



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 26, 2007

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 26, 2007 at 10:00 a.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
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Assistant to the County Administrator
James D. Griffin	County Attorney

M 377 07 Approve Agenda

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the Agenda, as distributed.

Motion Adopted: 5 Yeas.

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

M 378 07 Approve Minutes

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of June 5, 2007.

Motion Adopted: 5 Yeas.

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

M 379 07 Adopt Procla- mation

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt the Proclamation entitled "PROCLAIMING THE WEEK OF JUNE 29 THROUGH JULY 5, 2007 AS NATIONAL CLEAN BEACHES WEEK".

Motion Adopted: 5 Yeas.

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

Mr. Dukes, Yea

- M 380 07**
Reappoint
Robert
Wheatley/
P&Z
Commission
- A Motion was made by Mr. Jones, seconded by Mr. Phillips, to reappoint Robert C. Wheatley 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. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea
- M 381 07**
Reappoint
Dale
Callaway/
Board of
Adjustment
- A Motion was made by Mr. Rogers, seconded by Mr. Jones, to reappoint Dale Callaway to the Board of Adjustment for a term of three years.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea
- M 382 07**
Reappoint
Jeffrey
Hudson/
Board of
Adjustment
- A Motion was made by Mr. Phillips, seconded by Mr. Jones, to reappoint Jeffrey Hudson to the Board of Adjustment for a term of three years.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea
- M 383 07**
Reappoint
John
Mills/
Board of
Adjustment
- A Motion was made by Mr. Jones, seconded by Mr. Phillips, to reappoint John Mills to the Board of Adjustment for a term of three years.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea
- M 384 07**
Reappoint
Dennis
Hughes/
Library
Advisory
Board
- A Motion was made by Mr. Rogers, seconded by Mr. Jones, to reappoint Dennis Hughes to the Library Advisory Board for a term of three years.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

**Library
Advisory
Board
(continued)**

It was noted that the term of another member of the Library Advisory Board will expire on June 30, 2007. Luray McClung is completing her second term and is not eligible for reappointment. Mr. Phillips advised that he was not ready to make a recommendation.

**Land
Acquisition
Recommendation/
EMS**

Mr. Baker presented a proposal to purchase a property near the County's West Complex Building. The property is located on Mulberry Street, near the entrance to the Cinderberry Development; it includes approximately .77 acres on which is located two buildings, an office building (2,450 square feet) and an outbuilding (2,400 square feet). The proposed price is \$550,000.00, which is less than the asking price and less than the appraisal. Mr. Baker advised that the property would be used by the Paramedic Department to house Station No. 108, which is currently operating out of a temporary garage next to the West Complex. One of the buildings would also be used to house supplies that are currently kept at the West Complex in a shed. In addition, the purchase would result in approximately 850 square feet of space in the West Complex for another department to utilize. Mr. Baker reported that funding is available in the Capital Improvement Budget for Fiscal 2007 under property acquisition. Also, funding to move the paramedic program into the new facilities is available in the Paramedic's Budget.

Glenn Luedtke, Director of EMS, and Robert Stuart, Deputy Director, provided information on the proposal using a power point presentation.

**M 385 07
Approve
Contract
for EMS
Building**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Contract submitted by the Seller to purchase a 3/4 acre property for the offered price of \$550,000.00, subject to the following terms proposed by the Seller:

- that the property is zoned UB-1 in the Town of Georgetown and permitted uses would include the ability for the County to use it for an EMS Station, Office and Maintenance Facility;
- that the County would obtain a Fair Market Value Appraisal verifying the price;
- that the County would obtain a satisfactory survey;
- that the County would conduct an inspection of the buildings;
- that the closing would occur within fifteen days following the receipt of the appraisal and survey;
- that the property would be exempt from Realty Transfer Tax; and
- that the County would permit the leasing of one-half of the office building for up to one year at a rate of \$1,750.00 per month.

Motion Adopted: 4 Yeas, 1 Abstention.

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

Mr. Dukes, Abstained

**Proposal
to Increase
Clerk of
Peace Fees**

Mr. Baker and George Parish, Clerk of Peace, presented a proposal to amend the fees charged by the Clerk of the Peace. The proposal would raise the fees for non-Delaware residents and establish fees for marriage ceremonies performed by the Clerk of Peace Office. The proposed fees would be more consistent with those charged by New Castle County and Kent County and the proposal would raise \$11,000 to \$13,000 per year in additional revenues.

