



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 21, 2007

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 21, 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
David Hackett	Assistant County Attorney

M 516 07 Amend and Approve Agenda

A Motion was made by Mr. Jones, seconded by Mr. Cole, to amend the Agenda by deleting "CHEER and Senior Center Transportation Funding" and to approve the Agenda, as amended.

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 517 07 Approve Minutes

A Motion was made by Mr. Jones, seconded by Mr. Cole, to approve the minutes of July 24, 2007.

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

Corre- spondence

Mr. Griffin read the following correspondence:

SUSSEX TEEN COURT, INC., GEORGETOWN, DELAWARE.
RE: Letter in appreciation of Council's donation.

Draft CTP Request	Mr. Baker presented a Draft of the Sussex County Council 5-Year Capital Transportation Program Request which will be presented in final form to DelDOT at a workshop scheduled on September 6, 2007 from 6:00 p.m. to 9:00 p.m. at Delaware Technical & Community College in Georgetown. Mr. Baker reviewed the Draft Report and encouraged the Council to submit comments prior to the submission of the report on September 6th.
Draft CTP Request (continued)	Mr. Phillips joined the meeting. Mr. Cole referred to the improvements on Route 404; he questioned if DelDOT is making any effort to link with the State of Maryland's Route 404 improvements to the Delaware State Line. Mr. Cole emphasized that an east – west dual highway should be a priority in Sussex County. Bobbie Geier of DelDOT was in attendance. She stated that she would try to obtain information from the State of Maryland regarding their timeframe for the project.
Proposed Draft Ordinance Relating to Forested Buffers and Stormwater Manage- ment	Mr. Baker presented a proposed draft ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 20 OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED BUFFERS AND STORMWATER MANAGEMENT”. This draft ordinance would clarify the definition of a forested buffer. Mr. Baker advised that the draft ordinance was developed by James Griffin (County Attorney), Vince Robertson (Assistant County Attorney), and Lawrence Lank (Director of Planning and Zoning). In addition, input was received from URDC, the County's Land Use Consultant. Additional input was received from Paul DeVilbiss, a Landscape Architect, which was distributed to the Council for consideration. The Landscape Architect suggested that the content of the ordinance should clarify the plantings in the forested buffer, i.e. the density of the proposed trees, the size of the plants at installation, etc. Mr. Cole stated that the definition of and requirements for a forested buffer should not be limited to farmland and that it should address all districts, i.e. RPCs and Conditional Uses. (It was noted that stipulations can be placed on RPCs and Conditional Uses.) Mr. Phillips stated that the open space reference in the definition could possibly be taken out and he stated that forested buffer lands should qualify as open space. Mr. Phillips stated that, in light of the comments received and recommended changes, the introduction of the ordinance should be deferred until the draft ordinance is rewritten and presented to the Council at a later date. The Council will take the Draft Ordinance under consideration.
Planning and Zoning	Mr. Baker distributed information regarding “Planning and Zoning – Enforcement”, as follows:

**Enforce-
ment**

- **Proposed Ordinance amendment to clarify the thirty-foot forested buffer requirement adjacent to agricultural lands, which will specifically exclude stormwater management areas, as well as other improvements.**

**Planning
and Zoning
Enforce-
ment
(continued)**

- **Before bonds held by Public Works are released, the Director of Planning and Zoning or Assistant Director of Planning and Zoning must authorize and approve the project upon completion. An inspector and/or the Director or Assistant Director will inspect development, especially for buffers, amenities, or other conditions, as required by the Planning and Zoning Commission and the County Council.**
- **Each Planning and Zoning inspector covering a particular development will be provided a site plan, where special features will be highlighted noting buffers, amenities, or other requirements. The inspectors will monitor the progress of the developer in completing the amenities, buffers, etc., and ensure that they are as per requirements.**
- **Public Works inspectors will also continue to review amenities, buffers, conditions, etc. Planning and Zoning will notate on the Public Works copy of the record plan certain features to look for, such as buffers, retention ponds, landscaping, and other requirements set forth by conditions.**
- **A written signature of approval on final site plans from the Sussex Conservation District is required.**

**Citizens
Corps**

Joe Thomas, Director of Emergency Operations, presented a Proposed Resolution promoting the mission of the Citizens Corps in Sussex County, as presented to the Council on July 24, 2007.

