during the Inland Bays presentation.**
- Eric Bodenweiser, resident of Georgetown, commented on “the argument that is constantly used in your plight to emasculate the office of the Sheriff of the State of Delaware”.**
- Bartow Van Ness, resident of Deal Island, Maryland, commented on the office of the Sheriff.**

Rich Collins, Positive Growth Alliance, commented on the proposal on buffers for the Inland Bays.

M 263 12 **At 11:04 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson,**
Go Into **to recess the Regular Session and to go into Executive Session for the**
Executive **purpose of discussing issues relating to personnel and pending/potential**
Session **litigation.**

M 263 12 **Motion Adopted: 5 Yeas.**
(continued)

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

Executive **At 11:06 a.m., an Executive Session of the Sussex County Council was held**
Session **in the Caucus Room of the Council Chambers for the purpose of discussing**
issues relating to personnel and pending/potential litigation. The Executive
Session concluded at 11:25 a.m.

M 264 12 **At 11:27 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,**
Reconvene **to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 5 Yeas.

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

Action **There was no action required on Executive Session items.**

M 265 12 **At 11:28 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,**
Recess **to recess until 1:30 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

M 266 12 **At 1:33 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to**
Reconvene **reconvene.**

Motion Adopted: 5 Yeas.

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

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**

**Hearing
(C/U
No. 1928)** **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF EQUIPMENT AND A HOME OFFICE FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.49 ACRE, MORE OR LESS” (Conditional Use No. 1928) filed on behalf of Devin Rice.**

**Public
Hearing
(C/U
No. 1928)
(continued)** **The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on April 26, 2012 at which time the Commission deferred action. On May 10, 2012, the Commission recommended that the application be approved with conditions.**

(See the minutes of the Planning and Zoning Commission dated April 26 and May 10, 2012.)

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

The Council found that Kim Rice (mother of the Applicant) was present on behalf of the application. She stated that her son lives on the premises and proposes to operate his office and landscaping business from the site; that equipment will be stored inside; that he has cleaned up and improved the site; and that the driveway has been enlarged and there is ample parking available.

There were no public comments.

The Public Hearing and public record were closed.

**M 267 12
Adopt
Ordinance
No. 2256
(C/U
No. 1928)** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2256 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF EQUIPMENT AND A HOME OFFICE FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.49 ACRE, MORE OR LESS” (Conditional Use No. 1928) filed on behalf of Devin Rice, with the following conditions:**

- 1. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- 2. The Final Site Plan shall show the location for parking of trailers, trucks and equipment used for business.**
- 3. All lawn mowers shall be stored inside the pole barn.**
- 4. All maintenance and repair of equipment shall occur inside the pole barn.**
- 5. No junked or inoperable vehicles or equipment shall remain stored on the lot at any time.**
- 6. The hours of operation shall be Monday through Saturday, from 7:30**

a.m. through 6:00 p.m.

7. The location for a dumpster shall be shown on the Site Plan. It shall also be screened from the view of neighboring properties or the roadway.
8. Any security lights for the business area shall be screened so that they do not shine on neighboring properties or roadways.
9. No employees shall park on public roads or shoulders. All employee parking shall be on the Applicant's property.

**M 267 12
(continued)**

Motion Adopted: 5 Years.

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

**Public
Hearing
(C/Z
No. 1715)**

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 1.00 ACRE, MORE OR LESS” (Change of Zone No. 1715) filed on behalf of Twenty Storage, LLC.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on April 26, 2012 at which time the Commission deferred action. On May 10, 2012 the Commission recommended that the application be approved.

(See the minutes of the Planning and Zoning Commission dated April 26 and May 10, 2012.)

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

The Council found that Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A. was present with Ken Christenbury, Professional Engineer with Axiom Engineer, LLC. They stated that, last summer, a rezoning application for the adjacent property was approved by the County for the purpose of a mini-storage facility; that this site is immediately adjacent to the proposed mini-storage project and the proposal is for a home and office for an on-site manager to operate the mini-storage project; that the rezoning of this property will be similar to an in-fill connecting two properties for development of the mini-storage project; that the commercial entrance for the mini-storage project has just been approved by DelDOT; that they have a Letter of No Objection from DelDOT for the entrance; that there are no wetlands on the site; that the site is immediately adjacent to other CR-1 zoning and is in close proximity to other commercial, business, and conditional use properties; that according to State Strategies, the site is located in Investment Level 2 and Level 3 Areas where growth is anticipated; and that the proposal is consistent with the Comprehensive

Land Use Plan.

There were no public comments.

The Public Hearing and public record were closed.

M 268 12 **A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Ordinance No. 2257 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 1.00 ACRE, MORE OR LESS” (Change of Zone No. 1715) filed on behalf of Twenty Storage, LLC.**

M 268 12
Adopt
Ordinance
No. 2257
(C/Z
No. 1715)
(continued)

Motion Adopted: 5 Yeas.

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

M 269 12 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 1:56 p.m.**

Adjourn

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