

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 28, 1998

Call to Order The regular meeting of the Sussex County Council was held Tuesday, July 28, 1998, at 1:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
Finley B. Jones, Jr.	Vice President
George B. Cole	Member
George J. Collins	Member
Lynn J. Rogers	Member

The meeting was opened by repeating the Lord's Prayer and Pledge of Allegiance to the Flag.

M 333 98 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to Amend and Approve Agenda amend the Agenda deleting "Clearwater Development, Phase IV, Beneficial Acceptance" and to approve the Agenda, as amended.
Motion Adopted: 5 Yea.

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

M 334 98 A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Approve Minutes approve the minutes of the previous meeting, dated July 21, 1998.

Motion Adopted: 5 Yea.

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

Corre- Mr. Bayard, County Attorney, read the following correspondence: spondence
CINDI BROUGHT, SECRETARY, CARING ABOUT PEOPLE, INC., FRANKFORD, DELAWARE.
RE: Letter in appreciation of Councilmanic Grant.

ROSALIE B. WALLS, PRESIDENT, SUSSEX COUNTY RETURN DAY COMMITTEE, INC., GEORGETOWN, DELAWARE.

RE: Letter requesting a \$5,000 drawdown of the \$10,000 donation allocated by Council in the FY '99 budget.

REPRESENTATIVE MICHAEL N. CASTLE, CONGRESS OF THE UNITED STATES, WASHINGTON, D.C.

RE: Letter regarding funding for the proposed Ellendale Sanitary Sewer District.

Corre-
spondence
(con't)

JOSEPH R. BIDEN, JR., UNITED STATES SENATOR, WASHINGTON, D.C.
RE: Letter to The Honorable Dan Glickman, Secretary, U.S.
Department of Agriculture, regarding obtaining reserve federal
funds for the high-priority Ellendale Sanitary Sewer District.

GARY F. TAYLOR, TOWN ADMINISTRATOR, THE TOWN OF SELBYVILLE,
SELBYVILLE, DELAWARE.

RE: Letter in appreciation of Councilmanic Grant.

MARTHA JEAN ADDY, CHAIRMAN, HISTORICAL ASSOCIATION, TOWN OF
BETHANY BEACH, BETHANY BEACH, DELAWARE.

RE: Letter in appreciation of Councilmanic Grant.

LORD BALTIMORE ELEMENTARY SCHOOL, OCEAN VIEW, DELAWARE.

RE: Letter in appreciation of Councilmanic Grant.

Request
for
Funds

Mr. Martin Donovan was in attendance to present a request for
funds for The 1998 Eastern Regional Major League Softball
Tournament to be sponsored by Delaware District III.

M 335 98
Council
Grant

A Motion was made by Mr. Collins, seconded by Mr. Cole, to
give \$1,000 from Council Grants to The 1998 Eastern Regional
Major League Softball Tournament.

Motion Adopted: 5 Yea.

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

M 336 98
Council-
manic
Grant

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to
give \$500.00, \$100.00 from each Councilmanic Account, to The
1998 Eastern Regional Major League Softball Tournament.

Motion Adopted: 5 Yea.

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

Adminis-
trator's
Report

Mr. Stickels, County Administrator, read the following infor-
mation in his County Administrator's Report:

1. United States Census 2000

The United States Department of Commerce, Bureau of the
Census, is taking applications for census takers and crew
leaders to participate in the upcoming census. The Depart-
ment of Commerce is offering competitive hourly wages in
Sussex County and mileage reimbursement for field jobs.
Anyone wishing to apply for one of these positions can call

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toll free at 1-888-325-7733 or can write the United States Department of Commerce, Bureau of the Census, Regional Census Center, 841 Chestnut Street, Suite 5101, Philadelphia, PA 19107-4499.

2. Public Workshop - Delaware Department of Transportation

The Delaware Department of Transportation will be conducting a public workshop for proposed construction on U.S. 113, north of Dagsboro to north of Millsboro. The meeting will be held on August 6, 1998 between the hours of 4:00 p.m and 8:00 p.m. at the Indian River High School Lobby, Frankford, Delaware. The proposed construction includes replacement of concrete curbs, resurfacing of the existing pavement, the addition of 4-foot wide inside shoulders, and minor drainage improvements. Total reconstruction is needed at the intersection of Route 113 and Route 24, and safety improvements are planned for the intersection of Route 113 and Old Landing Road.

