



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 23, 2009

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 23, 2009, at 3:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

| | |
|------------------------------|-----------------------------|
| Vance Phillips | President |
| George B. Cole | Vice President |
| Joan R. Deaver | Councilwoman |
| Michael H. Vincent | Councilman |
| Samuel R. Wilson, Jr. | Councilman |
| David Baker | County Administrator |
| Susan M. Webb | Finance Director |
| Hal Godwin | Deputy Administrator |
| James D. Griffin | County Attorney |

The Invocation and Pledge of Allegiance were led by Mr. Phillips.

Mr. Phillips called the meeting to order.

Mr. Phillips announced the death of Senator Thurman Adams and a moment of silence was held.

M 381 09 Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by deleting "J. Fran Dell and PATS Aircraft, LLC Sublease" under Jim Hickin and to approve the Agenda, as amended.

Motion Adopted by Voice Vote.

Minutes

The minutes of June 9, 2009 were approved by consent.

Corre- spondence

Mr. Griffin read the following correspondence:

CAITLIN FREY (DELMAR DESTINATION IMAGINATION TEAM)
RE: Thanking Council for recent contribution.

P & Z Commission Vacancy

Mr. Baker announced that Ben Gordy's term on the Planning and Zoning Commission expires on June 30th (Mr. Gordy has resigned from the Commission).

M 382 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to appoint**
App't. to **Marty Ross to the Planning and Zoning Commission for a term of three**
P&Z Comm. **years, ending in June 2012.**

M 382 09 **Motion Adopted: 4 Yeas, 1 Nay.**
(continued)

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

Library **Mr. Baker announced that Ms. Theo Loppatto's term on the Library**
Advisory Bd. **Advisory Board expires on June 30th.**

M 383 09 **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to reappoint**
Appointment **Theo Loppatto to the Library Advisory Board for a term of three years,**
to Library **ending in June 2012.**
Advisory

Board **Motion Adopted: 5 Yeas.**

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

Discussion **Mr. Baker noted that several weeks ago the Council discussed a proposal to**
and **simplify and establish a more accurate guide for the County's process to**
Possible **provide road improvements in existing developments. The County**
Introduction **currently provides this service upon request, as required by Delaware Code,**
Draft **Title IX, Chapter 5. The proposed ordinance would follow the current**
Ordinance/ **Engineering Department practices with several exceptions regarding voting**
Sussex Road **and billing. With the proposed ordinance, the County would continue to**
Improve- **require petition and referendum before initiating any of those projects. Mr.**
ments **Baker stated that the Council had requested that other options regarding**
 the voting and billing requirements be presented. Mr. Baker stated that
 Mike Izzo, County Engineer; Patti Deptula, Assistant Director of Public
 Works; Vince Robertson, Assistant County Attorney; and Mr. Baker have
 reviewed other options for the Council's consideration.

Mr. Robertson, Assistant County Attorney, explained that each property
gets one signature on the petition and one vote in the election to establish a
Sussex Community Improvement Program; that each tax parcel gets one
vote and one signature on the petition; and that each buildable lot on a
parcel gets one vote and one signature on the petition. He stated that a
Public Hearing would be held following the petition. He stated that the
voting and petitioning process would be the same for the assessment. Mr.
Cole questioned if the ordinance would have to be changed if the County
changes to unit pricing. Mr. Robertson stated that he had discussed that
with the Engineering Department and Mr. Baker, and that it should be
changed for the sewer first, then the assessment. Mr. Cole stated that

infrastructure unit pricing is a more equitable way of charging.

Introduction of Proposed Ordinance Mrs. Deaver stated that she has been contacted by a community that wishes to participate in the Community Improvements Program, but wishes to fund it themselves. Mr. Izzo stated that would be possible. Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 96, SUSSEX COMMUNITY IMPROVEMENTS, TO FACILITATE THE IMPROVEMENT OF STREETS AND ROADWAYS OWNED AND CONTROLLED BY HOMEOWNERS ASSOCIATIONS, PROPERTY OWNERS ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS”. The Proposed Ordinance will be advertised for Public Hearing.