**Introduction
of Proposed
Ordinance**

Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV SECTION 62-16 RELATING TO FEES CHARGED BY THE CLERK OF THE PEACE”. The Proposed Ordinance will be advertised for Public Hearing.

**Adminis-
trator’s
Report**

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

1. **Richard Clifton Day**

The Town of Milton has proclaimed July 14, 2007, as “Richard Clifton Day,” recognizing Mr. Clifton as the first Federal Duck Stamp winner from Delaware. A program will be held at the Prime Hook National Wildlife Refuge from 10:00 a.m. to 3:00 p.m. on July 14 in honor of Mr. Clifton. A special ceremony will be held at 1:00 p.m., as per the attached notice.

2. **Paramedic Station 103 Grand Opening**

On June 28, 2007, at 10:00 a.m., the Sussex County Paramedic Department will dedicate a new station and Special Operations Facility. This unit has moved from its former location at the Stockley Center to north of Dagsboro. This change in location, along with a full-time unit in Georgetown, has improved paramedic coverage for central Sussex County. Attached is a copy of the Media Release pertaining to this announcement.

3. **Legislative Update**

- **House Bill No. 30** – This bill prohibiting the application of treated wastewater on State lands passed the House of Representatives on June 21 with an amendment that allows existing wastewater spray systems on State land to be exempt. The bill, with the amendment that will allow the Wolfe Neck Wastewater Treatment Facility to continue to spray irrigate on State owned lands, has been assigned to the Senate Executive Committee.

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

- **House Bill No. 111 – This bill that prevents local governments from collecting realty transfer tax within Level 4 areas and a subsequent amendment have been assigned to the House Transportation, Land Use, and Infrastructure Committee as of May 30. At this time, that Committee has not reviewed the proposed bill.**
- **House Bill No. 118 – This bill would authorize Sussex County to collect a surcharge not to exceed 2.25 percent of the construction value of building permits for schools, fire companies, and farmland preservation. This bill has been approved by the Housing and Community Affairs Committee.**
- **House Bill No. 233 – This bill that would extend the New Castle County School Impact Fee Program to the entire State has been introduced and assigned to the Transportation, Land Use, and Infrastructure Committee in the House.**
- **House Bill No. 239 – This bill establishes planning responsibilities in the Office of State Planning and creates specific minimum standards for public facilities and public services. This bill was introduced on June 21 and assigned to the Transportation, Land Use, and Infrastructure Committee in the House of Representatives.**

During the coming week, Mr. Hal Godwin and I will be closely monitoring the activity in the General Assembly.

4. Johnson's Corner Proposed Sanitary Sewer District

A public meeting was held June 21, 2007, at the Roxana Fire Hall regarding the proposed Johnson's Corner Sanitary Sewer District. Information was presented regarding construction cost estimates, rates, and voting requirements. A referendum is scheduled for July 21. Further information will be supplied in the near future. Approximately 120 people attended the June 21 meeting.

**Bid
Results**

Frank Shade, Purchasing Agent and Fleet Manager, presented the bid results for two (2) 4x4 pickup trucks needed by the Engineering Department at the Treatment Facilities, as follows:

I. G. Burton Chevrolet	\$23,328.00 per unit
Sansone's Motor Fleet	\$28,097.25 per unit

It is recommended that the bid be awarded to I. G. Burton Chevrolet.

M 386 07

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex

Award Bid County Council accepts the bid of I. G. Burton Chevrolet in the amount of \$23,328.00 per unit for two (2) 4x4 pickup trucks.

M 386 07 (continued) Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

Bid Results Frank Shade, Purchasing Agent and Fleet Manager, presented the bid results for one (1) 4x4 pickup truck needed by the Engineering Department at the Treatment Facilities , as follows:

I. G. Burton \$38,794.00 per unit

Sansone's Motor Fleet \$40,998.25 per unit

M 387 07 Award Bid A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the Sussex County Council accepts the bid of I. G. Burton Chevrolet in the amount of \$38,794.00 per unit for one (1) 4x4 pickup trucks.

Motion Adopted: 5 Yeas.

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

Land Acquisition/ Recommendation/ Airport Michael Izzo, County Engineer, presented a proposal to acquire 38.69 acres of land near the Sussex County Airport, at the end of Runway 10-28. Mr. Izzo stated that the County is planning to reopen the abandoned runway. The owner of the land is Patricia and Wayne Van Auken. Mr. Izzo stated that this would be a continuation of the land acquisition process at the Airport. The cost of the property is \$38,000 per acre.

