



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 12, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 12, 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
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 306 12 Amend and Approve Agenda

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to amend the Agenda by deleting "Paramedic Station No. 104/100 – Lease Renewal" under Robert Stuart, Director of EMS, and by deleting "Job Applicants' Qualifications, Personnel, 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

Comments

Mr. Phillips questioned, with respect to a future prayer policy, whether the decision on that will have to be made in public session. He also questioned, if a prayer policy is not decided on at this meeting, how the Council will handle the prayer issue at the June 19th meeting.

Mr. Moore responded that, if the Council adopts a policy on this date, a decision would have to be made in public session. Mr. Moore also

responded that the standing order and preliminary judgment of the Court indicates that there would be no Lord's Prayer at Council meetings after June 15th.

Minutes The minutes of May 22 and June 5, 2012 were approved by consent.

**Corre-
spondence** Mr. Moore read the following correspondence:

**Corre-
spondence
(continued)** KATIE MANNER, GIRL SCOUTS OF THE CHESAPEAKE BAY
COUNCIL SERVICE UNIT 30, NASSAU, DELAWARE.
RE: Letter in appreciation of grant.

**Comments
(continued)** Mr. Phillips reported that 982 Sussex County residents have signed petitions in support of the Council's prayer. He stated that the petitions have been coming in over the last several months.

Mrs. Deaver raised a question regarding which prayer the petitions support.

Mrs. Deaver reported that she is receiving a lot of calls and emails about an Artesian regional wastewater plan covering 700 acres north of Milton. She noted that it was approved in July 2007. She also noted that, at this point, it is a State permit issue.

In regard to the prayer support petitions, Mr. Phillips stated that there are many folks that support the prayer from Lewes, Milton, and other parts of Mrs. Deaver's District.

Mr. Wilson stated that he has received many phone calls in support of prayer and never one against it.

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

1. Sussex County Emergency Operations Center Call Statistics – May 2012

Attached please find the call statistics for the Fire and Ambulance Callboard for May 2012. There were 15,788 total calls handled in the month of May. Of those 9-1-1 calls in May, 76 percent were made from wireless phones.

2. 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 hold a meeting to discuss its strategic plan for 2011-2012 on June 20, 2012, at 1:00 p.m. The meeting will take place at the Sussex County West Complex on North DuPont Boulevard. The meeting is open to the public.

[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 307 12
Execute
Wastewater
Agreement** A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 865, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and John H. Ferris for wastewater facilities to be constructed in Ferris Courtyard Subdivision, located in the Millville Expansion of the Bethany Beach 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:

House Bill No. 336 - AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE APPRAISERS

This Bill has been tabled in Committee.

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

This Bill is in the Senate Revenue and Taxation Committee. Mr. Godwin stated that he has not had any success in having the Bill heard in Committee.

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

This Bill is in the Senate Revenue and Taxation Committee. Mr. Godwin stated that he has not had any success in having the Bill heard in Committee.

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

This Bill has been released from Senate Committee.

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

This Bill has been tabled in Committee by the sponsor.

**Legislative
Update
(continued)**

House Bill No. 322 - AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE ASSESSMENT OF PROPERTY

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

**Comments
(continued)**

In regard to the prayer support petitions, Mr. Phillips reported that he obtained a copy of the petition, as requested by Mrs. Deaver, and that the petition states “To the Sussex County Council Members: I am a resident of Sussex County and this is to show that I am in support of the Sussex County Council, keeping the Lord’s Prayer as the way to open each and every Council Session. God bless the men and women of our Council.”

**Extend
Runway
4-22
Project**

Jim Hickin, Director of Airport & Industrial Park Operations, discussed the Runway 4-22 Extension Project. Bids for construction were opened on May 18, 2012; there were six bidders and Mumford & Miller was the low bidder at \$3,072,671.50. The Engineer’s estimate was \$4,151,000.00.

**M 308 12
Award Bid/
Extend
Runway
4-22
Project**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Engineering Consultants, Urban Engineers, Inc. and the Engineering Department, that Sussex County Project No. 12-06, Extend Runway 4-22, Package 1” be awarded to Mumford & Miller Concrete, Inc. of Middletown, Delaware at the bid amount of \$3,072,671.50 with award to be contingent upon the receipt of a Federal Aviation Administration grant.