3. Sussex County Status Report - Second Quarter 1998 - Delaware State Police

	T-4	T-5	T-7
Total Hours on Duty	2,194.5	11,810	16,460.0
Hours Assisted Other Agencies	178.0	57.0	83.5
Total Traffic Arrests	2,620	3,113	2,803
Total DUI Arrests	91	115	139
Accident Reports:			
Property Damage	150	184	313
Personal Injury	57	89	140
Total Accident Reports	207	273	453
Criminal Arrests:			
Felony	42	68	113
Misdemeanor	243	394	491
Total Criminal Arrests	285	462	604
Total 10-29 P's (wanted persons)	214	154	164
Total Number of Complaints	2,285	3,436	4,321

4. Swearing-In Ceremony

In a formal ceremony held in the Sussex County Council Chambers on Friday, July 24, 1998, Peter B. Jones, former Sussex County Assistant Attorney, was sworn in as Associate Judge of the Family Court. This is the first time that a

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Report
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judge has been sworn in using the County Council's new chambers. Those participating in the ceremony included Delaware Supreme Court Chief Justice Norman Veasey, Supreme Court Associate Justice Randy Holland, Family Court Chief Judge Vincent Poppiti, Court of Chancery Chancellor William Chandler, Superior Court Resident Judge William Swain Lee, Governor Thomas R. Carper, Senator Thurman G. Adams, Jr., Educator Dr. William Williams, H. Edward Maull, Jr., Esquire, and the Reverend Richard Vance.

5. Kerns, Et Al. Vs. Dukes, Et Al.

The Third Circuit Court of Appeals in its Opinion and Order, has upheld the district court's decision of November 8, 1996, dismissing the class action suit against Sussex County and the State challenging the establishment and implementation of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. The Third Circuit District Court has concluded that the suit should be dismissed because the suit was a challenge to the imposition and enforcement of local taxes. As noted in the Circuit Court's opinion, the district court had held that the suit ran afoul both of Federal Comity principles and of the Tax Injunction Act.

The Property Owners had argued in their appeal to the Circuit Court that: "The primary purpose of the present lawsuit is to address the arbitrary and capricious establishment of a sewer district. Thus, the relief requested in the case at bar does not implicate Federal Comity or the Tax Injunction Act."

The Circuit Court was not persuaded and did not agree with the Property Owners, Citing the March 27, 1998 decision of the Delaware Supreme Court, the Third Circuit Court held that the courts of Delaware can provide the forms of judicial inquiry and remedy that meet the principles of the Tax Injunction Act and of comity, and upheld the District Court's dismissal of the Property Owners' complaint.

I am pleased with the Third Circuit Court's decision, but it should be noted that, to date, users of the district have spent over \$40,000 in defending this lawsuit.

Old
Business
(C/U
No. 1244)

Conditional Use No. 1244 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (28 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.615 ACRES, MORE OR LESS, filed on behalf of Salt Pond East, L.L.C., t/a Bethany Courts, L.L.C., was discussed. A Public Hearing was held on this application on June 2, 1998, at which time action was deferred for the purpose of obtaining additional information from DelDOT. Mr. Lank, Director of Planning and Zoning, submitted information received from DelDOT.

M 337 98 A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt
Adopt Ordinance No. 1253 entitled "AN ORDINANCE TO GRANT A CONDITIONAL
Ordinance USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR
No. 1253 MULTI-FAMILY DWELLING STRUCTURES (28 UNITS) TO BE LOCATED ON A
(C/U CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED,
No. 1244) SUSSEX COUNTY, CONTAINING 8.615 ACRES, MORE OR LESS" (Con-
ditional Use No. 1244) filed on behalf of Salt Pond East, L.L.C.,
t/a Bethany Courts, L.L.C., with the following conditions:

1. Total number of units not to exceed fourteen (14) units located in uplands only, meaning no units shall be constructed in tidal or non-tidal wetlands.
2. Site plan subject to review and approval by the Planning and Zoning Commission and shall be in substantial compliance with architectural types as presented to Council.
3. Development shall be served by Sussex County Sewer and Central Water Supply.
4. Development shall comply with all entrance design and improvements required by the Delaware Department of Transportation.
5. Development shall comply with all improvements required by Sussex Soil Conservation for storm water management and Army Corp of Engineers.
6. Development shall contain on site community building and swimming pool.
7. To avoid confusion "Salt Pond" will not be used in the development's name.