Extension Request for Conditional Use No. 1678 Mr. Baker stated that Marine Farm, LLC has requested an additional one-year extension of C/U No. 1678 for an Equestrian Center. He noted that on June 27, 2006 the Council approved the application with conditions. The Planning and Zoning Commission subsequently approved two (2) one-year extensions, which brought the extension time up to June 27, 2009. The applicant is requesting an additional one-year extension until June 27, 2010.

Lawrence Lank, Director of Planning and Zoning, explained that this project was a 19.84-acre conveyance from Marine Farm for a recreational/therapeutic equestrian facility. Mr. Lank stated that the conveyance has not yet taken place and, therefore, no site work has begun.

Mr. Griffin, County Attorney, acknowledged Georgia Truitt, Director of the Southern Delaware Therapeutic and Recreational Horseback Riding. Mr. Griffin stated that if the extension is not granted, there is no possibility that the property transfer would take place. He stated that the developer was to make a contribution to the therapeutic riding activity, but due to the downturn in the market, and since there is a mortgage against the property, the lender will not allow the 19 acres to be sold until the developer makes a payment.

Mr. Lank noted that once the property transfer has been completed, the equestrian facility will be a totally separate tract from Marine Farm.

Mr. Cole suggested that a policy be put in place with guidelines for granting extensions of conditional uses.

Georgia Truitt, Director of Southern Delaware Therapeutic and Recreational Horseback Riding, stated that the program operated on Marine Farm property for the first 15 years. The equestrian facility became displaced once purchased by the developer. Ms. Truitt noted that the facility serves children and adults with disabilities with approximately 25 riders per week. She stated that due to limited space and not enough horses, there is currently a waiting list. Ms. Truitt asked for Council’s consideration in granting the additional one-year extension, as the facility would lose the chance to acquire the property for the facility if it is denied.

Ms. Truitt noted that the property for the facility will be located on Jimtown Road. She stated that, until the 19 acres has been transferred, the plans for the facility cannot move forward.

M 384 09 A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to extend the
Grant application of Conditional Use No. 1678 on behalf of Marine Farm, LLC for
Extension of one year until June 23, 2010.
C/U
No. 1678 Motion Adopted: 5 Yeas.

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

Federal Mr. Baker stated that Sussex County is entitled to up to \$688,600 of grant
Energy funds direct from the federal government to be used for energy purposes.
Grant He stated that the County does not have to match the funds; that up to
Application \$75,000 is allowed for County administrative expenses; that the funds may
 be used to reduce total energy use, improve energy efficiency, install on-site
 renewable energy on County facilities, as well as other uses; that up to
 \$250,00 could be sub-granted to other nonprofit organizations within the
 County; and that the funds may also be used to develop a grant-required
 Energy-Efficient Conservation Strategy for the County government, which
 the County does not yet have. Mr. Baker reported that the County spends
 approximately \$1.7 million per year for electricity, a large portion of which
 is for the wastewater treatment plants and the 300 pump stations.

Mr. Baker stated that the initial plan is to request grant funding for up to \$40,000 to be used for the development of an energy efficient conservation strategy, which would guide the County in determining how the remaining funds could be spent most effectively. Mr. Baker stated that the energy strategy must be developed within 120 days from the date of the award of the grant.

Gina Jennings, Director of Accounting, stated that reporting of energy usage, money saved and the kilowatt usage is required quarterly for the first year, then reported annually.

M 385 09 A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the
Authorize Sussex County Council authorize the County Finance Director to apply for
Application an Energy Efficiency and Conservation Block Grant from the federal
For Energy government.
Efficiency &
Conservation Motion Adopted: 5 Yeas.
Block Grant

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

**Adminis-
trator's
Report**

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

1. Statement on Passing of Senator Thurman Adams

**Adminis-
trator's
Report
(continued)**

The State of Delaware and Sussex County have lost a prominent and influential figure. Senator Thurman G. Adams, Jr., of Bridgeville passed away earlier today at the age of 80. Senator Adams was many things—a farmer, a businessman, a legislator and respected statesman, but above all he was a Sussex Countian and a true gentleman. Senator Adams was a good friend to the county and to Sussex County Council over the years. He supported the expansion of public safety, he worked tirelessly to maintain agriculture's proper place in Delaware, and he did his very best to protect the interests of Sussex Countians.