**M 518 07
Adopt
R 021 07
Establishing
Sussex
County
Citizens
Corps**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 021 07 authorizing Joseph Thomas, Director of Emergency Operations to promote the mission of the Citizens Corps in Sussex County by establishing a Citizens Corps Council and affiliating as a sub-group with the Citizens Corps on the National level.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. DelDOT – Milford Area Route 1 Safety Improvements

As per the attached News Release from the Delaware Department of Transportation, DelDOT will be making changes to the Route 1

access in the Milford area. Cross access will be limited at various intersections as noted due to safety concerns. Per the attached release, changes will begin this year, with a grade-separated intersection at the Route 30 and Route 1 intersection occurring within the next few years.

Adminis-
trator's
Report
(continued)

2. **Delaware Department of Transportation Public Hearing – Delaware Capital Transportation Program**

On September 6, 2007, between 6:00 p.m. and 9:00 p.m. at the Delaware Tech Owens Campus Arts and Science Center, Owens Campus Theater, in Georgetown, a Public Hearing will be held to review the Capital Transportation Program for Sussex County for Fiscal Years 2009 through 2014. Attached is a copy of the notice regarding this meeting.

3. **Beneficial Acceptance**

The Engineering Department granted Beneficial Acceptance on August 13, 2007, to Vincent Overlook, Phase 1.1, Agreement No. 521. The developer is Vincent Property, L.L.C., and the project is located at the intersection of County Road 88 and County Road 261 in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of 35 single-family lots and a pumping station. Included with this report is a fact sheet on the project.

4. **Sussex County Council Schedule**

The next regularly scheduled meeting of the Sussex County Council will be September 11, 2007, at 6:30 p.m. In observance of Labor Day and a scheduled summer break, the Sussex County Council will not meet on August 28 or September 4, 2007.

Local Law
Enforce-
ment
Grant
Requests

Mrs. Webb presented the following requests for funding through the Revenue Sharing for Local Law Enforcement Grant Program:

Bethany Beach	\$25,000	Dodge Durango & Equipment
Bridgeville	\$25,000	Dodge Charger, Radar Gun, Computer Equipment

M 519 07
Approve
Local Law
Enforce-
ment
Grants

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council approves Local Law Enforcement Grants in the amount of \$25,000 each to the Town of Bethany Beach and the Town of Bridgeville.

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/
Sheriff
Fees
Public
Hearing/
Sheriff
Fees
(continued)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV §62-15 RELATING TO FEES CHARGED BY THE SHERIFF”. The Proposed Ordinance would increase Sheriff fees from 3 percent to 4 percent for the sale of lands and tenements and increase the minimum on these sales from \$300 to \$500 and establish a set-up fee for sales of lands and tenements at \$75. These changes would match the recently enacted changes made by New Castle County. Revenues of the Sheriff’s Department would increase approximately \$100,000 annually.

Stephen Smyk, Chief Deputy Sheriff for Sussex County, was in attendance. He stated that the purpose of the Ordinance is to bring fees in line with Kent County and New Castle County; that their workload has increased; that they are trying to streamline the operations of the Sheriff’s Office in order to cut costs; that they cannot control costs such as postage and fuel; and that the majority of the fees are bore by the attorneys and realtors.

Public comments were heard. Dan Kramer spoke in opposition to the proposed fee increases.

The Public Hearing was closed.

**M 520 07
Adopt
Ordinance
No. 1921**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1921 entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV §62-15 RELATING TO FEES CHARGED BY THE SHERIFF”.

Motion Adopted: 4 Yeas, 1 Nay.

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

**Proposed
Agreement
for Private
Roads and
Drainage
Con-
struction**

Tom Baker, Public Works Department, presented a Proposed Agreement for Private Roads and Drainage Construction - Administration and Inspection, which was developed by the County Public Works Department. In the past, the County has not used a specific agreement for the Administration and Inspection of Private Roads, although it has been used for sewer projects through Ordinance No. 38. Mr. Baker noted that this Agreement is very similar to the agreements for the Ordinance No. 38 projects with the exception that the County will not own and operate the road once it is completed. He explained that the Proposed Agreement provides a legal binding between the County and the Developer that is more definitive than what is currently written in the Code; it provides a time limit for the project; it allows the County to include the Homeowners Association at major points in time for their approval before the project is

turned over to them; it requires the present Developer to amend the Agreement should he sell it; it requires the Developer and the Contractor to have insurance; and it describes specific procedures for the project close-out.

