

SUSSEX COUNTY COUNCIL, GEORGETOWN, DELAWARE, JUNE 12, 2001

Call to Order The regular meeting of the Sussex County Council was held Tuesday, June 12, 2001, at 4:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes.	President
Finley B. Jones Jr.	Vice President
George B. Cole	Member
Vance Phillips	Member
Lynn J. Rogers	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 329 01 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to approve the
Approve Agenda, as distributed.
Agenda

Motion Adopted: 5 Yea.

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

Corre- Mr. Bayard read the following correspondence:
spondence

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL, DOVER, DELAWARE.
RE: Public Workshop Notices.

ST. JUDE HIGH SCHOOL, MONTGOMERY, ALABAMA.
RE: Letter in appreciation of Council's financial support of Slam Dunk to the
Beach.

ARCHBISHOP SPALDING HIGH SCHOOL, SEVERN, MARYLAND.
RE: Letter in appreciation of Council's financial support of Slam Dunk to the
Beach.

Recognition/
Roadrunners Mr. Stickels announced that the Delaware Tech Owens Campus Roadrunners
Baseball Baseball Team defeated Phoenix Community College 3-1 on Thursday, May
Team 31, 2001, to win the National Junior College Athletic Association (NJCAA)
 Division II World Series.

M 330 01 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt the
Adopt Proclamation entitled "PROCLAIMING THE MONTH OF JUNE 2001 AS
Proclamation ROADRUNNERS MONTH".

Motion Adopted: 5 Yea.

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

Presentation The coaches and several members of the Roadrunners Baseball Team were in
of Procla- attendance to accept the Proclamation. In addition, a check in the amount of
mation and \$1,250.00 was presented by Council to offset expenses associated with the
Check team's participation in the World Series.

DelDOT Mr. Tom Shafer, Consultant, and Mr. Joe Wutka, Delaware Department of
North Transportation (DelDOT), were in attendance to discuss a proposal from the
South Delaware Department of Transportation for a North-South Limited Access
Limited Highway. Mr. Shafer reported that last year, Senator Bunting sponsored
Access Senate Resolution 20 which called upon the Department of Transportation to
Highway undertake the feasibility of a new limited access highway, from Dover Downs
Report to the southern boundary of Sussex County at the Maryland State Line. Mr.
 Shafer advised that the cost of a new limited access highway is estimated to be
 approximately \$16 million per mile with the 32 miles through Sussex County
 totaling approximately \$500 million.

Mr. Shafer reported that Secretary of Transportation Nathan Hayward III instructed Mr. Reeb of the DelDOT Planning Department to work with Sussex County and retain the services of a consultant to undertake the feasibility study. DelDOT employed the firm of Whitman, Requardt & Associates for consultant services.

Mr. Shafer advised that the concept for this highway is to separate through-traffic from local traffic and provide some relief for the seasonal traffic. He further advised that planners discussed four options for a limited access highway in central Sussex near U.S. 113 and another option in western Sussex near U.S. 13.

Mr. Shafer advised that the intent of DelDOT is to make Route One (from Dover to Nassau) into a limited access highway. This project is currently underway with the Department purchasing access rights and making improvements, which would limit access to the area. Mr. Shafer noted that it would not be feasible to make the portion of Route One from Nassau to the Maryland State Line into a limited access highway due to environmental constraints and dense development.

Mr. Shafer advised that one of the options considered was a new route through the center of Sussex County. He noted that this would benefit people passing

DelDOT
North
South
Limited
Access
Highway
Report
(continued)

through the State but it would not be a lot of benefit to the residents of Sussex County; that it would relieve some of the through-traffic; that it would impact a lot of the roadside businesses along Route 13 and 113; and that it would put increased pressure for development in an area which is basically designated for agriculture.

