



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 24, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 24, 2008 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
Dale R. Dukes	Member
George B. Cole	Member
Vance C. Phillips	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy County Administrator
James D. Griffin	County Attorney

M 439 08 Amend and Approve Agenda

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to amend the following items and approve the Agenda, as amended.

Under David Baker, County Administrator:

Delete Center for the Inland Bays – Lease Renewal and Update

Under Julie Cooper, Project Engineer:

Delete Prince George's Acres, Dagsboro Frankford Sanitary Sewer District – Bid Award

Under Michael Izzo, County Engineer:

Delete Dagsboro Frankford Sanitary Sewer District – Piney Neck Farm Lease

Motion Adopted: 5 Yeas.

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

M 440 08 Approve Minutes

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of June 3, 2008.

Motion Adopted: 5 Yeas.

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

Time Extension Request/ C/U No. 1540 The Council discussed the Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (3 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,850 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1540) filed on behalf of James R. Gibson.

Mr. Baker stated that James R. Gibson has requested a time extension for Conditional Use No. 1540. He stated that the Planning and Zoning Commission has granted two previous one-year extensions for this project, which is the maximum number allowed to be granted by them; thus, the applicant has requested a time extension by the County Council. Mr. Baker reported that the current time extension expires on July 29, 2008. He stated that the project has been delayed due to the approval process by DelDOT, which required the completion of title searches regarding a public right-of-way and easements along Pine Lane and Lake Comegys. On November 7, 2007 DelDOT approved an entrance plan following the completion of the title searches.

M 441 08 Authorize Extension/ CU No. 1540 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to grant a one-year extension of Conditional Use No. 1540.

Motion Adopted: 5 Yeas.

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

Appeal Request/ Neal School Subdivision No. 2006-35 Mr. Baker reported that 2416 Joppa Road LLC, the applicants of the Neal School Subdivision (Subdivision No. 2006-35), are appealing the Planning and Zoning Commission’s denial of their application for the subdivision of land in an AR-1 Agricultural Residential District in Seaford Hundred, Sussex County, by dividing 109.45 acres into 56 lots, located north of Road 553, 1,820 feet west of Road 558 and 900 feet east of the Delaware/Maryland state line. Mr. Baker stated that in order to be in compliance with Sussex County Code (Chapter 99 Section 39), the Council must make a decision within 60 days, which is July 13, 2008. Since the County Council does meet again until July 15, 2008, a decision must be made at this meeting.

Mr. Griffin reviewed the reasons for denial of the application by the Planning and Zoning Commission and the applicant’s response to each of the reasons. (Refer to the minutes the March 19, 2008 meeting of the

Planning and Zoning Commission.)

**Appeal
Request
(continued)**

Mr. Griffin stated that the applicant is requesting that Council reverse the Planning and Zoning Commission's decision on the grounds that most of the reasons given for denial involved an error on the Commission's part in its interpretation of the applicable provisions of the subdivision law and that the reason given regarding flooding and poor drainage was not the result of an orderly and logical review of the evidence.

Mr. Griffin advised the Council of their options: 1) Reverse the Commission's decision, which would be to approve the Preliminary Site Plan 2) Send the application back to the Commission for different findings and let them know if a new public hearing should be held.

Mr. Griffin reiterated Mr. Baker's statement that Council must make a decision on this date in order to comply with the 60-day time limit.

Mr. Cole stated that he was in agreement with the Planning and Zoning Commission's decision. Mr. Phillips stated that the Commission misinterpreted some of the County's laws and that he was in favor of granting a Preliminary Site Plan approval. Mr. Dukes stated that some of the reasons given for denial by the Commission were inconsistent with other approved subdivisions and that he would agree to overturn the Commission's decision and approve the Preliminary Site Plan. Mr. Rogers stated that he is in agreement with the Planning and Zoning Commission's decision. Mr. Jones stated that he is in favor of sending the application back to the Commission for further review.

**M 442 08
Motion
Denied**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to send Subdivision Application No. back to the Planning and Zoning Commission for reconsideration without a new public hearing and further, that the Commission should consider the Council's comments.

Motion Denied: 3 Nays, 2 Yeas.

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

**M 443 08
Decision/
Neal School
Subdivision
Appeal**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to send Subdivision Application No. 2006-35 back to the Planning and Zoning Commission for a public hearing to be held in an expedited fashion.

