



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 24, 2007

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 24, 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

The meeting was opened with the Lord's Prayer and the Pledge of Allegiance.

M 423 07 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to amend the
Approve agenda by deleting "Approval of Minutes"; by deleting "Temporary
Agenda Wastewater Service Agreements: A) The Reserves at Lewes Landing and
B) Windstone; and by deleting "Change of Zone No. 1610, Burton's Pond
Communities, LLC" under "Old Business"; and, to approve the Agenda, as
amended.

Motion Adopted: 5 Yeas.

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

Corre- Mr. Griffin read the following correspondence:
spondence

**WEST REHOBOTH COMMUNITY LAND TRUST, REHOBOTH
BEACH, DELAWARE.**

**Re: Letter thanking Council for a \$5,000 grant to provide affordable
housing in West Rehoboth.**

Employee of the Quarter **Mr. Baker recognized Jamie Hall as “Employee of the Quarter” for the Second Quarter of 2007. Jamie has worked in the Building and Grounds Department since April 1993.**

M 424 07 Adopt Tribute **A Motion was made by Mr. Jones, seconded by Mr. Rogers, to adopt the Tribute to Jamie Hall for “Employee of the Quarter” for the Second Quarter of 2007.**

M 424 07 (continued) **Motion Adopted: 5 Yeas.**
Voice by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

Mr. Dukes presented the Tribute to Jamie Hall in honor of his achievement.

Special Development Tax Districts **Mr. Baker introduced Jack Hayes, CFO for Michael T. Rose Land, Inc., who explained that the purpose of Special Bond Taxing Districts is to impose a special tax on the property owners in new communities that are receiving the benefit of infrastructure improvements, rather than imposing the tax on all County residents. Mr. Hayes stated that as a property is developed and increases in value, the financial obligation imposed on that particular development could be paid off over a 30-year period.**

Mr. Hayes explained that the special obligation bonds are a vehicle that would allow the County, municipality, or the State, to have all the funds available at one time to finance public infrastructure improvements. He stated that Special Tax Districts have created successful developments in other areas.

Mr. Cole stated that this topic (Special Tax Districts) should be presented in a workshop forum, which would allow the Council to hear both sides. He also requested the scheduling of a workshop on impact fees.

Mr. Phillips asked Mr. Hayes if the legislation which would allow Sussex County to utilize Special Development District funding was attached to the TDR Bill that the General Assembly failed to pass and he requested that Mr. Hayes attempt to make the Special Tax District Bill separate from the TDR Bill.

John Stalford, a Partner with Miles and Stockbridge Law Firm, who drafted the legislation for Special Tax District Bonds, was present to explain the concept of Special Development Districts and to describe the proposed legislation. Mr. Stalford stated that he has served as Bond Counsel for the two Special Tax Districts in Delaware - in Millsboro and Bridgeville.

Mr. Stalford explained that a Special Development District is a defined geographic area that is created by the County at the request of the

landowners and used as a tool to provide public infrastructure improvements for the benefit of the District and the County. Special obligation bonds are sold to investors, who represent tax exempt money market funds. The proceeds from the bonds are placed into an account held by a bond trustee and the proceeds are used to pay for the public improvements. The County levies an annual tax on all the property owners in the District; the funds are used to pay the debt service on the bonds. Mr. Stalford stated that the full faith and credit of the County is not pledged to the bond and does not impact the County's debt rating.

**Special
Development Tax
Districts
(continued)**

Mr. Griffin referenced §9704 in the proposed draft legislation, which states that the County may pledge its full faith and credit, and he questioned if there would be circumstances where the County would want to do that. Mr. Stalford explained that the County would have the option of pledging its full faith and credit for an essential project in order to sell the bonds. Mr. Stalford said that this has not been done in either the Millsboro or Bridgeville tax districts.

Mr. Phillips asked if property owners moving into the Special Tax Districts are made aware that they are in a Special Tax District and that they would be paying higher taxes. Mr. Stalford stated that the special tax would be included in the annual County tax statement as a separate line item and that there is a disclosure addendum on the Contract of Sale identifying the Special Tax District. Mr. Stalford stated that a methodology is created by a company which would determine the rate of the special tax to be levied at the time the district is created. The tax is based on the projected uses of the improvement being financed; cannot exceed the maximum rate established when the tax district was created; and may increase approximately 2 percent annually.