We extend our deepest sympathies to Senator Adams' family and to his colleagues in the General Assembly in this tremendous loss.

2. Anthony Della Camera – County Employee

We regret to announce that Anthony Della Camera, District Manager for the Inland Bays Regional Wastewater Facility, passed away on June 23, 2009. Mr. Della Camera worked for the County since July 16, 2001. We wish to express our condolences to the Della Camera family.

3. Woodlands of Millsboro Sewer District

The Sussex County Engineering Department will be conducting a referendum at the Millsboro VFW, Millsboro, Delaware, on Thursday, June 25, 2009, from 1:00 until 7:00 p.m. The purpose of the referendum is to establish the Woodlands of Millsboro Sanitary Sewer District. Attached is a copy of the applicable press release.

**Local Law
Enforcement
Grant**

Mr. Baker presented the following requests for funding through the Revenue Sharing for Local Law Enforcement Grant Program.

Request

Lewes

\$ 7,901.29

Police radio equipment

Delmar

\$ 25,000.00

New police vehicle

**M 386 09
Approve
Local Law
Enforcement
Grant
Requests**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to approve the Revenue Sharing for Local Law Enforcement Grants to the Town of Lewes and the Town of Delmar.

Motion Adopted: 5 Yeas.

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

**Legislative
Update/
Senate Bill
No. 132**

Mr. Baker reported that Senate Bill No. 132 requires the State Planning Office to review each land use ordinance and any applications of over 50 units or 50,000 square feet. He stated that Amendment No. 1 to this bill requires review of the applications by the State Planning Office within 20 business days, unless mutually agreed to by the State Planning Office and the applicant. Mr. Baker stated that at last week's meeting, the Council had expressed opposition to Senate Bill No. 132.

**House Bill
No. 233**

Mr. Baker reported that House Bill 233 transfers dog control responsibility to the counties. He stated that the county currently funds the costs of the dog control which is administered by the state and subcontracted out to the Kent County S.P.C.A. Mr. Baker stated that the estimated net cost to the County for dog control for Fiscal Year 2010 is \$583,000, which is a reimbursement through the state. This includes the cost of the program in Sussex County, which is \$639,000, and \$56,000 collected by the state in fees and dog licenses. Mr. Baker stated that the original bill stated that each county could set its own licensing fees; however, there is an amendment under consideration which would limit the county's ability to set the licensing fees to a maximum of \$6.00 for a neutered or spayed dog and a maximum of \$10.00 for an unsprayed or unneutered dog.

Mr. Baker stated that consideration is being given to an outside company to handle the licensing through the internet. He noted that the bill states that the county would issue dog licenses, as well as licenses for retail dog outlets and kennels. The licenses would be issued subject to proof of rabies vaccination and the county would impose fines of not less than \$50 for failure to secure a license and not less than \$100 for subsequent offenses. The county would be responsible for inspecting kennels and retail dog outlets and would also enforce rules regarding humane handling, care and treatment of dogs. Mr. Baker stated that the State Department of Justice would continue to prosecute various violations of dog control and expressed concern over this due to the substantial legal costs in prosecuting various cases. He stated that the county could request an amendment to the bill requiring that the State Department of Justice handle the prosecutions in order to avoid a future budgetary decision for the state. Mr. Baker stated that transfer of dog control to the counties becomes effective January 1, 2010.

Mr. Phillips stated that the bill appears to place the responsibility of all dog control regulations on the counties without giving them the authority to properly implement them. He expressed his concern with the state limiting the county's ability to set license fees resulting in a loss to the county of more than of \$500,000 on the program. Mr. Phillips asked Mr. Griffin's advice regarding the County's options. Mr. Griffin advised that the state

**Legislative
Update
(continued)**

could repeal the existing state law having to do with how dogs are maintained and give the jurisdiction to the counties allowing the counties to adopt their own regulations. He stated that it appears that the state wants to make certain that the counties will have to use the same laws that the state has had in effect for several years. Mr. Griffin stated that once the County takes over the enforcement, it should have the right to determine the fees and hopefully allow the county to recover its costs.