Motion Adopted: 3 Yeas, 2 Nays.

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

M 444 08
Board
of Appeals
Appointment

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to reappoint James F. Walls to the Building Code Appeal Board and the Housing Code Appeal Board for a term of four years.

(continued)

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

M 445 08
Board of
Appeals
Appointment

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to reappoint Bruce Mears to the Building Code Appeal Board and the Housing Board Appeal Board for a term of four years.

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

M 446 08
Planning
and
Zoning
Commission
Appointment

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to reappoint Irwin G. Burton, to the Planning and Zoning Commission for a term of three years.

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

M 447 08
Planning
and Zoning
Commission
Appointment

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to reappoint Michael B. Johnson to the Planning & Zoning Commission for a term of three years.

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Library
Advisory Bd.
Appointment
Deferred

Mr. Baker reported that Janice Tranberg's term on the Library Advisory Board will expire on June 30, 2008. Mr. Dukes stated that Ms. Tranberg has served on the Board for the maximum two-term limit and cannot be reappointed. A decision on appointing her replacement was deferred.

M 448 08
Library
Advisory
Board
Appointment

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to appoint Norma Prettyman to the Library Advisory Board for a term of three years (replacing Mary Kathryn Warnick).

Motion Adopted: 5 Yeas.

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

Appointment (Deferred) Mr. Baker reported that Ronald G. McCabe's term on the Board of Adjustment will expire on June 30, 2008. A decision on his reappointment was deferred.

Proposed Amendment/ Rules of Procedure Mr. Baker stated that since the Rules of Procedure were approved by the County Council in January 2008, a concern has been raised regarding Item 5.7, which states that "the County Council will not consider the adoption of any ordinance unless at least four (4) voting members of the County Council are present".

M 449 08 Rules of Procedure/ Deletion A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to delete Section 5.7 from the *"Rules of Procedure of the Sussex County Council of Sussex County, Delaware."*

Motion Adopted: 5 Yeas.

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

Grant Request/ In Memoriam Stephanie Callaway Mr. Baker reported that the family of Paramedic Stephanie Callaway has requested that anyone wishing to make a donation in her memory may direct their contributions to either the Safe Haven Animal Sanctuary of Sussex County or to the Sussex County Chapter of the Delaware Society for the Prevention of Cruelty to Animals. Paramedic Callaway died in the line of duty on June 17, 2008 as a result of an accident while riding in an ambulance to Beebe Medical Center.

Mr. Baker thanked the following for their assistance during Ms. Callaway's funeral services: Kent and New Castle County Paramedics; Delaware State Police; the Town of Georgetown; local Fire Police and Fire Services; Honor Guards from North Carolina, Virginia, and New Castle County; Delaware Technical & Community College; Delmarva Christian High School; Georgetown Fire Department; DelDOT; Sussex County Building & Grounds Department; Sussex County Emergency Preparedness; Sussex County Public Information Officer, Chip Guy; and Sussex County Paramedics.

M 450 08 County Council Grants A Motion was made by Mr. Dukes, seconded by Mr. Rogers to donate \$1,250.00 from County Council Grants to the Safe Haven Animal Sanctuary and \$1,250.00 from County Council Grants to the Sussex County Chapter of the Delaware Society for the Prevention of Cruelty to Animals in memory of Paramedic Stephanie Callaway.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. Sussex County Airport Committee Meeting

The Sussex County Airport Committee will meet on Wednesday, July 2, 2008, at the West Complex building in Georgetown at 10:00 a.m.

2. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance to The Refuge at Dirickson Creek – Phase 8, Agreement No. 708, on June 19, 2008. The developer is Bunting-Gray, L.L.C., and the project is located on Route 54 west of Shady Park in the Fenwick Island Sanitary Sewer District, consisting of 24 single-family lots. Included with this report was a fact sheet on the project.

3. YSD, L.L.C., Economic Development Loan

YSD, L.L.C., a Bridgeville company, has repaid the County in full an economic development loan totaling \$150,000. The April 2007 loan was repaid last week as a result of an ownership change in the company. A total of \$136,313 was received that represented the remaining balance due. It is our understanding that the new ownership is planning to expand the company further and add additional employees.

4. Building Code Training Seminar

As per the attached press release, a five-day session beginning Monday, July 7, 2008, will be held at the Georgetown Fire Company for a Building Code Training Seminar. County staff will participate, as well as builders and municipal inspectors.