Mr. Shafer advised that the planners considered Route 13 and 113 as options for the north-south limited access highway. He noted that Route 113 has fewer businesses which are highway-dependent, that it has wider medians for use as extra lanes in the same right of way; and that it has a good northern and southern terminus. Mr. Shafer stated that one option would be to bypass Route 113 around Milford and use that road to the Maryland line. Another option would bypass Milford to the east, connect to Route 113 south of Ellendale, bypassing the existing towns, before connecting back to Route 113 in Selbyville. Mr. Shafer commented that Route 13 ends at Delmar and Maryland has no plans to make their portion of Route 13 into a limited access highway. He noted, however, that Maryland does plan to designate their portion of Route 113 as a limited access highway.

Mr. Shafer summarized by saying that the two main options being considered are (1) upgrading the existing alignment of the Route 113 corridor and (2) constructing a new highway. He expressed that the first option would be a greater benefit to Sussex County; that a realignment project would not take as long as constructing a new highway; and that it would have the least impact.

Mr. Wutka stated that DelDOT will be developing a final report on their findings and recommendations. The report will be submitted to Secretary of Transportation Nathan Hayward III following which a timing schedule would be developed including the scheduling of meetings with affected towns. The final report will be submitted to the General Assembly.

Prime
Hook
National
Wildlife
Refuge/
Payment
in Lieu
of Taxes

Mr. Stickels reported that a check in the amount of \$37,263.00 has been received from the United States Department of the Interior, Fish and Wildlife Service, as a federal payment in lieu of taxes for the Prime Hook National Wildlife Refuge. The check represents payment under the Refuge Revenue Sharing Act covering the Fiscal Year 2000. Sussex County may use the funds for any governmental purpose. Mr. Stickels presented for Council's authorization, the distribution of the Refuge Revenue Sharing Funds, as follows: Sussex Vocational Technical School District - \$3,197.02; Cape Henlopen School District - \$18,825.63; Milford School District - \$9,086.92; Sussex County - \$5,554.68; and Libraries - \$598.75.

M 331 01
Authorize
Distribution/
Refuge
Revenue

A Motion was made by Mr. Jones, seconded by Mr. Cole, that the Sussex County Council authorizes the distribution of the Refuge Revenue Sharing Funds, as proposed.

Motion Adopted: 5 Yea.

M 331 01
(continued)

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

Appeal
Request/
Subdivision/
Sussex
County
Ventures,
Inc.

Mr. Stickels presented for Council's consideration an appeal to the Sussex County Planning and Zoning Commission's decision to deny an application of Sussex Ventures, Inc., c/o of Donald Ward, for the subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 82.61 acres into 71 lots, located south of Road 297, 2,930 feet west of Route 30 (Subdivision Application No. 2001-2 - Country Meadows). It was the consensus of Council that a Public Hearing be scheduled.

Adminis-
trator's
Report

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

1. FY 2002 Budget – Public Hearing

A reminder that the Sussex County Council will be holding a Public Hearing on proposed 2002 budget expenditures starting at 10:30 a.m. on Tuesday, June 19, 2001. Copies of the budget may be obtained by contacting the County Administrator's Office at 855-7742. The budget, as well as the budget letter, is also available on the County's Internet homepage at www.sussexcounty.net.

2. Delaware Department of Transportation Long-Range Transportation Plan

The Delaware Department of Transportation will be conducting a daylong workshop starting at 8:00 a.m. at the Higher Education Building, Delaware Technical & Community College, Jack F. Owens Campus, Georgetown, Delaware, on Wednesday, June 20, 2001. Although this is not a public participation meeting, the public, as well as the media, is invited to observe the activities.

3. Delaware Department of Transportation SR-1 Land Use/Transportation Study

The Delaware Department of Transportation will be conducting a committee meeting on Wednesday, June 27, 2001, at 7:00 p.m. on the SR-1 Grid Study. The meeting will take place at the Lewes Library, Lewes, Delaware. The public, as well as the media, is invited to attend the workshop.

Old
Business
(C/Z
No. 1431)

Change of Zone No. 1431 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 LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.02 ACRES, MORE OR LESS" (filed on behalf of K.E.B.

Old
Business
(continued)

Properties, L.L.C.) was discussed.