Mr. Stalford highlighted the benefits to the County:

- Off-site road improvements can be paid for, as well as on-site improvements.
- Secured funding as all bond proceeds are put into a construction fund and money is drawn down as improvements are built and certified by an engineer.
- Types of improvements financed by Special Tax Districts include roads, stormwater, sewer, lights, libraries, schools, and a host of other public improvements.
- The County creates the Special Tax District, levies the taxes and collects them at no cost to the County, as the taxes pay for creating the District and the cost of administering the District.
- Bonds may be prepaid.

- Public improvements, such as water and sewer, would be conveyed to the County.

Mr. Stalford stated that the County would have the authority to limit the improvements proposed by the Developer and that Special Tax Districts would be an effective tool in assisting the County in funding off-site improvements without raising taxes.

Special
Develop-
ment Tax
Districts
(continued)

Ted Bishop, Assistant Director of Planning for DelDOT, spoke about a Master Agreement between the Town of Middletown, DelDOT, and the developers of West Town. He stated that this was not a Special Tax District and that the participation of developers was voluntary. He stated that the highway infrastructure is keeping up with the development phasing and DelDOT feels that the Master Agreement is working well for all participants – DelDOT, the developers, the community, and the Town of Middletown. He explained that each developer contributed to a “Transportation Fund” for Middletown by using a formula based on the number of units or the square footage of the property being developed.

Mr. Bishop stated that DelDOT supports Special Tax Districts as one of several possible tools to finance road improvements.

In response to questions raised by Mr. Cole, Mr. Bishop stated that the Agreement with Middletown would be comparable to an impact fee, although voluntary, rather than a Special Tax District.

Mr. Cole stated that he favors impact fees, as they are less complicated. Mr. Cole stated that the Council reviewed Special Tax Districts in the past and was advised at that time that Special Tax Districts were not recommended for residential purposes, but were primarily used to redevelop run-down areas. At the request of Mr. Cole, Mr. Bishop stated that he would forward a copy of the Agreement with Middletown for review by the Council.

Mr. Baker responded by stating that the County’s concern when Special Tax Districts were previously discussed was that the County did not want bond money used for improvements for which the developer would normally be responsible. He stated that the Middletown Agreement is similar to the County’s sewer funding proposal for Johnson’s Corner in that the County works with the developers to voluntarily contribute towards the cost of the project to reduce the cost to the residents.

Mr. Dukes stated that a workshop would be scheduled.

Adminis-
trator’s

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

Report	<p>1. <u>Johnson's Corner Sanitary Sewer District Referendum Results</u></p> <p>The Sussex County Engineering Department conducted a referendum on Saturday, July 21, 2007, from 9:00 a.m. until 2:00 p.m. at the Sound United Methodist Church Community Building. The purpose of this referendum was to establish the Johnson's Corner Sanitary Sewer District. The results of the referendum were 243 for the establishment of the sanitary sewer district and 87 against the establishment of the sanitary sewer district. These results include the 35 valid absentee ballots received.</p>
Adminis- trator's Report (continued)	<p>2. <u>Comprehensive Plan Update Workshop</u></p> <p>A workshop will be held at 6:00 p.m. on July 31, 2007, regarding the first draft of the Land Use Chapter for the 2007 Comprehensive Plan Update. The workshop will include members of the Sussex County Council and the County's Planning and Zoning Commission. The County's land use consultant, Urban Research & Development Corporation, will present the first draft to the Council and Commission. The workshop will be held at the Sussex County Administrative Office West Complex.</p> <p>3. <u>Beneficial Acceptance</u></p> <p>The Engineering Department has granted Beneficial Acceptance to the following projects:</p> <ul style="list-style-type: none">• Bay Forest Club Pump Station Site, Agreement No. 478, was granted Beneficial Acceptance on July 12, 2007. The developer is Bay Forest, L.L.C., and the project is located on the east side of Old Mill Road in the Millville Expansion of the Bethany Beach Sanitary Sewer District, consisting of a pump station for Bay Forest.• Bay Forest Club – Phase 1.1, Agreement No. 478-1, was granted Beneficial Acceptance on July 12, 2007. The developer is Bay Forest, L.L.C. and the project is located on the east side of Whites Neck Road and north of Old Mill Road in the Millville Expansion of the Bethany Beach Sanitary Sewer District, consisting of 82 single-family lots and 25 townhouses.
New Bank Accounts	<p>Mrs. Webb requested approval to open four new checking accounts. The accounts would be: Oak Orchard Sewer Expansion Construction Account, CDBG 07, HPG 07, and HOME 07.</p>
M 425 07 Adopt R 016 07	<p>A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Resolution No. R 016 07 entitled "AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH DELAWARE NATIONAL BANK BEARING THE SIGNATURES</p>

OF ANY TWO OF DALE R. DUKES, PRESIDENT; FINLEY B. JONES, JR., VICE PRESIDENT; OR SUSAN M. WEBB, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL”.