In response to questions raised by the Council, Mr. Izzo stated that they have been negotiating with the property owner for several years; since that time, a number of appraisals have been prepared on the property, with the appraisal amount ranging from \$44,000 in 2004 to \$60,000 in 2006.

M 388 07 Approve Land Acquisition/ Airport A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the purchase of Parcel No. 1-35-20.00 152.00 (37.102 acres) and 1-35-20.00 153.00 (1.584 acres) totaling 38.69± acres, in accordance with the Contract of Sale executed with Wayne V. and Patricia W. Van Auken.

Motion Adopted: 4 Yeas, 1 Abstention.

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

Mr. Dukes, Yea

- Millville Expansion of the BBSSD** **Michael Izzo, County Engineer, discussed a Contract with Underground Utilities Corporation for the Millville Expansion of the Bethany Beach Sanitary Sewer District (Whites Creek Manor). Mr. Izzo asked that the Council grant Substantial Completion to the contractor, effective June 18, 2007.**
- M 389 07 Grant Substantial Completion for Whites Creek Manor and CR 350 Project** **A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates and the County Engineering Department, that Sussex County Council grant Substantial Completion, effective June 18, 2007 to Underground Utilities Corporation, for Sussex County Project No. 05-06, Whites Creek Manor and CR 350, and any held retainage be released at the direction of the County Engineer.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**
- Reconstruct Runway 10-28** **Mr. Hickin presented Change Order No. 1, a balancing change order, to the Reconstruct Runway 10-28 (Phase I) Project. He noted that the demolition work, which included concrete processing, was completed on time.**
- M 390 07 Approve Change Order/ Reconstruct Runway 10-28 Project** **A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants, Delta Airport Consultants, Inc. and the County Engineering Department, that Balancing Change Order No. 1 for Sussex County Project No. 05-02, Reconstruct Runway 10-28, Phase I Construction, with Dixie Construction Co., Inc., be approved in the credit amount of \$16,297.62, which decreases the final contract total to \$580,842.38 and leaves the contract time of 150 days unchanged.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**
- Sewer Line Renovation Project** **Julie Cooper, Project Engineer, reviewed a Balancing Change Order and a request to award Substantial Completion to Allstate Power Vac, Inc. for Sussex County Project No. 06-08, Sewer Line Renovation, Phase IV (the last phase). Phase IV work was performed in the Bethany Beach and Dewey Beach Sanitary Sewer Districts.**

M 391 07 Grant Substantial Completion
M 391 07 Grant Substantial Completion/ Sewer Line Renovation Project (continued)

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant “Substantial Completion” effective May 25, 2007, to Allstate Power-Vac, Inc. for Sussex County Project No. 06-08, Sewer Line Renovation, Phase IV; and further, that Balancing Change Order No. 1 be approved in the amount of \$5,652.80, thereby decreasing the contract amount from \$289,795.00 to \$284,142.20, and that final payment be made and held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

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

Proposed Angola Neck Sanitary Sewer District Boundaries

John Ashman, Director of Utility Planning, reported on the final boundaries for the Angola Neck Sanitary Sewer District. On May 25, 2007, the Engineering Department conducted a Public Hearing on the Proposed Boundaries; at that Hearing, some questions were raised. Angola Beach and Angola Estates are owned by a single entity and the residents were concerned about paying the impact fees for something they do not own. The owners stated that they have a functioning on-site collection system and treatment facility and that they are concerned about the cost of the impact fees for 600+ units; for these reasons, the owners have requested to be excluded from the proposed district. Mr. Ashman also reported that the Herring Point Project is an undeveloped project; that there is an existing CPCN on the project; and that Tidewater (the private provider) refuses to terminate the CPCN. For this reason, the developer has requested to be excluded from the proposed district. The loss of this project and its front footage increases the proposed rates by \$20.00 per property per year based on 100 front feet and 1 EDU.

Mr. Ashman reported that they have instructed the Engineers not to supply capacity at the Regional Pump Station or Force Main for these projects, since they believe that the residents being included at this time should not bear the burden of over-sizing for communities that wish to be excluded. Should these communities require service in the future, they will be responsible, not only for the impact fees, front footage assessments, and service charges that will most likely be higher than presently proposed, but also the cost to increase capacity in the regional pump stations, force mains, and large diameter gravity pipelines to serve the community.