Mr. Phillips asked if the county could craft other revenue streams to pay for the program. Mr. Griffin responded that, if the state limits the county's ability to establish the licensing fees, the only means would be through enforcement and collection of the fines. Mr. Griffin stated that the county should object to the state limiting the county's ability to set its own licensing fees.

Mr. Griffin will draft a letter of objection to the Sussex County members of the General Assembly on behalf of the county regarding the Council's concerns.

**Prime Hook
National
Wildlife
Refuge/
Payment in
Lieu of
Taxes**

Gina Jennings, Director of Accounting, reported that a check in the amount of \$46,850.00 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 payments under the Refuge Revenue Sharing Act covering Fiscal Year 2008. She noted that the amount was calculated by the Fish and Wildlife Service by prorating the total funds available for payment. The check is funded through revenues generated from the Prime Hook National Wildlife Refuge and from a supplemental congressional appropriation, which the county may use for any governmental purpose. Ms. Jennings stated that, in the past, these funds have been allocated in the same percentage as the other county tax collections.

**M 387 09
Motion to
Approve
Distribution
of Refuge
Revenue
Sharing
Fund**

A Motion was made by Cole, seconded by Mr. Wilson, that the Sussex County Council approve the recommended distribution of the Refuge Revenue Sharing Fund as follows:

| | |
|-------------------------------|-------------|
| Milford School District | \$ 9,185.05 |
| Cape Henlopen School District | 28,920.78 |
| Sussex Technical H.S. | 3,129.23 |
| Library | 589.25 |
| Sussex County | 5,025.69 |

Motion Adopted: 5 Yeas.

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

Housing

Bill Lecates, Director of Community Development, was present today to

Preservation Grant Program review the Housing and Homeowner Preservation Grant and to request the Council's authorization to apply for the grant. 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. Mr. Lecates stated that a few years ago, when the state decreased the grant amount from \$200,000 to \$100,000, with only one allocation for the state, Kent and Sussex Counties

Housing Preservation Grant (continued) agreed to split the grant to augment the Community Development Block Grant. Mr. Lecates reported that the grant would impact about twelve dwellings throughout Kent and Sussex Counties; that homeowners will meet Section 8 income guidelines; that over 83% (10) of the grant recipients will be very low income homeowners; and 17% (2) will be low income homeowners. Mr. Lecates stated that the pre-application for the grant must be submitted by July 17, 2009.

M 388 09 Adopt R 018 09 A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to adopt Resolution No. R 018 09 entitled "RESOLUTION ENDORSING PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING DAVID B. BAKER, COUNTY ADMINISTRATOR, TO SUBMIT PRE-APPLICATION".

Motion Adopted: 5 Yeas.

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

Public Hearing/ Draft Ordinance to Increase Sheriff's Fees A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV §62-15 RELATING TO FEES CHARGED BY THE SHERIFF".

Lt. James Walls of the Sheriff's Department presented a proposal to increase fees for the Sheriff's Department. Mr. Walls noted that the proposed fee increases would cover additional costs incurred by sending two deputies to serve summons; additional trips to properties to post summons for sheriff's sale if they are not at home; and the use of additional deputies due to threats when seizing good and chattels from homes or businesses.

Dan Kramer of Greenwood, Delaware, stated the ordinance relating to an increase in the Sheriff's fees was introduced two weeks ago, changes were made, a Public Hearing was held, and it was reintroduced. He questioned which ordinance the Council was working on, as two different ordinances have been introduced.

There were no further public comments and the public hearing was closed. Mr. Griffin responded to Mr. Kramer's comment stating that issue was raised concerning deleting a certain section in the original ordinance and

introduction was delayed until the ordinance was modified. The ordinance was modified, then introduced to the Council.

M 389 09 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver to adopt Ordinance No. 2070 entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV §62-15 RELATING TO FEES CHARGED BY THE SHERIFF”.**

**Adopt
Ordinance
No. 2070/
Increase in
Sheriff’s
Fees**

Motion Adopted: 5 Yeas.