Motion Adopted: 4 Yeas; 1 Abstention.

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

**Source
Water
Protection
Draft
Ordinance**

Hal Godwin, Assistant to the County Administrator, presented the revised draft ordinance relating to Source Water Protection for the Council’s review and discussion. The draft ordinance incorporates comments from DNREC with the original draft ordinance approved by the Source Water Protection Committee on April 24, 2007. Mr. Godwin noted the following proposed changes in the draft ordinance to be considered by the Council for approval:

Source Water Protection Standards – Wellhead Protection Areas

A. Any well in existence prior to the adoption of this Ordinance is exempt from the conditions of this Ordinance (deleted).

B. For a public water supply well or combination of wells with a permitted allocation of 50,000 gallons per day (50,000 GPD) or greater, which draws water from an unconfined aquifer, as interpreted by the Secretary of DNREC, or his assigned DNREC Agent, or a licensed Delaware (added) professional geologist, *hydrologist or engineer registered with the State of Delaware (deleted)* the State geologist from the Delaware Geological Survey, or the Program Manager of the Division of Water Resources Source Water Assessment and Protection Program, (added) the following shall apply:

B2. A Safe Zone of no less than a one-hundred foot (100’) (deleted) (150’) (added) radius from the well shall be maintained. This Safe Zone may include building and access associated with the well and distribution and treatment facilities and their maintenance. No other facilities/structures may be located within the Safe Zone without the County Council or Planning and Zoning Commission approval.

C. For a public water supply well or combination of wells, with a permitted allocation of 50,000 gallons per day (50,000 GPD) or greater which draws water from a confined aquifer, as interpreted by the Secretary of the DNREC, or his assigned DNREC Agent, or a licensed Delaware (added) professional geologist, *hydrologist or engineer registered with the State of Delaware (deleted)* the state geologist from the Delaware Geological Survey, or the Program Manager of the Division of Water Resources Source Water Assessment and Protection Program (added) the following shall apply:

Source
Water
Protection
Draft
Ordinance
(Continued)

C1. A Safe Zone of no less than a one-hundred foot (100') (*deleted*) (150') (added) radius from the well shall be maintained. This Safe Zone may include electrical controls, access to the well, distribution piping and other facilities for these items continual maintenance. No other structures may be located within the Safe Zone without the County Council or Planning and Zoning Commission approval.

D1. A Safe Zone of no less than a twenty-foot (20') (*deleted*) (150') (added) radius from the well shall be maintained. This Safe Zone may include electrical controls, access to the well, distribution piping and other facilities/structures for these items continual maintenance. No other structures may be located within the Safe Zone without the County Council or Planning and Zoning Commission approval.

G. Except as otherwise noted in this Article, within zoning districts established under Article II of Chapter 115: (Paragraphs G – H added)

G1. There are no requirements of this section for development occurring provided the impervious cover of that portion of the parcel within the wellhead protection area is 35 percent or less.

G2. Impervious cover of that portion of the parcel within the wellhead protection area of greater than 35 percent but no more than 60 percent is allowed provided the applicant demonstrates through an environmental assessment report prepared by a registered professional geologist or registered professional engineer familiar with the hydrogeologic characteristics of Sussex County using climatic water budget that post-development recharge quantity will meet or exceed the existing (pre-development) recharge quantity. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.

G3. For all new construction where the impervious surfaces exceed 60 percent or where the level of post-development recharge is less than pre-development recharge, all structures shall be required to discharge roof drains into underground recharge systems or permeable surfaces that allow the discharges to infiltrate into the ground. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.

H. Notwithstanding with provisions of §XXX.XX (Non-conforming uses) in Industrial, Business or Commercial districts within designated development zones where the impervious cover of a property exists prior to the effective date of this ordinance and the applicant desires to re-develop the property, the gross impervious cover shall be equal to or less than the original impervious cover percentage of the original site.