**Proposed
Agreement
(continued)**

Mr. Rogers asked for additional time to review the Proposed Agreement. Tom Baker stated that before Substantial Completion is granted, the County would need an acceptance letter from Stormwater Management and Planning and Zoning.

Action was deferred.

**North
Coastal
Planning
Area/
Oak
Orchard
Expansion/
Contract
Amendment**

Russell Archut, Assistant County Engineer, presented a proposal from Whitman, Requardt & Associates to prepare the Facilities Plan and Environmental Assessment for the Oak Orchard Expansion No. 1. In May 2007, the Council expanded the boundaries of the Oak Orchard Sanitary Sewer District to include the area north of Oak Orchard, at which time there was some discussion about whether or not to include Captains Grant.

Mr. Archut stated that, in order to get grants and loans for the project, a Facilities Plan and Environmental Assessment must be performed. He noted that the Study would look at the expansion area with and without the Captains Grant subdivision. The cost of the proposal is approximately \$39,000 for the Facilities Plan and approximately \$8,600 for the Environmental Assessment.

Mr. Archut reported that the County Engineering Department will be meeting with representatives from Captains Grant on August 28th; a new poll in that subdivision shows that the majority of people are in favor of being a part of the sewer district.

**M 521 07
Authorize
Contract
Amend-
ment with
WR&A/
North
Coastal
Planning
Area/Oak
Orchard
Expansion
Area**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the President of the Sussex County Council is authorized to execute Contract Amendment No. 4 to its original Contract with Whitman, Requardt & Associates, LLP for the North Coastal Planning Area for the Oak Orchard Expansion Area No. 1, Facilities Plan and Environmental Assessment, at a cost not to exceed \$48,042.00.

Motion Adopted: 5 Yeas.

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

**Proposal
to Declare
Angola
Neck**

John Ashman, Director of Utility Planning, stated that, on August 18, 2007, the eligible voters approved the creation of the Angola Neck Sanitary Sewer District by a vote of 568 For the District to 339 Against the District; this total includes 128 Absentee Ballots. The County Council is required to issue

SSD
Proposal to Declare Angola Neck SSD (continued)

a determination establishing the District within 30 days of the referendum. This will allow the County Engineer and the County Attorney to procure the necessary lands and right of ways by purchase agreement for condemnation; it directs the County Engineer to prepare maps, plans, specifications and estimates; to let contracts for and supervise the construction and/or enlarging and remodeling of structures required for safe disposal of sewage; it directs the County Finance Director and County Engineering to apply for, accept and receive grants, loans and other funding necessary to provide adequate planning, design, and construction for all of the phases of the sanitary sewer district. Mr. Ashman stated that the first order of business with the approval of this sanitary sewer district would be to provide interim service to the Woods on Herring Creek, which has a failing community system.

Mr. Ashman advised that he has a request from Michael Izzo, County Engineer, in the form of a letter. Mr. Ashman read the letter into the record. In his letter, Mr. Izzo stated that he would like to lift the moratorium on connections at the Woods on Herring Creek on August 22, 2007 while the pumping and hauling continues to be performed; connections would be allowed on a hardship basis as determined by the County Engineer and the Homeowners Association, with DNREC's approval. Once the temporary connections are in place, then all connections would be permitted and the County would take over the temporary pumping and hauling in January. The temporary connection to Tidewater, Artesian, or West Bay Park is estimated to take place in six to nine months.

It was noted that no action is required by the County Council to lift the moratorium since no action was taken by Council to put it on.

M 522 07
Adopt
R 022 07
(Angola Neck SSD)

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Resolution No. R 022 07 entitled "ANGOLA NECK SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65 OF THE DELAWARE CODE".