Motion Adopted: 5 Yeas.

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

**Proposed
Contract
Amend-
ment/
Extend
Runway
4-22 Project**

Mr. Hickin presented a proposed amendment to the County’s contract with Urban Engineers for construction management, inspection, testing, etc. for the Runway 4-22 Extension Project (Package 1). He reported that the proposed fee is \$346,000. As required by the FAA, an independent fee estimate was obtained prior to receiving the proposal; the numbers were about 2 percent different on man hours and about 6 percent different on cost. Mr. Hickin noted that this project is grant eligible.

M 309 12
Approve
Contract
Amend-
ment/
Runway
4-22 Project

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Amendment No. 11 to the Engineering Agreement between Sussex County and Urban Engineers, Inc. for Sussex County Project 12-06, Runway 4-22 Extension – Package 1, Construction Phase Services, which increases the original contract amount by \$346,000, contingent upon the receipt of a grant from the Federal Aviation Administration.

M 309 12
(continued)

Motion Adopted: 5 Yeas.

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

Housing
Preservation
Grant
(HPG)

Brad Whaley and Mike Jones of the Community Development Office were in attendance to review the Housing Preservation Grant (HPG) and to request the Council's authorization to apply for the grant. Mr. Whaley advised that the HPG is a Department of Agriculture program that assists with rural housing issues. Historically, Sussex County has applied for this grant in conjunction with Kent County. He stated that the \$50,000 grant is for homeowner-occupied housing rehabilitation; that it is for 100% rural areas; and that it covers housing deficiencies. This year, Kent and Sussex counties can submit applications for grants in the earmarked amount of \$50,000 (\$25,000 each county). The grant recipients will be very low income homeowners. Mr. Jones reported that a lot of the work performed with this grant funding is for handicap accessibility projects.

M 310 12
Adopt
R 012 12
(HPG)

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to Adopt Resolution No. R 012 12 entitled "RESOLUTION ENDORSING PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING TODD LAWSON, COUNTY ADMINISTRATOR, TO SUBMIT PRE-APPLICATION".

Motion Adopted: 5 Yeas.

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

Old
Business
C/U
No. 1897

Under Old Business, the Council discussed Conditional Use No. 1897 filed on behalf of Russell V. Banks.

The Planning and Zoning Commission held a Public Hearing on this application on May 26, 2011 at which time action was deferred. On June 23, 2011, the Commission recommended that the application be approved with the following conditions:

Old
Business
C/U
No. 1897
(continued)

1. No materials shall be brought from off site for processing, mixing or similar purposes.
2. Water or a water truck shall be available to control dust from road traffic when conditions require.
3. As stated by the Applicant, the entrance to the borrow pit shall be from Iron's Lane. However, if dictated by DelDOT, the entrance could be from Old Mill Road, within the road frontage of the parcel that is the subject of this application.
4. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
5. The hours of operation for the business on this site shall only occur between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
6. No materials shall be stored on any access roads or within any buffer area.
7. No fuel shall be stored on-site for borrow pit operations.
8. No dredging activities shall be permitted on the site.
9. No de-watering activities will occur on-site.
10. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
11. The borrow pit shall have benches and 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.
12. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance.
13. The Applicant shall comply with all State and County erosion and sediment control regulations.
14. A buffer shall be maintained along the perimeter of all boundaries of at least 50 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees. Existing natural vegetation and tree growth within the buffer areas shall remain undisturbed.
15. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
16. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Code.
17. It is recommended that Sussex County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).
18. The excavated area shall not exceed 17 acres, which shall be divided

into 2 phases. The second phase shall not be started until the first phase is completed. The phase line shall be the hedgerow line that currently exists across the site.

19. The borrow pit shall be no closer than 200 feet from the boundary to property of other ownership and further no structures shall be built or placed within 200 feet of the limits of excavation.
20. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**Old
Business
C/U
No. 1897
(continued)**

The County Council held a Public Hearing on this application on June 14, 2011 at which time action was deferred.

The Council discussed the application and the conditions recommended by the Planning and Zoning Commission. The discussion included the reclamation plan and related time frame, maintaining compliance with regulations; DNREC and Conservation District approvals; and closure of the pit. It was noted that a reclamation plan has to be approved by the Planning and Zoning Commission before any borrow pit work can be performed.