Mr. Griffin questioned the possible consequences if the County were to adopt an ordinance that is different from DNREC's current regulations. Mr. Godwin stated that DNREC could possibly deny issuance of a permit if it did not meet their specifications.

Mr. Godwin was asked to contact Burt Messick, Chairman of the Source Water Protection Committee, to schedule a meeting of the Committee. with a representative from DNREC present, for discussion on the comments presented by DNREC. Once this meeting is held, the Council would consider the adoption of the Source Water Protection Ordinance.

**Local Law
Enforce-
ment Grant
Request**

Mr. Godwin presented a request from the Greenwood Police Department for the full \$25,000 disbursement allowed from the Local Law Enforcement Grant Program. Greenwood is following regulations as set forth by the County for the use of these funds, as follows:

\$ 12,587 Digital in-car video systems
\$ 12,413 Police Operating Account

**M 426 07
Award
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council awards a \$25,000 Local Law Enforcement Grant to the Police Department of the Town of Greenwood, as presented.

Motion Adopted: 5 Yeas.

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

**Sussex
County
Citizen
Corps**

Joe Thomas, Director of Emergency Operations, requested the Council's approval to sponsor a Sussex County Citizen Corp Council. The Citizen Corp Council is a group of volunteers throughout the County and the local community who, through training and outreach, coordinate volunteer efforts to assist the community during times of emergency situations.

Bob George of DEMA and the Delaware Citizen Corps was present to explain the local Citizen Corps Program. The program is funded by the Department of Homeland Security for the purpose of recruiting citizens to become involved in the safety of their community, which is done through education, training, and volunteer programs. The Delaware Citizen Corps would assist local and county Citizen Corps in developing a community outreach program for Homeland Security, community preparedness, or family safety, and provide them with a sub grant to begin the program. Mr. George stated that the Federal Government mandates that the local or County Citizen Corps be sponsored by the local Emergency Management Agency, local police department, or the town. He reported that volunteers have been recruited to run the programs and that one of the programs being considered at the County level is "Community Emergency Response Training". Mr. George stated that free emergency and disaster training

would be provided to citizens. Brochures were distributed to Council, along with a sample disaster kit.

Sussex
County
Citizen
Corps
(continued)

Mr. George stated that he would like to see support of a progression of programs that deal with citizen preparedness in Sussex County and allow the County Council to provide oversight to local Citizen Corps. Mr. George suggested that the County partner with local businesses in this effort to help offset the cost of materials and disaster kits that would be needed. Mr. George stated that the program is funded by Homeland Security and Delaware chose to use their funds for the Delaware Emergency Management Agency (DEMA), to be used for the councils for outreach programs. The County Council would be responsible for the recruitment of towns to establish local councils. Mr. George stated that the Milton Police Department has agreed to sponsor a local council to develop a neighborhood watch program as their outreach program.

Mr. Griffin was directed to prepare a draft Resolution, for the Council's consideration, in support of the Sussex County Citizen Corps.

Public
Hearing/
Fenwick
Island SSD –
Water's Run

A Public Hearing was held to consider extending the boundary of the Fenwick Island Sanitary Sewer District to encompass parcels of land east and west of Old Mill Bridges Road including the community of Water's Run and part of the communities of Magnolia Shores and Mill Creek Acres, which lie contiguous to the Fenwick Island Sanitary Sewer District.

John Ashman, Director of Utility Planning, reported that system connection charges for the Fenwick Island Sanitary Sewer District are \$4,365.00. The proposal is for 56 single-family lots. The developer would be responsible for \$244,440.00 in system connection charges.

Mr. Cole stated that the developer should be mandated to install the infrastructure within a certain period of time for the parcels to be included in the annexation. Mike Izzo, County Engineer, stated that the only way to insure a time schedule for the infrastructure would be to require the execution of an escrow agreement with the developer. Russell Archut, Assistant County Engineer, noted that the County does have a policy in place for extending sewer boundaries and it would be possible to incorporate a time schedule for a developer to install the infrastructure.

Wayne Lyons of Long & Foster Real Estate in Bethany Beach was present on behalf of the sellers. He stated that the developer, Mandarin Homes, did put in sewer for all of Swan Cove and down Route 54.

The Public Hearing was closed.