5. July 4th Holiday

Sussex County government offices will be closed on July 4, 2008, in honor of Independence Day. County offices will reopen at 8:30 a.m. on July 7, 2008.

In honor of the July 4th holiday, the County Council will not meet on July 1, 2008. The next regularly scheduled meeting of the Sussex County Council will occur on July 15, 2008, at 6:30 p.m.

Mr. Baker announced that an Open House and dedication of the new Emergency Operations Center will be held on Tuesday, July 15, 2008 at 5:00 p.m.

**Legislative
Update**

Hal Godwin stated that the 144th session of the Delaware General Assembly will end on Monday, June 30, 2008 and that any Bills not passed by the House of Representatives by that time will die and must be reintroduced in January 2009.

Mr. Godwin updated the Council on the status of House Bill Nos. 311, 312, 376, 449, 452 and 453 relating to Special Development District financing, absentee balloting on referendums that pertain to public infrastructure, spraying of waste water on privately-owned lands without requiring a conditional use permit, allowing Sussex County to construct a waste water treatment plants outside sewer district boundaries and equitable tax ditch billing.

Mr. Godwin stated that the Council had opposed HB 453, the Agri-tourism Bill, which expands the uses granted under agricultural zoning to include a number of recreational activities, which may not necessarily be agricultural functions. Mr. Godwin stated that this Bill was initiated by the Farm Bureau and that Sussex County would like to be excluded from this legislation. Mr. Godwin stated that he has been informed by the House Agriculture Committee that this would not be possible. Mr. Godwin informed the Council that the Bill has been rewritten by its sponsors and the Farm Bureau; he reviewed the changes that were made. Mr. Godwin expects the House of Representatives to act on HB 453 on this date and he asked the Council to advise whether or not they support the Bill, as amended.

Mr. Cole opposed the Bill; he stated that the Farm Bureau should request the adoption of an ordinance by the County and that it should not be a State issue. Mr. Phillips stated that he supported the original Bill and he still supports the amended version of the Bill. Mr. Dukes opposed the Bill and he stated that it is too vague and that the County would probably receive a lot of complaints relating to some of the activities that this Bill would allow. Mr. Rogers also spoke in opposition, stating that the Bill was too broad and that he feels it takes land use responsibility away from the County. Mr. Jones opposed the Bill and he stated that it should be a County issue. Mr. Godwin stated that he will convey the Council's opposition to House Bill No. 453 to the Legislature.

**Perimeter
Fence/
Phase II/
Bid
Award**

Jim Hickin, Director of Airport and Industrial Park Operations, requested the Council's authorization to complete the construction of three gaps in the fence that was intentionally left in the Sussex County Airport Perimeter Fencing Project (Phase 2). Mr. Hickin noted that the Engineering Services were previously approved by the Council. He reported that two bids were received. One bid was received from Abel Fence, LLC (the low bidder) at a

cost of \$85,563.50. Mr. Hickin stated that FAA grant funding will cover 95% of the entire project cost with a total cost to the County of \$3,175.

**M 451 08
Approve
Bid Award**

A Motion was made by Mr. Rogers, seconded by Mr. Mr. Dukes, based on the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 08-02, Perimeter Fencing, Phase II, be awarded to the lowest responsive bidder, Abel Fence, LLC at the bid amount of \$85,563.50.

Motion Adopted: 5 Yeas.

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

**Oak
Orchard
SSD/
Amendment
No. 7**

Mr. Izzo reported that when the Oak Orchard Sanitary Sewer District has been completed; a portion of the project was left out due to the discovery of a grave site located in the middle of River Road. He stated that at least one set of skeletal remains has been found and that there may possibly be up to six remains located within the road; therefore, approximately 25 homes that were part of the original referendum process were excluded from the construction project and remain unserved by the sewer district. Mr. Izzo stated that archeologist, John Milner & Associates, would use ground-penetrating radar to determine the number of remains and will investigate to determine their identity. Mr. Izzo stated that State law requires that next of kin be involved, if it becomes necessary for the County to exhume the remains.

Dan Parsons, County Historic Preservation Planner, stated that it is believed the remains are from the 1740's – 1800's and explained that the GPR (radar) will delineate the exact location of the remains. Mr. Parsons stated that an agreement has been made with the State Historic Preservation Office to mitigate the effect and to not disturb the remains, if possible.