Mr. Ashman reported that another development, the Village of Herring Creek, has an existing on-site treatment facility and that they plan to connect to County sewer when available. Tidewater (the private provider) has agreed to terminate the CPCN and abandon the existing facility.

Mr. Cole stated that Angola Estates and Angola Beach should be included

in the boundaries for the Proposed District and that the County should challenge the CPCN for Herring Point.

**Proposed
Angola
Neck
Sanitary
Sewer
District
Boundaries
(continued)**

Michael Izzo, County Engineer, reported that the District boundaries, as proposed, exclude Angola Estates, Angola Beach and Herring Point.

Mr. Baker suggested that the boundaries be adopted for referendum purposes, as proposed, (excluding Angola Beach, Angola Estates and Herring Point. Thereafter, the County could meet with the Public Service Commission regarding Herring Point.

Mr. Izzo suggested that the Engineering Department could meet with Tidewater and the developer of Herring Point in an effort to compromise and report back to the Council on July 17th. He noted that the referendum is scheduled for August 18th.

**M 392 07
Adopt
R 017 07/
Proposed
Angola
Neck
SSD
Boundaries**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 017 07 entitled “DISTRICT BOUNDARIES FOR THE PROPOSED ANGOLA NECK SANITARY SEWER DISTRICT”, excluding Angola Estates and Angola Beach and including Herring Point.

Motion Adopted: 5 Yeas.

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

**EOC
Project/
Change
Orders**

Bob Jones, Project Engineer, reviewed Change Order Nos. 9, 10 and 11 to the Sussex County Emergency Operations Center Project. The total increase in the Contract sum would be \$27,081.39, as follows:

- Change Order No. 9 - \$66,953.58
- Change Order No. 10 – credit of \$30,641.95
- Change Order No. 11 – credit of \$9,230.24

**M 393 07
Approve
Change
Orders/
EOC
Project**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department and its Consultant, L. Robert Kimball and Associates, that Change Order Nos. 9, 10 and 11 for Sussex County Council Project No. 04-02, Emergency Operations Center Building, be approved, which extends the contract time by thirty calendar days due to added scope of work and increases the contract amount by \$27,081.39 for a new total of \$7,232,433.94.

Motion Adopted: 5 Yeas.

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

Holly Oak Subdivision SCIP **Bob Jones, Project Engineer, presented a Balancing Change Order and requested that Substantial Completion be granted for the Holly Oak Subdivision Suburban Community Improvements Project. Jerry's, Inc. completed the work on this Project on June 1, 2007.**

M 394 07 Grant Substantial Completion/ Holly Oak Subdivision SCIP **A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant Substantial Completion, effective June 14, 2007, to Jerry's, Inc., for Sussex County Project No. 06-06, Holly Oak Subdivision Repavement; and further, that Balancing Change Order No. 1 be approved in the amount of \$3,925.50, thereby increasing the contract amount from \$154,453.25 to \$158,378.75, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.**

Motion Adopted: 5 Yeas.

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

SCRWF Personnel Facilities/ Change Order **Bob Jones, Project Engineer, reviewed Change Order No. 1 to the South Coastal Regional Wastewater Facilities, Treatment Upgrade No. 2, Personnel Facilities Project. Mr. Jones explained that a portion of the Change Order includes smoke partitions which were mandated by the Fire Marshal's Office, requiring that two trusses be redesigned to carry the extra load of drywall. In addition, a 60 day time extension is needed to design and manufacture the roof trusses.**

M 395 07 Approve Change Order/ SCRWF Personnel Facilities **A Motion was made by Mr. Rogers, seconded by Mr. Jones, that based upon the recommendation of the Sussex County Engineering Department and its Consultant, Stearns & Wheler, LLC, the Sussex County Council approves Change Order No. 1 for Sussex County Project No. 05-07, SCRWF Upgrade No. 2, Personnel Facilities, be approved, which extends the contract time by 60 calendar days due to added scope of work and increases the contract amount by \$5,541.71 for a new total of \$3,688,912.71.**

Motion Adopted: 5 Yeas.