M 427 07
Adopt
Resolution/

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt Resolution No. R 019 07 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE FENWICK ISLAND SANITARY SEWER

**Fenwick
Island
SSD
Expansion**

DISTRICT TO ENCOMPASS PARCELS OF LAND EAST AND WEST OF OLD MILL BRIDGES ROAD INCLUDING THE COMMUNITY OF WATER'S RUN (LYNCH PROPERTY), AND PART OF THE COMMUNITIES OF MAGNOLIA SHORES AND MILL CREEK ACRES LYING CONTIGUOUS TO THE FENWICK ISLAND SANITARY SEWER DISTRICT, IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas.

**M 427 07
(continued)**

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

**Old
Business/
C/U
No. 1686**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12.77 ACRES, MORE OR LESS” (Conditional Use No. 1686) filed on behalf of Malone Enterprises, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on April 26, 2007 at which time action was deferred. On May 16, 2007 the Commission recommended that the application be approved with thirteen (13) conditions.

**M 428 07
Adopt
Ordinance
No. 1912
(C/U
No. 1686)**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1912 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12.77 ACRES, MORE OR LESS” (Conditional Use No. 1686) filed on behalf of Malone Enterprises, LLC, with the following conditions:

- 1. The maximum number of residential units shall not exceed 41.**
- 2. The boat slips shall not be leased to anyone other than an owner or occupant of the residential units.**
- 3. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s determination.**
- 4. The development shall be served as part of the Sussex County Long Neck Sanitary Sewer District.**
- 5. The project shall be served by a public central water system**

**M 428 07
Adopt
Ordinance
No. 1912
C/U
No. 1686
(continued)**

- providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
 7. The site plan shall be subject to approval of the Planning and Zoning Commission.
 8. The interior street design shall be in accordance with or exceed Sussex County Street design requirements.
 9. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
 10. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 7:00 p.m.
 11. No wetlands shall be located within any areas of disturbance or construction.
 12. There shall not be any portable toilets on site, except those associated with the construction of this project once Final Site Plan approval has been granted. As required on numerous occasions by County Engineering, there shall be no portable toilets permitted as part of the current or future use of this property as a marina or under this Conditional Use.
 13. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/U
No. 1711**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SEWER TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 13.41 ACRES, MORE OR LESS” (Conditional Use No. 1711) filed on behalf of Artesian Water Company, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2006, at which time action was deferred. On March 15, 2007, the Commission recommended that the application be denied.

M 429 07

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt the

**Adopt
Proposed
Ordinance
(C/U
No. 1711)
DENIED** **Proposed Ordinance entitled “AN ORDINANCE TO GRANT A
CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
RESIDENTIAL DISTRICT FOR A SEWER TREATMENT FACILITY
TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND
BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING
13.41 ACRES, MORE OR LESS” (Conditional Use No. 1711) filed on
behalf of Artesian Water Company, Inc.**

Motion Denied: 5 Nays.

**M 429 07
(continued)** **Voice by Roll Call: Mr. Cole, Nay; Mr. Phillips, Nay;
Mr. Rogers, Nay; Mr. Jones, Nay;
Mr. Dukes, Nay**

**Georgetown
Avigation
Easement** **Jim Hickin, Director of Airport and Industrial Park Operations, presented
an Avigation Easement for the Council’s consideration. Mr. Hickin stated
that the Avigation Easement is between the Town of Georgetown and
Sussex County whereby the Town of Georgetown grants access in and
through the airspace over their property at the approach end of Runway 10
for the unobstructed use and passage of all types of aircraft.**

**M 430 07
Approve
Georgetown
Avigation
Easement** **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 authorizes the execution of the Avigation Easement
between Sussex County and the Town of Georgetown, as accepted by the
Town of Georgetown and Town Council on June 27, 2007.**

Motion Adopted: 5 Yeas.

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

**M 431 07
Amend
Agenda** **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to amend the
Agenda by deleting, “South Coastal Library – Lease for Relocation During
Construction”.**

Motion Adopted: 5 Yeas.