Mr. Izzo stated that the initial cost to locate the remains is \$19,917.00 and that additional costs would be incurred if the remains extend all the way across the road and must be exhumed. The total cost could reach \$150,000.00 before proceeding with construction of the sewer project for the remaining unserved homes.

**M 452 08
Approve
Amendment
No. 7**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the County Engineering Department, that the Sussex County Council hereby authorizes its President to execute Amendment No. 7 to its Contract with Whitman, Requardt and Associates, L.L.P. for the Oak Orchard Sanitary Sewer District, River Road Phase Archeology, at a cost not to exceed \$19,917.00.

Motion Adopted: 5 Yeas.

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

**Pinetown/
Balancing
CO**

Mr. Izzo presented a balancing change order for the Pinetown Sewer Collection System and he requested a 30-day extension of the Contract due to weather conditions.

**M 453 08
Approve
Balancing
Change
Order/
Pinetown**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department and its Consultant, George, Miles, and Buhr, LLC, that the balancing change order for Sussex County Contract No. 96-03, Pinetown Sewer Collection System, with Bunting and Murray Construction Corporation, be approved, which decreases the Contract total by the amount of \$23,540.79, for a new Contract total of \$384,257.24 and increases the Contract time by thirty (30) days, contingent upon the receipt of approval from the funding agencies.

Motion Adopted: 5 Yeas.

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

**SCRWF/
Change
Order No. 2**

Bob Jones, Project Engineer, presented Change Order No. 6 for the South Coastal Regional Waste Water Facility, Treatment Upgrade No. 2, Personnel Facilities.

**M 454 08
Approve
Change
Order No 6/
SCRWF
Treatment
Upgrade
No. 2**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Stearns & Wheler, LLC, that Change Order No. 6 for Sussex County Project No. 05-07, SCRWF Upgrade No. 2, Personnel Facilities, be approved, which decreases the Contract amount by \$82,589.18, for a new Contract total of \$3,626,086.15.

Motion Adopted: 5 Yeas.

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

**West
Complex
Generator/
Bid Award**

Steve Hudson, Director of Technical Engineering, requested the Council's approval for the purchase and installation of a 200 KW generator system at the Sussex County West Complex for the paramedics. Mr. Hudson reported that four bids were received, as follows:

Tudor Electric \$ 119,750.00

Zober Contracting \$ 98,250.00

Eastern Shore Services, Inc. \$ 139,500.00

Power Plus Electrical Contractors \$ 102,000.00

Bid Award (continued) **Susan Webb reported that \$75,000.00 of the cost will be funded by a DEMA Homeland Security Grant with the balance being split between the Paramedics and the County, with total cost to the County of \$13,000.00.**

M 455 08 **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the**
West **recommendation of the Sussex County Engineering Department, that**
Complex **Sussex County Project No. 08-01, West Complex Generator, be awarded to**
Generator/ **Zober Contracting Services, Inc., of Dover, Delaware at the bid amount of**
Bid **\$98,250.00**

Award

Motion Adopted: 5 Yeas.

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

Old **The Council discussed the Proposed Ordinance entitled “AN ORDINANCE**
Business/ **TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1**
C/U **AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AIRPORT AND**
No. 1735 **HELIPORT TO BE LOCATED ON A CERTAIN PARCEL OF LAND**
 LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,
 CONTAINING 28.55 ACRES, MORE OR LESS” (Conditional Use No.
 1735) filed on behalf of Richard and Sonya West.

The Planning and Zoning Commission held a Public Hearing on this application on April 10, 2008 at which time the Commission deferred action for further consideration.

On April 24, 2008, Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission recommended that the application be approved with the following conditions:

- 1. Any landings of airplanes or helicopters shall be limited to the hours between dawn and dusk, and shall be further limited to visual flight conditions only, as defined by the Federal Aviation Administration.**
- 2. Any lighting on runways shall be limited to those necessary for directional purposes.**
- 3. With the exception of agricultural aerial spray applications, no commercial activities or flights, including but not limited to banner towing, shall be permitted.**
- 4. Storage of fuel or hazardous materials shall be limited to such temporary storage necessary for agricultural aerial spray applications and shall be in compliance with all Federal, State and local laws or ordinances.**

Old
Business/
C/U
No. 1735
(continued)

5. Use of the airport by emergency, police and Medivac agencies shall be permitted at anytime.
6. No more than nine (9) landings per day shall be permitted, with the exception of landings and takeoffs necessary for agricultural aerial spray applications.
7. The landing strip shall remain grass or dirt.
8. No more than one (1) additional hangar, not to exceed 10,000 square feet in size, shall be permitted on the site. The location of the hangar shall be shown on the Site Plan.
9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
10. Access to the site shall be from Route 17 only.

