

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 28, 2001

Call to Order The regular meeting of the Sussex County Council was held Tuesday, August 28, 2001, 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
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

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

M 485 01 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to approve the agenda, Approve Agenda as distributed.

Motion Adopted: 5 Yea.

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

M 486 01 A Motion was made by Mr. Rogers, seconded by Mr. Jones, to approve the minutes of August 21, 2001, as distributed. Approve Minutes

Motion Adopted: 5 Yea.

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

Correspondence Mr. Bayard read the following correspondence:

JOSEPH T. CONAWAY, PRESIDENT, TOWN OF BRIDGEVILLE, BRIDGEVILLE, DELAWARE.

RE: Letter in appreciation of the \$15,000 Transfer Tax check.

ALLAN FINLAYSON, PRESIDENT, BAY COLONY PROPERTY OWNERS ASSOCIATION.

RE: Letter in appreciation of Council's favorable vote approving the County's takeover of the collection system in the Holt's Landing Sewer District.

Corre-
spondence
(continued)

U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA, PENNSYLVANIA.
RE: Public Notice to solicit comments and recommendations from the public concerning issuance of a Department of the Army permit for the work proposed by (1) Bayside Hamlet Property Owners Association (Beach Cove on Indian River Bay) and (2) Delaware Department of Natural Resources (Delaware Bay).

M 487 01
Adopt
Proclamation

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt the Proclamation entitled "PROCLAIMING THE MONTH OF SEPTEMBER, 2001 AS 'NATIONAL FOOD SAFETY EDUCATION MONTH'".

Motion Adopted: 5 Yea.

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

Present
Proclamation

The Proclamation was presented to Mary Wilcoxon, Extension Educator, Family & Consumer Sciences, University of Delaware Cooperative Extension, Georgetown, Delaware. Ms. Wilcoxon advised Council of food safety activities that have been planned by the Sussex County Cooperative Extension.

Sussex
County
North-
South
Tranpor-
tation
Study

Secretary Nathan Hayward, III, Delaware Department of Transportation, presented the results of the Sussex County North-South Transportation Study, a study to determine the feasibility of a north-south limited-access highway in Sussex County.

The Secretary explained that in December 2000, Senator George Bunting sponsored Senate Resolution No. 20, calling upon the Delaware Department of Transportation to address the issues of growth and traffic in the north-south corridor in Sussex County and to prepare an analysis of potential options. The Secretary responded to Resolution No. 20 by instructing DelDOT's Director of Planning and Policy, Ralph A. Reeb, to work with Sussex County staff in the conduct of a feasibility study. The firm of Whitman, Requardt and Associates, LLP was engaged to perform the work, and the study was started in March 2001.

Secretary Hayward reported that the Working Group Members of the Study are Robert L. Stickels, Sussex County Administrator; Lawrence Lank, Sussex County Director of Planning and Zoning; David Baird, Manager, Town of Georgetown; Joseph T. Wutka, Deputy Director of Planning, DelDOT; Thomas J. Shafer, Consultant to Whitman, Requardt and Associates; and Jeffrey R. Riegner, Whitman Requardt and Associates.

According to Senate Resolution 20, there are a number of factors that have led to the need to study north-south travel in Sussex County. The imminent completion of the 45-mile SR 1 corridor between northern New Castle County and the Dover Air Force Base in 2003 is likely to increase north-south traffic to and through Sussex County. At the same time, the communities along the County's current north-south routes continue to develop. Interstate and truck traffic traveling through the Delmarva Peninsula is also a significant contributor to traffic volume. In addition, as congestion in the Richmond, Washington D.C., Baltimore and Salisbury areas

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South
Transportation
Study
(continued)

continues to worsen, the Delmarva Peninsula becomes more attractive for regional through-traffic. Based on these factors, DelDOT considered (1) what solutions will allow for both local, commercial and residential traffic; (2) how to deal with the pattern of growing through-traffic; and (3) what can be done to recognize that Sussex County is a very important and increasingly popular destination.

The Secretary reported on the Working Group's evaluation of potential corridors and the resulting three basic options. He pointed out that the study noted that Sussex County has three north-south corridors (Route 1, US 13, and US 113), none of which is a limited-access facility. The study analyzed the north-south corridors and considered a number of important factors involved in building a new highway or upgrading existing roadways, including the cost, time to implement and environmental impacts including wetlands and agricultural areas. The three basic options discussed were as follows:

(1) Route 1

It was decided that it is not feasible to develop a new limited access highway along this corridor because of dense development and environmental constraints.

(2) US 13

US 13 has historically carried more traffic than US 113 and is more congested. US 13 has a substantial number of highway-dependent businesses and there would be substantial impacts to these businesses associated with a new alignment.

(3) US 113

US 113 serves some of the same transportation needs as Route 13, including traffic and connections between Sussex County towns. In addition, it serves as a major corridor for seasonal traffic.