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

Public Hearing/ Proposed Ordinance/ Density Bonus as a Conditional **A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 SECTION 22 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY FOR MULTIFAMILY DWELLING STRUCTURES AND/OR TOWNHOUSES AND/OR TOWNHOMES IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR**

Use	OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE ACQUISITION AND PRESERVATION OF OPEN SPACE AND/OR ACTIVE AND/OR PASSIVE RECREATION AREAS”.
Public Hearing/ Proposed Ordinance/ Density Bonus as a Conditional Use (continued)	<p>The Planning and Zoning Commission held a Public Hearing on this application on June 14, 2007 at which time action was deferred.</p> <p>Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing; the summary included a copy of all correspondence received on the Proposed Ordinance.</p> <p>Mr. Lank explained that the Proposed Ordinance prohibits multi-family dwelling units and/or townhouse and/or townhome units in AR-1 Districts outside the growth areas identified in the Comprehensive Plan and it would allow the County to consider approving said units with a density bonus as a Conditional Use. The density bonus and fee structure will be determined by reference to the bonus density fees set forth in Ordinance No. 1842 for cluster subdivisions; with the exception that (a) a fee must be paid for every multi-family unit and/or townhouse and/or townhome unit in excess of two units per gross acre; and (b) there must be at least 40 percent open space provided in each application filed under this amendment. It also allows the County to consider allowing such an application to be processed and considered on an expedited basis.</p> <p>In response to questions raised by Mr. Phillips, Mr. Lank stated that the proposal (1) does not create a “by right” guarantee for development and a conditional use process is required and (2) that the intent is to restrict it to the Environmentally Sensitive Development Area, the Town Centers, and the Development Districts.</p> <p>In response to questions raised by the Council, Mr. Lank stated that, presently an applicant can accomplish the same thing under the “catch-all clause” where the Zoning Ordinance states that any residential, business, commercial, or industrial use is more appropriately approved as a conditional use (and there is no list). Mr. Lank stated that the Proposed Ordinance would eliminate the use of the “catch-all” in AR-1 Districts.</p> <p>Public comments were heard.</p> <p>Daniel Kramer stated that he agrees with the proposal with one exception, which is the limitation on the amount of houses (a reduction of 12 to 4) and that the way to save farmland is with higher density.</p> <p>Dennis Forney, Chairman of the Sussex County Land Trust, spoke in favor of the proposal since it is a proactive stance to save land while compensating people for their property. He spoke in favor of “no more extra density for free and no more up-zonings for free”.</p> <p>Preston Schell, Developer and Vice Chairman of the Sussex County Land</p>

Trust, stated that, financially, this proposal actually hurts developers; however, he still believes that it is a good ordinance because it provides a financial means to provide more open space in rural areas.

Public
Hearing/
Proposed
Ordinance/
Density
Bonus as
Conditional
Use
(continued)

Tom Ford stated that he is in favor of the initial ordinance and the concept of the Density Trade since it puts forth a solid method and approach of enhancing Livable Delaware and the Sussex County Comprehensive Land Use Plan's primary objectives, such as steering growth toward development areas where adequate infrastructure exists or is imminent; that he is in favor of the proposal whereas it does not limit or discriminate against the type of housing that may be sought; that the key to achieving four units per acre is it must have adequate infrastructure; that he requests that the funds generated be used in close proximity to the areas where the development occurs, when feasible (if the land is there); that he would like it seen within the watersheds to protect the area around the watersheds; that the approval of this ordinance will minimize the current practice of seeking a zoning change in development areas where the patterns of development would be appropriate; that it is an efficient use of existing or proposed sewer capacity; and that this proposal would allow the County and the community to benefit.

Sonny Vuono of Lincoln spoke in opposition to higher density and stated that he would like to see lower density for the residents of Lincoln.

Wendy Baker, President and Chief Executive Officer of the Sussex County Land Trust (SCLT), spoke in support of the proposal since it will help the Land Trust further its conservation initiatives and since it would provide a revenue source which is needed to insure the valuable partnership between the SCLT and the County to preserve open space. Ms. Baker stated that the SCLT Board supports the proposal and that they volunteer to be the recommending organization to the County for the pledged funds. Ms. Baker asked that her report to the Planning and Zoning Commission be made a part of this record.

Bob Maegerle advised that the Pinewater Civic Association, representing 98 families in Pinewater Neck, requests that this proposal be rejected or rewritten to protect the environmentally sensitive area east of Route 24. He stated that he is against multi-family homes in the AR-1 Environmentally Sensitive Area; that the current procedure of rezoning AR-1 and MR-1 for construction of multi-family housing, when that type of construction is appropriate for the area, should be maintained as the correct procedure for this type of growth.

Mike Dominquez spoke in opposition to the proposal, as written; he stated that to increase density, infrastructure is needed and that there is concern about where the land would be purchased.