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

Delaware **Jim Hickin, Director of Airport and Industrial Park Operations, presented a lease for the Council’s consideration between the County and the State of Delaware for Lot G at the Sussex County Airport for use by the Delaware State Police Aviation Unit. Mr. Hickin stated that there has been no lease between the County and the State since 1995. He stated that the FAA believes that in negotiations between units of government, such as the County and the State, the rates would be achieved through arms-length negotiations; however, there are exceptions to police and fire units based at the airport. Under the grant agreement with the FAA, the County is required to charge a reasonable amount, but the rent can be offset by the value of the services they provide to the airport.**

State Police

Lease

Mr. Hickin reviewed some of the terms of the proposed lease. He stated that there is an initial ten-year term with two five-year options; that the property was appraised for fair market rental value in 2007 at \$19,179.00 per year; and that the State Police will provide yearly services equal to that amount. When the State Police are not being used, their EMT’s will be available for emergency responses, both aviation and non-aviation, at the airport; they will also be available for routine law enforcement, as allowed by Delaware Code; and they will use their aviation assets for security surveillance for the airport. The State Police are allowed to use the property for any purpose related to its business, provided it is directly related to the aviation business.

M 390 09 **A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council approve the Lease Agreement with the State of Delaware and the Delaware State Police, acting by and through the Department of Homeland Security, for Lot G at the Sussex County Airport.**

**Approve
Lease
Agreement/
Delaware
State Police**

Motion Adopted: 5 Yeas.

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

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

**Delta
Airport
Consultants/
Runway
10-28
Contract
Amendment** **Mike Izzo, County Engineer, presented a contract amendment with Delta Airport Consultants involving the rehabilitation of Runway 10-28, which is in the process of being reopened. The contract amendment for \$143,000.00 is for extra contract administration time due to construction time overrun by the contractor, as well as overtime inspection and additional testing required for the runway inspection. Mr. Izzo noted that the work should have been completed in the fall of 2008, but was delayed due to extreme cold weather. The contract term ended on May 23, 2008 and since that time the contractor has incurred liquidated damages of \$2,000 per day, which has now reached about \$60,000. He stated that the paving should be complete within the next two weeks with additional work to follow.**

**M 391 09
Approve
Runway
10/28
Contract
Amendment
No. 22** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Amendment No. 22 to the Engineering Agreement between Sussex County and Delta Airport Consultants, Inc. to rehabilitate Crosswind Runway 10-28 for the Sussex County Airport, which increases the original contract amount by \$143,087.00, pending approval from Delaware Department of Transportation and/or the FAA.**

Motion Adopted: 5 Yeas.

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

**IBRWWF/
Phase I
Expansion/
Design
Contract
Amendment** **Mr. Izzo presented a proposed design contract amendment with Whitman, Requardt and Associates in the amount of \$929,000.00 for the design of Phase I of the expansion of the Inland Bays Regional Waste Water Facility. Mr. Izzo stated that the expansion will increase the treatment capacity from the current 1.2 MGD to 2.0 MGD and will increase the disposal capacity provided by spray irrigation from 1.2 MGD to 2.6 MGD. Mr. Izzo noted that a \$1.3 million grant has been received, which requires the contract agreement to be signed by February 10, 2010; therefore, the design must be ready for approval by DNREC in time for a November 15, 2009 bid advertisement.**

Heather Sheridan, Director of Environmental Services, stated that the Phase I expansion will provide for 213 additional acres. She described the field modifications that have been made to correct the ponding occurring from prior farming practices.

Mr. Izzo stated that the total construction estimate is \$12.8 million. Upon questioning from Mr. Phillips, Mr. Izzo explained that a pipeline would run

from the treatment plant to the north field rig; a set of pumps would be set up for the northeast rig so both fields could be run simultaneously.

(continued) Mr. Izzo noted importance of upgrading the Inland Bays Regional Waste Water Facility in order to manage the Angola Sewer District and the Oak Orchard expansion area, which will be added in 2011. Mr. Izzo also noted the continued growth in the Long Neck Sewer District.

M 392 09 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the
Approve recommendation of the Sussex County Engineering Department, that the
Contract Sussex County Council hereby authorizes its President to execute
Amendment Amendment No. 12 to its contract with Whitman, Requardt and Associates,
IBRWWF LLP for the Inland Bays Regional Wastewater Facility Phase I Expansion,
at a cost not to exceed \$929,468.