Motion Adopted: 3 Yea, 2 Nay.

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

Findings of Fact The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use is consistent with the purposes and goals of the Comprehensive Land Use Plan; the property is zoned MR, is in a development district, and adjoins a 640 unit residential planned community.
2. With the conditions attached to the approval and based on the record before Council, there will be no adverse impact of any sort on the character of the neighborhood, property values, traffic, or the environment.

Bid Results/
Red Mill
Pond

Mr. Izzo, County Engineer, discussed Bid Results for Contract WIII-2, Red Mill Pond North, West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, as follows:

Contractor	Bid Schedule A	Bid Alternate B	Sweet Briar Add Alternate
Teal Construction, Inc.	\$4,812,812.00	\$4,762,812.00	\$138,000.00
L. A. Merrell Construction Co., Inc.	\$4,984,142.75	\$4,945,075.75	\$.00
R. E. Pierson Construction Co., Inc.	\$9,928,003.80	\$9,931,412.80	\$ 66,475.00
Engineer's Estimate	\$5,034,560.00	\$4,966,560.00	\$ 40,000.00

The bids will be reviewed for a recommendation to Council.

Funding for
Volunteer
Fire
Service

Mr. Rogers proposed that Mr. Stickels, County Administrator, investigate the possibility of developing a program to provide funding for the Volunteer Fire Service. Mr. Stickels stated in his FY '99 Budget Letter that in the future it would be difficult for the County Council to continue double digit funding increases to the Fire Service without establishing a special funding source or increasing property taxes. Mr. Rogers stated that fire companies will have funding difficulties if the County Council cannot continue with increases as they have for the last two years. There was no opposition to Mr. Rogers' proposal and Mr. Stickels was instructed to look at funding alternatives.

M 338 98
Council-
manic
Grant

A Motion was made by Mr. Collins, seconded by Mr. Rogers, to give \$400.00, \$200.00 each from Mr. Collins' and Mr. Dukes' Councilmanic Accounts, to the Laurel Lions Club for improvements to the tennis and basketball complex.

Motion Adopted: 5 Yea.

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

M 339 98
Council-
manic
Grant

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give \$200.00 from Mr. Dukes' Councilmanic Account to the Town of Blades for the Town Clerk to attend a Municipal Clerks Institute Advanced Academy Program.

Motion Adopted: 5 Yea.

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

Public
Hearing
(C/Z
No. 1340)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.60 ACRES, MORE OR LESS (Change of Zone No. 1340) filed on behalf of IPM Equities, Inc. and IPM Equities Bethany, L.L.C. There were no public comments and the Public Hearing was closed.

M 340 98
Adopt
Ordinance
No. 1254
(C/Z
No. 1340)

A Motion was made by Mr. Collins, seconded by Mr. Cole, to Adopt Ordinance No. 1254 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.60 ACRES, MORE OR LESS" (Change of Zone No. 1340) filed on behalf of IPM Equities, Inc. and IPM Equities Bethany, L.L.C.

Motion Adopted: 5 Yea.

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

Findings
of Fact

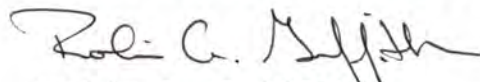
The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the change of zone is an addition to an existing commercial property and is adjoined on three sides by other commercial properties.
2. The change of zone is consistent with the purposes and goals of the Comprehensive Land Use Plan.
3. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

M 341 98
Adjourn

A Motion was made by Mr. Cole, seconded by Mr. Jones, to adjourn at 2:32 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the County Council