Mary Ann Scott stated that affordable housing/single family homes are needed; that extra density should be in the form of MPHUs for working-

Public
Hearing/
Proposed
Ordinance/
Density
Bonus as
Conditional
Use
(continued)

class people; and that developers should pay more for road improvements.

Arthur Brown commented that the proposal does not control increased density; that it doesn't seem there is anyone to make sure that developers follow the rules; that there is no provision in the proposal if developers break the rules; and that when they break the rules, they should be fined.

David Achey spoke in opposition to the proposal.

Faye Ellis Jones spoke in opposition to the proposal. She stated that she believes any zoning proposals should be presented and considered within a fuller Comprehensive Plan and that she is uncomfortable with putting Delaware Agricultural Lands on the auction block; that new developments require services such as roads and fire and police protection; that studies show that farm, forest and open land more than pay for the municipal services they require while taxes on residential uses on average fail to cover costs; that she is concerned that all the new development will impact the quality of life in Sussex County; that she is a proponent of the conservation of natural resources; and that she questions why an agricultural county hired an urban planner; and that she suggests that the County consult with a farmland trust.

There were no additional public comments.

Mr. Rogers stated that the County hired a Land Use Consultant to prepare the Land Use Plan and that the Consultant should have more input on the Proposed Ordinance; that perhaps the Environmentally Sensitive District should not be a part of the proposal; that the Land Use Plan Update should include this proposal; and that the public record should remain open.

Mr. Phillips stated that this proposal does not need to wait on the adoption of the Comprehensive Land Use Plan Update; the process of creating new ordinances following the adoption of the Comprehensive Land Use Plan could take years. Mr. Phillips stated that the proposal will make development more restrictive by lowering the density allowed, it will create new buffers, and it will require open space.

Mr. Cole stated that the existing Environmentally Sensitive Development District has no environmental safeguards; that this ordinance will not provide any protection; that high density housing does not guarantee affordable housing; that the only way to address open space is impact fees; that infrastructure is needed and not just sewer; that the Council should not support anything that creates higher density until something is done about the traffic situation; and that the Environmentally Sensitive Development District should be taken out of the proposal.

Mr. Dukes stated that something should be incorporated in the proposal regarding where the money will be appropriated and in what time frame the developer must pay the money.

- M 396 07**
Defer
Action on
Proposed
Ordinance/
Density
Bonus as
Conditional
Use
- A Motion was made by Mr. Rogers, seconded by Mr. Jones, to defer action and to leave the record open on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 SECTION 22 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY FOR MULTIFAMILY DWELLING STRUCTURES AND/OR TOWNHOUSES AND/OR TOWNHOMES IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE ACQUISITION AND PRESERVATION OF OPEN SPACE AND/OR ACTIVE AND/OR PASSIVE RECREATION AREAS”.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- M 397 07**
Recess
- At 1:25 p.m., a Motion was made by Mr. Jones, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**
- Reconvene**
- Mr. Dukes called the Council back into session at 1:46 p.m.**
- Requests**
- Mrs. Webb presented grant requests for the Council’s consideration.**
- M 398 07**
Council-
manic
Grant
- A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$250.00 from Mr. Phillips’ Councilmanic Grant Account to the Indian River School District for the HOSTS Program.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Cole, Absent; Mr. Phillips, Absent; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- M 399 07**
Human
Service
Grant
- A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$500.00 from Human Service Grants to Sussex Teen Court for operating costs.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mr. Cole, Absent; Mr. Phillips, Absent; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- M 400 07**
Community
Investment
Grant
- A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$1,000.00 from Mr. Cole’s Community Investment Grant Account to the Town of Ocean View for signs for the new Police Station.**

Motion Adopted: 4 Yeas, 1 Absent.

M 400 07
(continued) **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Absent;**
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

M 401 07
Community
Investment
Grant **A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give**
\$2,000.00 from Mr. Rogers' Community Investment Grant Account to the
Ellendale Ruritan Club for refurbishing the war memorial and cannon
located near the Town Hall.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 402 07
Youth
Activity
Grant **A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$300.00**
(\$100.00 each from Mr. Cole's, Mr. Jones', and Mr. Rogers' Youth Activity
Grant Account. to the Cape Crusaders for tournament expenses.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Phillips rejoined the meeting.