Motion Adopted: 4 Yeas; 1 Nay.

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

Discussion

Mr. Wilson questioned if an irrigation firm, such as O.A Newton, should have been consulted for the expansion design and stated that he felt the cost from Whitman, Requardt and Associates was excessive. Mr. Izzo stated that an irrigation supplier will be included in the final design process for the irrigation rigs.

Mr. Phillips expressed his concern with the cost from Whitman, Requardt and Associates and questioned the possibility of obtaining another design estimate from one of the other County engineering firms. Mr. Izzo noted that there would not be enough time to negotiate with another engineering firm and stated that Whitman, Requardt and Associates was selected because of their familiarity with the project.

M 393 09 A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon
Approve the recommendation of the County Engineering Department, that the
Substantial Sussex County Council grant substantial completion effective June 3, 2009
Completion for Sussex County Contract No. 08-03, Millville Expansion of the Bethany
SR 26/ Beach Sewer District State Route 26 West and MPS #8 to George and
Millville Lynch, Inc., and that final payment be made and any held retainage be
Expansion/ released in accordance with the terms and conditions of the contract
Bethany documents.
Beach SSD

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/Z No 1661**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.03 ACRES, MORE OR LESS” (Conditional Use No. 1661) filed on behalf of Wayne Baker.

**Old
Business/
C/Z No 1661
(continued)**

Lawrence Lank, Director of Planning and Zoning, stated that the Planning and Zoning Commission held a combined Public Hearing on February 26, 2009 for applications of C/Z No. 1661 and C/Z No. 1662, at which time the Commission deferred action on both applications. Mr. Lank noted that the decisions for each application were made separately.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 26, 2009). Mr. Lank read a summary of the Commission’s Public Hearing.

On June 11, 2009 the Commission discussed the applications under Old Business and recommended that both applications be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 11, 2009).

The County Council held a Public Hearing on both applications on March 24, 2009 at which time they deferred action and left the record open until April 15, 2009 for written comments.

Mr. Lank stated that since the March 24, 2009 Public Hearing before the Council, letters of support had been received from the Milton Fire Department, Noble Prettyman and Kevin Burdette; and that approximately 80 letters, emails or faxes had been received in opposition to the applications. The letters were made part of the record.

Following a display of signs stating opposition to the applications from several members of the audience in the Council Chambers, Mr. Griffin acknowledged their presence, but reiterated that this was not a Public Hearing and that there would be no public input.

Mrs. Deaver questioned the process of another Public Hearing for other possible uses of the property which may be potentially hazardous. Mr. Lank stated that the permitted uses for HI-1 Heavy Industrial Districts are listed in the Zoning Code, as well as potentially hazardous uses which require approval by the Board of Adjustment. Mrs. Deaver further questioned how the County would know if a property was being used for an operation other than what is permitted under the Conditional Use. Mr. Lank stated that the site plans for the intended uses must be reviewed by the County. Mrs. Deaver expressed concerns with site plans not being

Old
Business/
C/Z No 1661
(continued)

received, raising the possibility of the property being used for operations not permitted by the Zoning Code. Mr. Lank stated that such activity would have to be observed and reported by County staff or by the community. Mr. Lank noted that the Council is considering the rezoning of the property, not the specific use.

Mr. Cole questioned the long-term status of the rail line, which crosses Route 30, adjacent to the property. Mr. Lank stated that currently it is not being used and that the applicant has no control of the rail line.

Mr. Cole also stated his concerns regarding who would determine if there is a “potentially hazardous” use of the property. Mr. Lank stated that if the use is based on the site plan, either the Planning and Zoning Director or Planning and Zoning Commission could determine whether or not the use is “potentially hazardous”. If a violation was based on a complaint, the Board of Adjustment would make the determination.

M 394 09
Adopt
Ordinance
No. 2064
(C/Z
No. 1661)

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to adopt Ordinance No. 1661 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.03 ACRES, MORE OR LESS” (Change of Zone No. 1661) filed on behalf of Wayne Baker.

Motion Adopted: 3 Yeas; 2 Nays.