The Planning and Zoning Commission held a Public Hearing on this application on April 26, 2001, at which time they recommended that the application be approved since the site is located in a Town Center District according to the Comprehensive Plan and since rezoning the site to C-1 General Commercial is appropriate due to the site's close proximity to other commercial uses and zonings in the area.

The Sussex County Council held a Public Hearing on this application on May 22, 2001, at which time action was deferred to permit Mr. Cole to participate in the vote. (Mr. Cole was out of town when this Public Hearing was held.) Mr. Cole advised that he has not had the opportunity to listen to the taped proceedings of the Public Hearing.

Mr. Phillips referred to the Town of Delmar's position that they thought this use would be best located in an industrial zone. Mr. Lank, Director of Planning and Zoning, responded that, in accordance with the County's commercial zoning ordinances, the office and the accessory use of the warehouse are permitted uses. Mr. Lank acknowledged that the Town's ordinances and zoning categories are different than the County's.

Mr. Phillips referred again to the Town's position that this use should be located in an industrial zone. He questioned Mr. Lank as to whether there is any interest among the Planning and Zoning Commission to look at the County's commercial zone to see if the industrial permitted uses are appropriate for that zoning. Mr. Lank advised that, under the County's current zoning ordinance, this type of use would be permitted in both commercial and industrial districts.

Mr. Cole suggested that this issue be forwarded to the County's Land Use Advisory Committee for review and discussion. Mr. Phillips agreed with Mr. Cole's suggestion.

M 332 01
Adopt
Ordinance
No. 1468
(C/Z
No. 1431)

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Ordinance No. 1468 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 LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.02 ACRES, MORE OR LESS" (Change of Zone No. 1431) filed on behalf of K.E.B. Properties, L.L.C.

Motion Adopted: 4 Yea, 1 Abstention.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Abstained;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, 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 change of zone is consistent with the purposes and goals of the Comprehensive Land Use Plan, and is located in a Town Center District, which permits the site activities proposed by the applicant. The site adjoins the Town of Delmar and is near various other commercial uses.
2. The site is located in a mixed commercial – residential area, with a trend toward future commercial development. With DelDOT's regulations, traffic impact will be minimized and there will be no other adverse impact.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Wastewater
Facilities

Mr. Baker, Utility Construction Division, discussed several wastewater projects located in the Bethany Beach, South Bethany, and Fenwick Island Sanitary Sewer Districts.

M 333 01
Grant
Beneficial
Acceptance/
Hunters
Run, RPC

A Motion was made by Mr. Rogers, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 193, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Hunters Run, RPC, located in the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 334 01
Grant
Beneficial
Acceptance/
Bethany
Meadows

A Motion was made by Mr. Rogers, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 192, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Bethany Meadows, Phase V, located in the South Bethany Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 335 01 Grant Beneficial Acceptance/ Lighthouse Cove

A Motion was made by Mr. Cole, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 207, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Lighthouse Cove, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 336 01 Recess

At 5:10 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips, to recess until 7:00 p.m. Motion Adopted by Voice Vote.

Reconvene/ Public Hearing/ Interim Rezoning Policy

Mr. Dukes called Council back into session at 7:00 p.m. at the CHEER Auditorium in Georgetown. The Sussex County Council conducted a Public Hearing for the purpose of receiving input on a request from the Association of Coastal Towns (ACT) that the County Council adopt an Interim Rezoning Policy which would delay rezoning requests in the unincorporated areas of the Coastal Development District, until after the County's Comprehensive Land Use Plan is updated in October 2002.

Mr. Stickels provided an overview of zoning activities that have been approved in the Coastal Development District since the adoption of the Comprehensive Land Use Plan in October 1997:

- Five subdivisions have been approved totaling 85 new lots on 162.1 acres with a density of 0.52 units per acre.
- Nineteen (19) applications for rezoning have been received; of that amount, 11 of those were for housing. Three thousand and twenty eight (3,028) units have been approved by the County Council with a gross density of 2.1 units per acre. The County's ordinance would have permitted a maximum of 7,700 units.
- Eight (8) conditional use applications have been approved, creating 84 additional lots on 50.67 acres with a density of 1.66 units per acre.