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

**Proposed
Lochwood
Suburban
Community
Improve-** **Russell Archut, Assistant County Engineer, was present to request the
Council’s approval to schedule another election date for the Proposed
Lochwood Community Improvements Project. He reported that the
original election date was scheduled for Saturday, June 14, 2007; however,
some Lochwood Community property owners had expressed concern that**

**ment
Project**

absentee ballots had not been provided. Mr. Archut stated that Vince Robertson, Assistant County Attorney, advised that the County cannot offer absentee ballots, as State law has no such provision. Another concern expressed was that the County had not met the posting requirements. Mr. Archut stated that, by Law, the posting cannot be less than 20 days, nor more than 30 days, from the date the information was presented to the Council. In addition, the election date must be posted for 30 days and must be advertised for four weeks prior to the election. He explained that due to the 20 and 30 day posting requirements and 30 days of posting, there is only one day in which to do that. In the past, elections have been held on Saturday. Mr. Archut stated that since State law requirements were not met, a Saturday election would not be an option.

**Proposed
Lochwood
Suburban
Community
Improve-
ment
Project
(continued)**

Mr. Archut asked that the Council authorize a new election date on Thursday, August 23, 2007, at the Inland Bays Treatment Plant, from 9:00 a.m. to 6:00 p.m.

Mr. Griffin, County Attorney, suggested that the County may consider requesting a legislative change in order to allow for Saturday elections. Mr. Archut stated that the Engineering Department is currently preparing a draft ordinance that would parallel State law and coincide with the County's procedure, and which would also allow for absentee ballots.

Mr. Archut reported that the estimate for the overall improvements for the project has been completed by the Engineering Department. The cost estimate includes a hot mix paving overlay on all streets, minor drainage repair work, removal and replacement of existing speed bumps, and the installation of paved driveway aprons within the subdivision. This work, including the administrative costs, bond and interest costs, is estimated to be \$732,179.07 to be paid for by the property owners at a rate of \$4.83 per front foot for a ten-year repayment period. Mr. Archut stated that there has been no change in this information which was originally presented to the Council by Patti Deptula, Assistant Director of Public Works, on June 19, 2007.

**M 432 07
Authorize
Election on
Proposed
Suburban
Community
Improve-
ment
Project**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorizes an election to be held at the Inland Bays Regional Wastewater Treatment Facility located at 29445 Inland Bay Road, Long Neck, Delaware, between the hours of 9:00 a.m. and 6:00 p.m. on Thursday, August 23, 2007, for the purpose of allowing property owners and residents of the Proposed Lochwood Suburban Community Improvement Project Area, Indian River Hundred, to consider the financing of Suburban Community Improvements, as regulated under Title 9, Chapter 5, Delaware Code, and having an estimated total project cost of \$732,179.07 to be financed over a ten-year period with an estimated annual cost of \$4.83 per front foot.

Motion Adopted: 5 Yeas.

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

**Bid
Results/
Pinetown
Sewer
Bid
Results/
Pinetown
Sewer
Collection
System
(continued)**

Douglas Stewart, Project Engineer, presented bid results for the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, Pinetown Sewer Collection System. Mr. Stewart reported that the project will provide sanitary sewer service to 67 residential parcels on Pinetown Road and Sweet Briar Road, north of Route 9, most of which currently have substandard or failing on-site sewage treatment and disposal systems. Funding for the project will come from grants from USDA Rural Utilities Service, DNREC State Revolving Fund, and Sussex County.

Mr. Stewart stated that the original design for the project included gravity sewers, a small pump station, and a force main; however, only two bids were received in October of 2003, both of which were well above the County Engineer's estimate. The County chose to re-bid the project and George, Miles, and Buhr redesigned the project as a 2,400 foot long, all gravity system that would discharge to the new Hopkins-Pettyjohn Subdivision, currently under construction adjacent to Pinetown.

Mr. Stewart reported that four bids were received, with the lowest bid being received from Bunting & Murray Construction Corporation in the amount of \$407,089.55. The Engineer's Estimate was \$445,665.00.

**M 433 07
Award
Bid/
Pinetown
Sewer
Collection
System**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Engineering Consultants, George, Miles, and Buhr, LLC, and the Engineering Department, that Sussex County Project 96-03, West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, Pinetown Sewer Collection System, be awarded to Bunting & Murray Construction Corporation of Selbyville, Delaware, at the bid amount of \$407,089.55, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and the U.S. Department of Agriculture, Rural Utility Service.

Motion Adopted: 5 Yeas.

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

**M 434 07
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Clear Space Productions for the 2007-2008 performance season.