The Working Group had to decide whether US 13 or US 113 should be the focus of further study work. The Secretary reported that the current plan to balance mobility and safety on US 13 with sound economic development has developed a broad base of support. Maryland's funding efforts are focused on converting US 113 to limited access as far north as Selbyville. Completion of limited access SR 1 as far south as Dover Air Force Base and the adoption of the SR 1 corridor capacity preservation plan have established the Dover-to-Milford corridor as the north-south route of choice in Sussex County. In light of these facts, the Working Group decided to focus on the US 113 corridor.

The Secretary discussed the alignments recommended for further study – Corridor 113-A (upgrade existing alignment) and Corridor 113-C (new alignment). The Working Group used three primary criteria to gauge these corridors: ability to serve regional as well as seasonal traffic, potential to be built in usable and affordable segments, and minimization of potential environmental impacts. Secretary Hayward summarized the basic plan for both corridors. The first option would be to add significant capacity to US 113, with a series of localized improvements in and

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Transportation
Study
(continued)

around each of the towns, while providing local traffic options, with minimal impact on the environment, at the lowest possible cost (\$400 million - \$500 million), and with a completion time of 5 years to 15 years. The total length of this option is 32 miles of roadway. The Secretary reported that a second option would be to take the existing Route 113 alignment and use parts of it, but then also build bypasses. This project would involve the construction of more lane miles; it would have a more significant impact on the environment; and it would take more time and more money. The total length of this option is approximately 34 miles of roadway, at a possible cost of \$650 to \$750 million, with a completion time of 15 to 20 years.

Although the Working Group considered several potential corridors both east and west of the existing US 113, the Group decided that a new highway corridor should be closer to the existing US 113. The major conclusion in the study is that DelDOT should change its Corridor Capacity Preservation Program for US 113 into a project with an emphasis on converting the existing alignment into a limited-access facility. The study also recommended that DelDOT take the following actions:

- Begin planning of a Milford bypass extension from Route 1 to US 113 to preserve right-of-way.
- Initiate discussions with towns along US 113 to plan for improved connections to major east-west roadways.
- Work with the County to better use existing ordinances to control access to US 113 and limit the number of additional traffic signals on the roadway.

The Working Group acknowledged that upgrading US 113 offers significant benefits in terms of cost, timing for implementation and reduction of potential environmental impact.

The Secretary advised that, now that the feasibility study has been completed, it is time to begin public debate to reach a consensus and with Council 's support, the Department will initiate that debate and solicit comments from the public, the towns, and the County.

Delaware
Solid
Waste
Authority
Transfer
Station

Mr. Canzano, Chief Operating Officer, and Mr. Houska, Chief of Administrative Services, Delaware Solid Waste Authority (DSWA), were in attendance to discuss the proposed transfer station to be located on a parcel of land situated near the intersection of Routes 5 and 48. The DSWA has identified growth in eastern Sussex County including Rehoboth and Lewes. The DSWA has concluded that they need to locate a transfer station approximately equidistant between the growth area and the Jones Crossroads landfill and have determined that this site will best serve the area's needs.

Mr. Houska explained that the transfer station concept is to consolidate the waste from smaller vehicles into larger vehicles, thereby reducing total traffic counts, which will result in a reduction in fuel consumption and vehicle emissions.

The DSWA plans to use only 30 acres (of the 301 acre parcel) for the actual site of the transfer station and any future facility expansion; the remainder of the parcel will be devoted to agriculture preservation and open space. Mr. Houska reported that a

Delaware
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Transfer
Station
(continued)

120' x 120' closed facility is proposed with a full Recycle Delaware Center located on the site. He noted that the DSWA wants the community to be involved in the design of the facility and the property. In response to concerns relating to groundwater contamination, Mr. Canzano advised that there will be no chemical processing of waste as it comes into the facility; that all wash-down fluids will be contained; and that no run-off of fluids will take place.

Mr. Houska reported that the DSWA is currently negotiating the purchase of the parcel and that finalizing the purchase will require final approval from the DSWA's Board of Directors.

Mr. Drain, an area resident, asked Council to take into consideration everything said by DSWA; to keep an eye on the DSWA; that this transfer station is for the Lewes/Rehoboth area and they should keep their own trash. Mr. Drain asked for Council's support of legislation that has been presented to Senator Bunting to require the DSWA to come before County Council for zoning changes like everyone else.

Mr. Dukes left the meeting due to a possible conflict of interest with the Public Hearing on Subdivision No. 2001-7, an application of Gary Watson.

Public
Hearing/
Subdivision
Application/
Appeal of
Gary
Watson

A Public Hearing was held on an appeal of the Sussex County Planning & Zoning Commission's decision to deny an application of Gary Watson for the subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, by dividing 41.86 acres into 37 lots, located north of Road 465, 2,340 feet west of Road 479.