Mr. Bob Frederick, Mayor of Dewey Beach and President of ACT, and Ms. Peg Baunchalk, Mayor of Fenwick Island, presented the request for the adoption of the Interim Rezoning Policy. Under this Policy, the County Council would not accept or approve any applications in the Coastal Development District for rezoning land currently zoned AR-1 to a higher density such as MR, HR, or for high density conditional uses. The Policy would not allow non-tidal wetlands and golf courses to be included in the calculations of the number of dwelling units allowed in any Residential Planned Community in the Development District. Mayor Frederick and Mayor Baunchalk emphasized that the Policy in no way stops growth in the area. They stated that, in accordance with this Policy, approval of developments

Public
Hearing
(continued)

under AR-1 and AR-RPC zoning would and should continue; developers and landowners would be free to develop their property under the zoning rights they acquired when they purchased the land. Mayor Frederick and Mayor Baunchalk also emphasized that this policy would only affect the Coastal Development District and that it would not apply to the other 12 Districts in the County.

In response to allegations that the Interim Rezoning Policy is a Moratorium, Mayor Frederick acknowledged that the proposal could be considered a moratorium; however, the moratorium is limited in scope.

Mayor Baunchalk addressed the question submitted to her regarding whether ACT has approached the Sussex County Association of Towns (SCAT) for their endorsement of the proposal. Mayor Baunchalk advised that ACT has not approached SCAT since that organization is composed of 13 development districts and their proposal relates to only one of those districts.

Mayor Frederick spoke on behalf of ACT and stated that this request is critically important to the long-term well-being of the citizens in the area. He further stated that ACT would like Council to recognize the expertise of mayors in the development of their district.

Approximately 200 people attended the Public Hearing. Thirty (30) people spoke and gave their opinions on the Interim Rezoning Policy; 16 people spoke in favor of the proposal, 13 people spoke in opposition to the proposal, and 1 person agreed that the Route 1 corridor might benefit from the proposal but requested that Long Neck and Oak Orchard not be included.

Public comments were heard.

Supporters of the Interim Rezoning Policy stated that the Policy is sorely needed at this time due to the fact that the rapid acceleration of growth in the region in the last few years has led to a series of critical problems: road systems at gridlock; public health issues relating to water and air pollution; drinking water quantity and quality; over-crowding; slow response time of emergency vehicles; inadequate beach parking facilities; the impact of development on infrastructure; overcrowded storm evacuation routes; loss of wetlands; and continuing threats to natural resources and especially, the fragile, environmentally sensitive Inland Bays. They argued that the Council was well within its rights to enact an emergency "moratorium" in the interest of public health and safety.

Petitions and letters were submitted into the record in support of the Interim Rezoning Policy.

Opponents of the Interim Rezoning Policy stated that the moratorium is unfair because it would take away the rights of property owners and developers who have purchased land based on the 1997 Comprehensive Land Use Plan. They

Public
Hearing
(continued)

cited concerns relating to the economy and to the need for affordable housing in the area. They questioned whether serious development problems actually exist in the Coastal Development District and if they do, whether a 16-month moratorium on rezonings would correct those problems.

The Public Hearing was closed.

M 337 01
Draft
Interim
Rezoning
Moratorium
Ordinance

A Motion was made by Mr. Phillips, seconded by Mr. Cole, that the Sussex County Council authorizes the Sussex County Administrator and the Sussex County Attorney to draft an ordinance for an Interim Rezoning Moratorium.

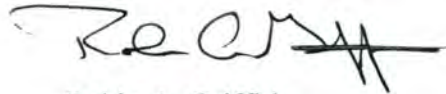
Motion Adopted: 4 Nay, 1 Yea.

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

M 338 01
Adjourn

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to adjourn at 10:15 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council