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A PUBLIC UTILITY FOR A REGIONAL PROPANE STORAGE AND DISTRIBUTION FACILITY TO BE

Introduction of Proposed Ordinance (continued) LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.529 ACRES, MORE OR LESS” (Conditional Use No. 1761) filed on behalf of Sharp Energy, Inc. The Proposed Ordinance will be advertised for Public Hearing.

Additional Business Mr. Phillips stated that he has requested a discussion by the Council and possible vote on an Amendment to the Sussex County Code on the July 31, 2007 Council meeting, The Amendment would allow the density trade concept to be applied to conditional uses for multi-family dwelling structures in AR-1 Districts.

Additional Business Dan Kramer expressed his objection to statements made by Mr. Cole regarding Mr. Kramer on a local radio talk show.

M 435 07 Recess At 12:30 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 At 1:45 p.m., Mr. Dukes called the Council back into session.

Public Hearing (C/Z No. 1613) A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 34,386 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1613) filed on behalf of Bayshore Plaza II, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on June 28, 2007, at which time the Commission deferred action for further consideration and for receipt of the PLUS comments.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 28, 2007, for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the

Commission's Public Hearing. The summary was admitted as part of the Council's record.

Mr. Lank, Director of Planning and Zoning, reported that a letter was received from the Office of State Planning Coordination on July 16, 2007. The letter stated this project will not be required to be seen by the PLUS process.

Mr. Lank distributed an Exhibit Booklet which was provided by the Applicant.

**Public
Hearing
(C/Z
No. 1613
(continued)**

The Council found that Preston Dyer was present on behalf of Bayshore Plaza II, LLC, the developer of Bayshore Plaza, along with Mark Davidson of DC Group. They stated that the parcel will be joined into the existing Bayshore Plaza II Shopping Center; that the property is located within the Environmentally Sensitive Development District; that under County Code, the parcel is not large enough to fit within the extra parameters of the process of performance requirements; that the property is located within the Long Neck Sanitary Sewer District that water would be provided by Tidewater Utilities; that the site is located in Level 1 and Level 2 of the State Strategies for Spending Map; that the final project will appear as part of the existing Bayshore Plaza II shopping center; that the rezoning request is appropriate, as the adjoining properties are commercially zoned, as well as lands located across Route 24; and that the proposed land use is consistent with the Sussex County Comprehensive Land Use Plan.

Mr. Cole asked if the dumpster could be relocated so that residents would not be subject to the odor and noise from the dumpster. Mr. Dyer stated that the location of the dumpster could be moved to the other side near the loading area.

There were no public comments and the Public Hearing was closed.

**M 436 07
Defer
Action on
C/U
No. 1613**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Change of Zone No. 1613 filed on behalf of Bayshore Plaza II, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing
(C/U
No. 1688)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE, STORAGE BUILDING, AND STORAGE YARD FOR A CONTRACTING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.96 ACRES, MORE OR LESS" (Conditional

Use No. 1688) filed on behalf of Richard Bell III.

The Planning and Zoning Commission held a Public Hearing on this application on June 28, 2007 at which time they deferred action. On July 12, 2007, the Commission recommended that the application be approved with conditions.

**Public
Hearing
(C/U
No. 1688)
(continued)**

(See the minutes of the meeting of the Planning and Zoning Commission dated June 28, 2007 and July 12, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

Mr. Lank distributed an Exhibit Booklet that was provided by the Applicant.

Mark Davidson of Design Consultants Group and Tony Smith, Vice-President of Clean Cut Interlocking Pavers, Inc., were present on behalf of the application. Mr. Davidson stated that they propose an office, a shop, and a materials storage area for the Clean Cut Interlocking Pavers business; that the proposed use is consistent with other uses in the area; that according to Jim Hicken, Director of Airport and Industrial Park Operations, the property is outside of the Runway Protection Zone and that the only restriction is on the height of the building; that the building cannot be higher than 40 feet; that the proposed building will be metal and will not be 40 feet in height; that the existing entrance will be upgraded to a commercial entrance and will meet all of DelDOT's requirements; and that Mr. Bell has no objections to the conditions as set forth by the Commission.

Mr. Cole expressed concern regarding the noise that would be created from loading and unloading materials and he asked if the materials storage area could be moved from the planned location, which is close to the adjacent residents. Mr. Davidson stated that it could be moved to the rear of the shop.

Mr. Smith stated that all the pavers would be shipped in; that the pavers would be delivered from the site directly to the job sites; that the storage materials would consist of left-over pavers; that there would be no walk-in trade; and that that the business wishes to relocate due to space limitations.