The County Council held a Public Hearing on April 29, 2008 at which time action was deferred and the record was left open for thirty days. On that date, the Council requested the following information:

- Any FAA regulations regarding private airstrips' impact on neighboring property owners.
- Comments from the Roxana Fire Company on emergency response Vehicles' access to the airstrip via the 15-foot easement.
- Recommended stipulations developed by County staff that would avoid assigning a maximum number of flights.

In response to the above requests, Mr. Lank stated that information had been received from Jim Hickin, Director of Airport and Industrial Park Operations, and from the Roxana Fire Company. He stated that the Commission had recommended that no more than nine (9) landings per day would be permitted, with the exception of landings and take-offs necessary for agricultural spray applications, and that use by emergency, police and medivac agencies shall be permitted at any time.

Mr. Cole stated that the main complaint from residents who reside near the airstrip is the noise from helicopters landing and taking off. He stated that he did not feel it is necessary to limit the number of landings and takeoffs from the airstrip; that access should not be limited to Route 17 only, as there is another access off of Airport Road; and that the Planning and Zoning Commission should review the Conditional Use permit every five years. Mr. Phillips questioned whether or not the Planning and Zoning Commission has the authority to override conditions set by the County Council. Mr. Griffin advised that the Commission can only modify those conditions which they impose, even if they are approved by the Council and that any conditions imposed by the Council can only be changed by the Council.

M 456 08
Adopt
Ordinance
No. 1981/

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1981 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AIRPORT AND HELIPORT TO BE

(C/U
No. 1735) **LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 28.55 ACRES, MORE OR LESS” (Conditional Use No. 1735) filed on behalf of Richard and Sonya West, with the following conditions:**

- M 456 08
(continued)**
- 1. Any landings of airplanes shall be limited to the hours between dawn and dusk, and shall be further limited to visual flight conditions only, as defined by the Federal Aviation Administration.**
 - 2. Any lighting on runways shall be limited to those necessary for directional purposes.**
 - 3. With the exception of agricultural aerial spray applications by aircraft and/or helicopter, no commercial activities or flights, including but not limited to banner towing and commercial passenger service, shall be permitted.**
 - 4. Storage of fuel or hazardous materials shall be limited to such temporary storage necessary for agricultural aerial spray applications and shall be in compliance with all Federal, State and local laws or ordinances.**
 - 5. Use of the airport by emergency, police and Medivac agencies shall be permitted at anytime.**
 - 6. The landing strip shall remain grass or dirt.**
 - 7. No more than one (1) additional hangar, not to exceed 10,000 square feet in size, shall be permitted on the site. The location of the hangar shall be shown on the Site Plan.**
 - 8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
 - 9. The Conditional Use shall be reviewed by the Planning and Zoning Commission every five years for compliance and any modification of the conditions. The Commission may alter those conditions which are imposed by the Commission.**

Motion Adopted: 5 Yeas.

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

**Source
Water
Protection
Ordinance** **The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION TO PROTECT CRITICAL AREAS FROM ACTIVITIES AND SUBSTANCES THAT MAY HARM WATER QUALITY OR SUBTRACT FROM OVERALL WATER QUANTITY”.**

Mr. Baker reviewed the following changes, which were made to the Source Water Protection Ordinance since it was last discussed by the Council.

- Additional definitions**
- §89-6.C:**

Deleted “or a combination of wells”

**Source
Water
Protection
Ordinance
(continued)**

- Deleted all references throughout Ordinance to “Program Manager”
- **§89-6. F4:**
Added “including, but not limited to Urban Business, Neighborhood Business, General Commercial, Commercial Residential, Marine, Light Industrial , and Heavy Industrial
- **§89-6. F5 and §89-7. C:**
Deleted “segregated and treated prior to discharge”
Added “shall be disposed of using Best Management Practices, such as grass swales”
- **§89-9. B**
Added “which is not exempt under §89-12. hereof”

Mr. Phillips asked if the final draft of the Ordinance had been reviewed by the Source Water Protection Committee and was advised by Mr. Griffin that the Committee had served its function to submit its recommendations to the Council and, therefore, has been disbanded. Mr. Phillips felt that the Council was doing a disservice to the Committee by modifying the original Ordinance and not allowing them to review it and offer comments. Mr. Griffin stated that the changes that have been made are mainly deletions and explained that following a public hearing modifications may be made before adoption, provided new material has not been introduced that is not addressed in the title of the Ordinance.