**M 311 12
Amend
Condition
No. 15**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend Condition No. 15 (recommended by the Planning and Zoning Commission) by replacing the text with the following:

Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control (DNREC), or any successor thereto. Upon certification by DNREC of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.

Motion Adopted: 5 Yeas.

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

**M 312 12
Amend
Condition
No. 17**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend Condition No. 17 (recommended by the Planning and Zoning Commission) to read as follows:

The Applicant shall provide Performance Guarantees to assure

completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e) as approved by the County Attorney.

Motion Adopted: 5 Yeas.

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

**M 313 12
Amend
Condition
No. 12**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend Condition No. 12 (recommended by the Planning and Zoning Commission) to read as follows:

A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation of the site shall be ongoing as the phases progress.

**M 314 12
Adopt
Ordinance
No. 2259
(C/U
No. 1897)**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Ordinance No. 2259 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A DIRT BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.02 ACRES, MORE OR LESS” (Conditional Use No. 1897) filed on behalf of Russell V. Banks, with the following conditions, as amended:

- 1. No materials shall be brought from off site for processing, mixing or similar purposes.**
- 2. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- 3. As stated by the Applicant, the entrance to the borrow pit shall be from Iron’s Lane. However, if dictated by DelDOT, the entrance could be from Old Mill Road, within the road frontage of the parcel that is the subject of this application.**
- 4. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- 5. The hours of operation for the business on this site shall only occur between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.**
- 6. No materials shall be stored on any access roads or within any buffer area.**
- 7. No fuel shall be stored on-site for borrow pit operations.**
- 8. No dredging activities shall be permitted on the site.**
- 9. No de-watering activities will occur on-site.**

M 314 12
Adopt
Ordinance
No. 2259
(C/U
No. 1897)
(continued)

10. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
11. The borrow pit shall have benches and 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.
12. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation of the site shall be ongoing as phases progress.
13. The Applicant shall comply with all State and County erosion and sediment control regulations.
14. A buffer shall be maintained along the perimeter of all boundaries of at least 50 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees. Existing natural vegetation and tree growth within the buffer areas shall remain undisturbed.
15. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control (DNREC), or any successor thereto. Upon certification by DNREC of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.
16. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Code.
17. The Applicant shall provide Performance Guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e) as approved by the County Attorney.
18. The excavated area shall not exceed 17 acres, which shall be divided into 2 phases. The second phase shall not be started until the first phase is completed. The phase line shall be the hedgerow line that currently exists across the site.
19. The borrow pit shall be no closer than 200 feet from the boundary to property of other ownership and further, no structures shall be built or placed within 200 feet of the limits of excavation.
20. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 3 Yeas, 2 Nays.

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

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

(Mr. Vincent noted that he did not participate in the Public Hearing on Conditional Use No. 1897; however, since that time, he has listened to the recording of the Public Hearing.)

There was no additional business.

**M 315 12
Go Into
Executive
Session**

At 11:09 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to pending/potential litigation.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 11:15 a.m., an Executive Session was held in the Council Chambers for the purpose of discussing issues relating to pending/potential litigation. The Executive Session concluded at 1:29 p.m.

**M 316 12
Reconvene
Regular
Session**

At 1:33 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, 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**

**Executive
Session
Business**

Mr. Moore announced that, during Executive Session, the Council discussed issues relating to pending/potential litigation.

**M 317 12
Retain The
Beckett
Fund**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to retain The Beckett Fund for religious liberty.

Motion Adopted: 5 Yeas.

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

Mr. Moore announced that mediation is scheduled for Thursday, July 14th, and the Council needs to give Legal Counsel certain parameters for discussion in the mediation.

M 318 12

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give

Give Authority to Continue Mediation & President-led Prayer **authority to Legal Counsel to continue the mediation with the parameters that the Council continue with a President-led invocation prior to each meeting with a non-sectarian prayer, with occasional use of the Lord's Prayer.**

Motion Adopted: 3 Yeas, 2 Nays.

M 318 12 (continued) **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Nay; Mr. Wilson, Nay; Mr. Vincent, Yea**

M 319 12 Adjourn **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 1:36 p.m.**

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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