There were no additional public comments and the Public Hearing was closed.

- M 437 07
Adopt
Ordinance
No. 1913
(Conditional
Use No.
1688)**
- A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1913 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE, STORAGE BUILDING, AND STORAGE YARD FOR A CONTRACTING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.96 ACRES, MORE OR LESS” (Conditional Use No. 1688) filed on behalf of Richard Bell III, with the following conditions:**
- M 437 07
Adopt
Ordinance
No. 1913
(C/U
No. 1688)
(continued)**
- 1. The office hours of operation will be from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to noon on Saturday. Business hours in the yard area will begin no earlier than 7:00 a.m. The business shall be closed on Sunday.**
 - 2. Landscaping shall be installed to screen the use from the adjacent residential dwellings. The landscaping shall be shown on the Final Site Plan and the screen shall extend to a minimum of five (5) feet past the front corner of any dwelling on adjacent properties.**
 - 3. One sign, no greater than 32 square feet in size and illuminated by spotlights may be installed pursuant to Sussex County Ordinance.**
 - 4. Lighting may be installed for safety and security around the site. Any lights shall be downward screened and shall not illuminate across any property lines or onto Route 9. Because the property is adjacent to the Sussex County Airport, any lighting installed on the property shall comply with FAA regulations.**
 - 5. Any fuel storage on site shall comply with all State, Local, and Federal Guidelines.**
 - 6. The Applicant shall comply with all roadway and entrance improvements required by the Delaware Department of Transportation.**
 - 7. The Applicant shall not advertise or display products within the front yard area except in the form of landscaping beds and planters. The location of the proposed display shall be described in detail on the Final Site Plan.**
 - 8. There shall be no parking in the front yard setback.**
 - 9. The mobile home that currently exists on the property shall not be used as an office without approval of the Sussex County Board of Adjustment.**

10. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission
11. The materials storage bins shall be relocated to the rear of the proposed metal building.

Motion Adopted: 5 Yeas.

**M 437 07
(continued)**

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

**Public
Hearing
(C/U
No. 1689)**

A Public Hearing was heard on the proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 30,288 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1689) filed on behalf of Michael and Nancy Chorman.

The Planning and Zoning Commission held a Public Hearing on this application on June 28, 2007 at which time the Commission deferred action for further consideration and a review of the restrictive covenants. On July 12, 2007, the Commission discussed the application and was advised by Mr. Robertson, Assistant County Attorney, that there were no restrictive covenants found in reference to the property. On that date, the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 28, 2007 and July 12, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

The Council found that Michael Chorman was present on behalf of the application. Mr. Chorman stated that he would be doing automotive repair work in the evenings from approximately 5:30 p.m. to 9:30 p.m. and on Saturdays; that he would be using an existing garage on the property; and that he proposes to leave repaired vehicles parked outside for customer pick up.

There were no public comments and the Public Hearing was closed.

**M 438 07
Adopt
Ordinance
No. 1915
(C/U
No. 1689)**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Ordinance No. 1915 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 30,288 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1689) filed on behalf of Michael and Nancy Chorman, with the following conditions:

**M 438 07
Adopt
Ordinance
No. 1915
(C/U
No. 1689)
(continued)**

- 1. There shall not be any outside storage of any type including, but not limited to, cars, equipment, tires, automotive parts, scrap metal, parts or other materials used as part of the applicant’s business.**
- 2. No vehicles for sale will be displayed outside on the premises.**
- 3. No repair work will be performed outside.**
- 4. No vehicles under repair shall be operated outside.**
- 5. The shop will only be operated between the hours of 5:30 p.m. until 9:30 p.m. Monday through Friday, and between 8:00 a.m. until 4:30 p.m. on Saturday. There shall be no Sunday hours.**
- 6. There shall not be any signs on the property advertising the business.**
- 7. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.**
- 8. Any dumpster on the site shall be screened from the view of neighboring properties.**
- 9. The site plan shall be subject to the approval of the Planning and Zoning Commission.**
- 10. Repaired vehicles may be parked outside for customer pick up.**

Motion Adopted: 5 Yeas.

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

**M 439 07
Adjourn**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to adjourn at 2:25 p.m. Motion Adopted by Voice Vote.

Respectfully Submitted,

**Gaye King
Administrative Secretary**