Mr. Cole asked if the latest revision of the Ordinance will be accepted by the State. Mr. Baker stated that the amended Ordinance has been reviewed with John Barndt of DNREC, Program Manager for the Source Water Program, and he indicated that the Ordinance would be approved with the amended changes.

Mr. Phillips expressed his concern with §89-5.B, which allows DNREC to make wholesale changes to the Wellhead Protection and Excellent Recharge Area maps without public review.

Mr. Dukes voiced his approval of the amendments made to the Ordinance. He expressed his appreciation to the Source Water Committee, but felt it would not be necessary to have them further review the Ordinance. Mr. Dukes was in agreement with Mr. Phillips and questioned what changes could possibly be made to the Wellhead Protection and Excellent Recharge Area maps without public notice.

John Barndt explained the three possibilities for revisions to the maps.

- When a property owner challenges an Excellent Recharge Area

Map.

- When there is placement of a new well, which would require delineation of a new wellhead protection area.
- When a well is abandoned.

**Source
Water
Protection
Ordinance
(continued)**

Mr. Barndt stated that the Excellent Recharge Area maps have been adopted and the Wellhead Protection Areas maps may be subject to modification based on new or abandoned wells.

Mr. Phillips requested the following addition to §89-5.B “Any expansion of the Excellent Recharge Area Maps shall require approval of the Sussex County Council.”

Mr. Barndt stated that the current amended Source Water Protection Ordinance is in compliance with State law.

Wayne Baker, who served on the Source Water Protection Committee, stated that the maps create overlay zones, which impinge on private property rights. He stated that State law requires seven days’ notice to property owners of any changes made to their property and that by not notifying property owners, the County is in violation of State law. Mr. Baker stated that the Source Water Committee had requested that property owners receive notification of any changes made to their property created by these maps but the Council denied their request.

Dan Kramer, who also served on the Source Water Protection Committee, stated that an addition had been made to the Ordinance after the Public Hearing regarding Council approval of the location of bike paths and walking trails. He stated that this had been a recommendation of the Committee; however, it was not part of the Ordinance that was presented at the time of the Public Hearing.

**Motion
Failed**

A Motion was made by Mr. Cole to Adopt the Source Water Protection Ordinance. Mr. Cole retracted this Motion due to the lack of a Second.

Mr. Dukes questioned if the County would be in violation of State law by not notifying property owners when an overlay zone is created. Mr. Griffin responded that the Council should follow its procedure to adopt the Ordinance; however, Wayne Baker is requesting the Council to superimpose a notice requirement, as set by State law, but which is not part of the County Code nor is it imposed upon the County by Title IX, and Mr. Griffin does not feel this is required. Mr. Griffin stated that the Council may choose not to accept the Ordinance; however, this Ordinance is less restrictive than the original one. Mr. Griffin advised that amendments may be made to a Proposed Ordinance following a Public Hearing, provided new material is not inserted which is not addressed in the title of the Ordinance.

**M 457 08
Approve**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to approve the amendments made to the Source Water Protection Ordinance after the Public Hearing, including the following amendment to § 89-5. B:

**Amend-
ments to
SWP
Ordinance**

“Any expansion of the Excellent Recharge Area Maps shall require approval of the Sussex County Council.”

Motion Adopted: 5 Yeas.

**M 457 08
(continued)**

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

**Motion
Failed**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, that before this Ordinance becomes law, all property owners affected by this Ordinance will be notified and following a Public Hearing, the Council will vote to approve the Excellent Recharge Area maps and the Wellhead Protection maps with the opportunity to modify them at that time. (No vote taken.)

Wayne Baker clarified that his concerns previously stated did not pertain to wells, but to the overlay zones created by the excellent recharge areas.