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
Order

Bob Jones, Project Engineer, presented Change Order No. 12 to the Sussex County Emergency Operations Center Project, which consists of five potential changes in the communications of fiber optics and equipment, increasing the total cost of the contract by \$733.36.

M 523 07
Approve
Change

A Motion was made by Mr. Jones, 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 No. 12

**Order/
EOC
Project** **for Sussex County Project No. 04-02, Emergency Operations Center Building, be approved, which increases the Contract amount by \$733.36 for a new total of \$7,233,167.30.**

Motion Adopted: 5 Yeas.

**M 523 07
(continued)** **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
 Mr. Rogers, Yea; Mr. Jones, Yea;
 Mr. Dukes, Yea**

Requests **Susan Webb presented grant requests for the Council's consideration.**

**M 524 07
Community
Investment
Grant** **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00 from Mr. Jones' Community Investment Grant Account to the Bridgeville Apple-Scrapple Festival for expenses.**

Motion Adopted: 5 Yeas.

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

**M 525 07
Council-
manic
Grant** **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$250.00 from Mr. Jones' Councilmanic Grant Account to the Town of Bridgeville for their Charity Open Golf Tournament.**

Motion Adopted: 5 Yeas.

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

**M 526 07
Council-
manic
Grant** **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Councilmanic Grant Account) to the International Association of Approved Basketball Officials (IAABO Board #129) for the Third Annual Open Golf Tournament.**

Motion Adopted: 5 Yeas.

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

**M 527 07
Youth
Activity
Grant** **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$500.00 from Mr. Dukes' Youth Activity Grant Account to the City of Seaford for the Seaford Recreation Football Program.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance **Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR’S OFFICE AND PARKING FOR VEHICLES AND EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28,964 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1763) filed on behalf of Alton R. Stack. The Proposed Ordinance will be advertised for Public Hearing.**

Additional Business/ Independence Development/ **Under Additional Business, Tiffany Derrickson commented on the Forested Buffer Ordinance. She expressed her opinion that the problems with the County’s current Forested Buffer Law “stem far beyond the ambiguous language currently used in the Law”; that the County acts as though laws were made to be discretionary; that there is no accountability for the enforcement of County Law or penalties imposed to developers who violate the law; and that it is essential for the County to enforce the law and protect agricultural lands and the people that already own land and live in Sussex County.**

Ms. Derrickson stated that, since June 2007, she has been working diligently to receive a timeline from the County for when a 30 foot forested buffer will be put in place at the Independence Development along all lands adjacent to the N&M Burton Farm District. She stated that, on June 14, 2007, she personally delivered a letter to the Planning and Zoning Department documenting the violations at the Independence Development and requesting that permits be pulled until the dry pond is filled in and a 30 foot forested buffer approved by the State Forester be in place along all lands adjacent to the N&M Burton Farm District. She stated that, as of July 9th, construction at the Independence Development continued despite the fact that the violations continued.

Ms. Derrickson stated that on July 20th, Hal Godwin met with her and her mother; on August 3rd, Mr. Godwin sent the first written response they have received from the County informing them that the dry pond was to be filled in immediately but due to construction and dry conditions, there was no time line available for when the 30 foot forested buffer would be in place. Ms. Derrickson stated that they are still awaiting that timeline and that they are still waiting to hear if fines were enforced for the violations of County Law at the Independence Development.

Mr. Baker distributed a copy of a letter dated August 6, 2007 written by Shane Abbott, Assistant Director of Planning and Zoning, to Mark Chura

of Sussex Group Partners regarding the Independence Development and the 30 foot buffer requirements, requesting that the required 30-foot forested buffer be installed as soon as possible and that failure to correct this violation may result in Building Permits and Certificate of Occupancies being withheld until the matter is resolved.

**Additional
Business
(continued)**

Mr. Cole questioned if the County has a policy in regards to withholding Building Permits and Certificates of Occupancies.

Mr. Abbott responded that there is a policy; however, it is not a written policy and that the matter would have to be turned over to the Constable's Office. Mr. Cole stated that a written policy needs to be adopted by the Council.

Dan Kramer stated that it is neither feasible nor cost effective to have a 30 foot buffer in every zoning classification.

**M 528 07
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to adjourn at 11:45 a.m. Motion Adopted by Voice Vote.

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**