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

Discussion

Mrs. Deaver stated that she is not opposed to industrial parks, but does not feel this is located in the right place. Mrs. Deaver read a list of uses that are permitted by the Zoning Code under LI, LI 2, and HI. She stated that since the Board of Adjustment could approve any of the uses included in the LI, LI 2 and HI zoning districts, she must vote in opposition to the application.

Mr. Cole noted his concerns with the recent residential growth in the area, the possibility of the adjacent railroad not being viable and that there are no limitations on the building heights.

Mr. Phillips stated that the property is located in the appropriate area and has been approved by the Office of State Planning.

C/Z
No. 1662

In regards to Change of Zone No. 1662, the Planning and Zoning Commission held a Public Hearing on this application on February 26, 2009 at which time action was deferred. On June 11, 2009 Mr. Gordy stated he would be not be participating in the discussion of the application.

Mr. Lank previously read the summary of the Commissions' Public Hearing.

On June 11, 2009 the Commission recommended approval of the application for Change of Zone No. 1662.

M 395 09
Adopt
Ordinance
No. 2065
(C/Z
No. 1662)

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adopt Ordinance No. 2065 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 19.02 ACRES, MORE OR LESS" (Change of Zone No. 1662) filed on behalf of Wayne Baker.

Motion Adopted: 3 Yeas; 2 Nays.

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

Mr. Vincent stated that he has resided next to an industrial park for thirty years and his property value has not decreased. He stated that there has never been a problem with the industrial park. He noted that in order for a business to want to relocate to an area, the land must be properly zoned or that opportunity is lost. He stated that the industrial park will create new jobs.

Mr. Phillips noted the creation of jobs and economic opportunity for the County and the approval of the Office of State Planning as his reasons for voting in favor of the application.

Grants

Mrs. Webb presented grant requests for Council's consideration.

M 396 09
Community
Grant

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$250.00 from Mr. Cole's Community Grant Account to the Cape Henlopen Lacrosse Boosters for banquet expenses.

Motion Adopted: 5 Yeas.

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

M 397 09
Community
Grant

A Motion was made by Mr. Cole, seconded by Mr. Vincent to give \$10,000 (\$5,000 from Mr. Phillips', \$1,000 from Mr. Cole's, \$2,000 from Mr. Vincent's, \$2,000 from Mr. Wilson's Community Grant Accounts) to the American Red Cross for the Delmarva Peninsula to be used for assistance

services in Sussex County.

Motion Adopted: 5 Yeas.

M 397 09
(continued) **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;**
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea

Community Grant **Mr. Daniel Valle, Chief Executive for the American Red Cross of Delmarva,**
updated the Council on the local Red Cross services for Sussex County and
the direct financial assistance to families for the fiscal year ending June 30,
2009 and to request the County's financial assistance in their efforts.

Mrs. Deaver requested that organizations requesting grants from the
County Council be represented at the Council meeting to inform the
Council on the project for which they are requesting the grant.

M 398 09
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$500.00**
from Mr. Phillips' Community Grant Account to the Dagsboro Boys and
Girls Club for field trips, educational supplies, scholarships, etc.

Motion Adopted: 5 Yeas.

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

M 399 09
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give**
\$1,000.00 from Mr. Cole's Community Grant Account to the Indian River
Senior Center for operating expenses.

Motion Adopted: 5 Yeas.

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

Additional Business
M 400 09
Authorize Executive Session **Mr. Phillips requested that the appointment of Marty Ross to the Planning**
and Zoning Commission become effective as of August 1, 2009.
At 5:30 p.m. a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to
authorize the Council to go into Executive Session for the purpose of
discussing personnel issues.

Motion Adopted: 5 Yeas.

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

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| Executive Session | At 5:31 p.m. an Executive Session of the Sussex County Council was held in the Caucus Room of the Sussex County Council Chambers for the purpose of discussing personnel issues. The Executive Session concluded at 6:20 p.m. |
| M 401 09 Return to Regular Session | At 6:21 p.m. a Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to come out of Executive Session and return to Regular Session. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea |
| M 402 09 Motion to Adjourn | At 6:22 p.m. a Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn. Motion adopted by Voice Vote. |

Respectfully submitted,

**Gaye King
Administrative Secretary**