Additional
Business **Paul Blust of Oak Orchard stated that he addressed the Council on**
December 5, 2006 and again on April 24, 2007 about a lot maintenance
problem in Oak Orchard. He stated that, back in April, he was told that
the County would be preparing an ordinance amendment to include boats
as a vehicle and he questioned the status of that amendment.

Mr. Griffin responded that the process has been started but has not been
brought before the Council for action.

Workshop **At 1:30 p.m., a Public Workshop was held on the Proposed Source Water**
Protection Ordinance. (see following pages).

Respectfully submitted,

Robin A. Griffith
Clerk of the Council

SUSSEX COUNTY COUNCIL
PUBLIC WORKSHOP ON
SOURCE WATER PROTECTION
PROPOSED DRAFT ORDINANCE
JUNE 26, 2007

A Public Workshop on the Proposed Source Water Protection Ordinance was held in the Sussex County Council Chambers on Tuesday, June 26, 2007, at 1:30 p.m.

Hal Godwin, Assistant to the County Administrator, referenced Senate Bill No. 119, the “Delaware Source Water Protection Act of 2001” requiring County governments and municipalities with year-round populations of 2,000 or more, to develop maps delineating source water assessment, well-head protection and excellent groundwater recharge areas, and regulations governing the use of land within those critical areas, as part of the update to the 2002 Comprehensive Land Use Plan. It also requires DNREC to provide technical assistance to local governments to adopt these measures. It defines and clarifies source water and wellhead protection areas as critical areas. The bill also requires that a Citizen and Technical Advisory Committee be consulted in the implementation of the Source Water Area Plan and closely-related matters.

Mr. Godwin distributed the following documents to Council, Mr. Baker, and Mr. Griffin: 1) Proposed Draft Ordinance 2) Letter from John T. Barndt, Mgr., DNREC Source Water Program (4/23/07) 3) Letter from Kevin C. Donnelly, Director, DNREC Division of Water Resources (5/23/07) 4) Review of Ordinance from Mable Granke, Source Water Protection Committee Member (5/30/07).

Mr. Godwin reported that the final Draft Ordinance being presented to Council is the result of several Committee meetings, which began in April of 2006, in an effort to provide an appraisal of what the Committee felt would be best-suited for Sussex County, as set forth in the law. He stated that the original Ordinance drafted by the Committee was based on a draft Ordinance prepared by the Committee’s Technical Consultant, Nick DiPasquale, of Duffield Associates.

Burt Messick, Chairman of the Sussex County Source Water Protection Committee, introduced the following members of the Committee in attendance: Sam Wilson, Wayne Baker, Kevin Burdette, Mable Granke, Dan Kramer, and Rick Duncan.

Mr. Messick stated that most of the areas designated to be addressed in the Delaware Source Water Protection Act of 2001 were already being regulated by DNREC. The Committee felt it was unnecessary for the County to duplicate those regulations and, therefore, focused its efforts on land use within the wellhead protection areas and the excellent recharge areas.

Mable Granke pointed out the following concerns she had with the proposed draft ordinance. (Refer to her attached letter dated May 30, 2007).

- Exemption of existing public wellheads (Page 4, Paragraph A)

- **Appropriateness of allowing a storm water management facility close to a public wellhead (Page 5, Paragraph E)**
- **Standards for providing protection to public wellheads in allowing on-site wastewater treatment plants (Page 6, Paragraph D)**

Wayne Baker stated that the intention of the Source Water Protection Committee was to protect the rights of the property owner. He stated that it should be the buyer's responsibility to protect his well, not the adjacent land owner. Mr. Baker stated that the Committee chose to refrain from proposing any regulations in the Draft Ordinance that would prevent a property owner from using his land as he sees fit. He stated that the original ordinance, drafted by Nick DiPasquale of Duffield Associates, contained regulations requested by DNREC, to which the Committee was opposed. He pointed out that the Committee did not agree with a five-year time of travel for well-head protection, as recommended by DNREC. He explained the five-year time of travel as being the determined minimum length of time that it would take water to reach a well, meaning that the area within the five-year time of travel would be delineated.

Kevin Burdette responded to some of the concerns expressed by Kevin Donnelly in his letter of May 30, 2007.

- **The Environmental Protection Agency requires a 150-foot wellhead protection.**

Hal Godwin was advised by DNREC that there was no minimum standard.

- **Engineers not licensed in geology should not be determining aquifer conditions.**

Mr. Burdette pointed out that this would also apply to the Secretary of DNREC, or any of his assigned agents, unless they are a professional geologist; therefore, they should also be stricken from the Draft Ordinance.