**M 458 08
Adopt
Ordinance
No. 1979/
Source
Water
Protection
Ordinance**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1979 entitled “AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION TO PROTECT CRITICAL AREAS FROM ACTIVITIES AND SUBSTANCES THAT MAY HARM WATER QUALITY OR SUBTRACT FROM OVERALL WATER QUANTITY”, as amended.

Motion Adopted: 3 Yeas; 2 Nays.

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

**2007
Comprehen-
sive Plan
Update
Ordinance**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE ADOPTING THE 2007 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING ORDINANCE NO. 1574, THE COMPREHENSIVE PLAN UPDATE, ADOPTED DECEMBER 10, 2002.”

The Planning and Zoning commission held a Public Hearing on April 3, 2008 at which time action was deferred. On April 30, 2008 the Commission again deferred action. On June 18, 2008 the Commission approved the Plan, with recommendations. It was the consensus of the Commission to incorporate a request of Baker Petroleum and the City of Milford into the future Land Use Plan Map. The Commission recommended approval of the Revised Draft of the Comprehensive Land Use Plan, dated May 2008, with editorial corrections and the two map modifications.

M 459 08

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt the amendments to the 2007 Update of the Comprehensive Land Use Plan, as

**Adopt
Amend-
ments to
LUP**

proposed.

**M 459 08
(continued)**

Motion Adopted: 3 Yeas, 2 Abstentions.

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

**M 460 08
Adopt
Ordinance
No. 1980/
2007 Com-
prehensive
Plan Update**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Ordinance No. 1980 entitled “AN ORDINANCE ADOPTING THE 2007 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING ORDINANCE NO. 1574, THE COMPREHENSIVE PLAN UPDATE, ADOPTED DECEMBER 10, 2002”, with amendments.

Motion Adopted: 3 Yeas, 2 Nays.

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

Grants

Susan Webb presented grant requests for the Council’s consideration.

**M 461 08
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$250.00 from Mr. Phillips’ Youth Activity Grant Account to Delmar Senior High School for Kyle Dykes to participate in the People to People Sports Ambassador Program.

Motion Adopted: 5 Yeas.

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

**M 462 08
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$250.00 (\$125.00 each from Mr. Phillips’ and Mr. Dukes’ Youth Activity Grant Accounts) to Sussex Central High School for Kyle Davis to participate in the People to People Sports Ambassador Program.

Motion Adopted: 5 Yeas.

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

**M 463 08
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$250.00 from Mr. Phillips’ Youth Activity Grant Account to Coasters, Inc. for the Mid-Coast Gymnastics and Dance Studio’s operating costs.

Motion Adopted: 5 Yeas.

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

**M 464 08
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$500.00 (\$250.00 each from Mr. Phillips' and Mr. Dukes' Councilmanic Grant Accounts) to the Friends of the Georgetown Public Library for the Race/Walk fundraising event.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinance**

Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CHRISTIAN BOOK STORE/CLOTHING STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 37,836 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1806) filed on behalf of Timothy Morris.

**Introduction
of Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PUBLIC UTILITIES (WATER AND WASTE WATER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 13.228 ACRES, MORE OR LESS" (Conditional Use No. 1807) filed on behalf of Tidewater Environmental Services, Inc.

**Introduction
of Proposed
Ordinance**

Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN ARA-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOME BUSINESS OFFICE WITH CLERICAL STAFF TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.06 ACRES, MORE OR LESS" (Conditional Use No. 1808) filed on behalf of Kelly R. Jansen.

**Introduction
of Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PRODUCE STAND AND RETAIL TOOL SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.689 ACRE, MORE OR LESS" (Conditional Use No. 1809) filed on behalf of Curtis McDonald.

Mr. Rogers introduced the Proposed Ordinance entitled "AN

Introduction of Proposed Ordinance **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.**

(continued)

Introduction of Proposed Ordinance **Mr. Rogers introduced 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 19.02 ACRES, MORE OR LESS” (Change of Zone No. 1662) filed on behalf of Wayne Baker.**

Introduction of Proposed Ordinance **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.24 ACRE, MORE OR LESS” (Change of Zone No. 1663) filed on behalf of Keith Properties, Inc.**

Additional Business **Dan Kramer of Greenwood questioned why the Land Use Plan requires 22 new ordinances, what happens if the Council votes against any or all of ordinances, and are they State mandated? Mr. Dukes stated public hearings would be held on the ordinances.**

M 465 08 Adjourn **A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn the meeting at 1:10 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

**Gaye King
Administrative Secretary**