- **Requests clarification of exempting wells in existence prior to the adoption of an ordinance**

Mr. Burdette stated that the Committee discussed this issue at length. It was the Committee's opinion that if existing public wells were not exempt, the two options offered to the land owner would be to change the land use or shut down the well, if it was not in compliance with the Ordinance. The Committee was not in favor of imposing these changes on property owners.

Mr. Burdette cited daycare centers, restaurants, nursing homes and convenience stores as examples of businesses that would also be governed by the land use regulations of this Ordinance.

Dan Kramer stated that the five-year time of travel area would be delineated on the Wellhead Protection Maps.

Councilman Phillips asked if the Ordinance contains a provision for the landowner to be compensated if they are restricted from building on their land. Mr. Kramer responded that this is not included in the Ordinance, but in such cases, the landowner should be compensated.

Nick DiPasquale of Duffield Associates stated that the limited contract between Duffield Associates and the County prevented him from being totally involved in the Committee meetings. During the first few meetings with the Committee, Mr. DiPasquale explained the States requirements, citing examples of potential problems that could develop in excellent recharge areas or wellhead protection areas. At the third meeting of the Advisory Committee, since time constraint was a concern, the Committee requested that Mr. DiPasquale prepare a preliminary Draft Ordinance. Since he was not given specific instructions on what the Committee wanted contained in the draft, he developed a framework document, based on current State regulations. He stated that the Committee interpreted his Draft Ordinance as being the requirements requested by DNREC, and chose to revise it. Mr. DiPasquale did attend another meeting of the Advisory Committee to explain some concerns he had with the draft they had proposed (Refer to Memo from Mr. DiPasquale dated December 28, 2006).

Mr. DiPasquale stated that DNREC has no requirements regulating land use in excellent recharge areas, wellhead protection areas, or impervious cover within excellent recharge areas. He explained that land use regulations for these areas are the responsibility of the County Council.

Mr. Griffin stated that the definition of “impervious” should be included in the Ordinance.

Mr. Griffin questioned the possibility that each county would have its own version of how to protect groundwater. Mr. DiPasquale stated that it was extremely likely that this would occur due to geographical differences. He stated that the Ordinance would affect approximately 8% of Sussex County.

Kevin Donnelly, Director, DNREC Division of Water Resources, referred to his letter of May 30, 2007, expressing concern that the exemption of existing public water supplies from the conditions of the Ordinance would decrease the protection of drinking water for thousands of Sussex County residents. He stated that the Ordinance, as drafted, does not meet its purpose and does not satisfy the requirements of the Delaware Source Water Protection Law of 2001, which is to afford protection to everyone.

David Baker, County Administrator, asked Mr. Donnelly to explain the effect of not grandfathering existing public wells. Mr. Donnelly responded by stating that in some cases restrictions would have to be placed on the current uses around the existing public wells in order to protect the water supply. He informed Council of the availability of State funds for the purpose of assisting in the compensation for easements that need protection.

In response to the question raised by Mr. Griffin, County Attorney, Mr. Donnelly confirmed that the County is required to adopt the Recharge Area Map in the Comprehensive Land Use Plan.

Burt Messick explained the Committee’s decision to grandfather the existing public wells, stating that property owners should not have to move their well or change the current use of their property. He stated that the process of moving a well would create a financial hardship on small businesses. The idea of compensation had also been discussed; however, the Committee felt this would be too costly for utility companies and municipalities.

Mr. Dukes cited the example of a daycare owner not having enough land to move the well. Mr. Donnelly stated that this would be covered under “Nonconforming Uses” of the Ordinance.

Mr. Dukes requested that Mr. Godwin and Mr. Griffin prepare a comparison of the current Ordinance drafted by the Source Water Protection Committee to Mr. Donnelly's recommendations for review by the Council during an afternoon County Council session.

Mr. Rogers asked Mr. DiPasquale to clarify why he is not participating in the final drafting of the Ordinance. Mr. DiPasquale explained that the first three meetings were used for informational purposes. He was then asked by the Committee to draft a preliminary Ordinance for discussion purposes, which was presented at a fourth meeting. Duffield Associates held two workshops: one for the Delaware Rural Water Association, one public workshop. He stated that additional services had been provided pro bono, as they were beyond the scope of the agreement.

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to adjourn at 3:30 p.m.

**Prepared by _____
Gaye King
Administrative Secretary**