The Planning and Zoning Commission held a Public Hearing on this application on May 24, 2001. On June 14, 2001 the Commission recommended that the application be denied for the following reasons:

- (1) Concerns about the poultry houses in the area on adjacent parcels.
- (2) Concerns about the project being built.
- (3) Concerns about the present up-keep of the site at this time.

Mr. Abbott, Assistant Director of Planning and Zoning, advised that this application originally received preliminary approval on January 28, 1999; that a revised preliminary approval was granted on February 25, 1999; that the Commission denied a six-month time extension on March 1, 2001; and that the application was voided. It was noted that this application is essentially the same as the previous application with the exception of the stormwater and curb design. In addition, it was noted that two of the five members on the Planning and Zoning Commission have changed.

Mr. Bayard questioned the Commission's concerns about poultry houses in the area on adjacent parcels; questioned what present upkeep of the site has to do with a planned subdivision to be built sometime in the future. Mr. Bayard noted that the difficulty the Council has is that it is only allowed to review the record that has been

Public Hearing
(continued)

made by the Planning and Zoning Commission to reach a decision as to whether or not to uphold the Commission's decision.

Mr. Rutt, Attorney, was present on behalf of the applicant. He expressed his opinion that (1) the Commission should have only taken testimony regarding whether the plan met the technical requirements of the statute, and (2) Mr. Gordy, Planning and Zoning Commission member, obtained information from area residents outside of the record.

There were no public comments in support of the application.

Public comments in opposition to the application were heard from one resident. Mr. Harry Koch stated that the applicant does not maintain the property. Mr. Bayard advised that this has no bearing on the proposed subdivision.

The Public Hearing was closed.

M 488 01
Defer
Action on
Appeal

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action on the appeal of the Sussex County Planning & Zoning Commission's decision to deny an application of Gary Watson, pending further review of the record.

Motion Adopted: 4 Yea, 1 Absent.

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

Land Use
Issue

Mr. Cole commented on restricting residential uses in agricultural districts and requested that this be placed on the agenda for the upcoming revision of the Land Use Plan.

Mr. Dukes rejoined the meeting.

Land Use
Plan
Consultant
Services

Mr. Stickels requested permission from the County Council to negotiate a contract with Shafer Consulting for the preparation of a new Land Use Plan. Mr. Stickels advised that this recommendation is being made following the County advertising for consulting services. Mr. Stickels noted that the County is required to update its Land Use Plan by October, 2002.

Mr. Stickels advised that County officials will meet with Mr. Shafer to draft a contract with a dollar amount for Council's approval. He noted that he anticipates a minimum of twelve public hearings being held – preliminary hearings in each Councilmanic District, a second public hearing in each Councilmanic District to report on the draft plan, and a formal Public Hearing for both the Planning and Zoning Commission and the Sussex County Council. In addition, meetings will be held with special interest groups, service organizations, etc.

M 489 01
Negotiate
Contract/
Consultant
Services

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council authorizes the Sussex County Administrator to negotiate a contract with Shafer Consulting to provide an updated Comprehensive Land Use Plan to comply with State legislation known as “Livable Delaware”, to include zoning ordinances required for implementation of the Plan, and preparation of zoning maps in a GIS format.

Motion Adopted: 4 Yea, 1 Abstention.

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

Land Use
Plan
Consultant
Contract

Comments were made by Councilmembers relating to the cost of the contract and having the work completed in-house. Mr. Stickels expressed his opinion that he does not feel it is wise to do the work in-house; that the County needs the expertise of a consulting firm; that hiring a consultant is more cost-effective; and that the additional workload would put a burden on County staff.

DelDOT
Five-Year
Capital
Improve-
ment
Program

Mr. Stickels reviewed a list detailing the County’s priority requests for DelDOT’s Five Year Capital Improvement Program, as follows:

1. North-South Limited Access Highway

(Mr. Stickels advised that he will request that \$100 million be funded annually in the Five Year Capital Improvement Program for this project.

2. East-West Improvements

a. SR 36 from US 113 west of Milford to SR 404 east of Greenwood.

b. SR 16 from SR 36 east of Greenwood to the termination of the road at the Delaware Bay.

c. SR 404 east of US 113 to Delaware Technical & Community College in Georgetown west of US 113 and east of SR 5 to SR1 west of Lewes.

d. SR 24 from west of SR 30 to east of the Route 1 intersection north of Rehoboth.

e. SR 26 from the Assawoman Canal west to US 113.

f. SR 54 from 58C west to US 113.

3. SR1 Dewey Beach Improvements from Salisbury Road, Dewey Beach, to Lewes and Rehoboth Canal

4. SR 30 and SR5

5. Stormwater drainage improvements into South Bethany Canal.

DeIDOT
Five-Year
Capital
Improve-
ment
Program
(continued)

- 6. Georgetown – Park Avenue - SR 318 east of Georgetown and SR 321 south of SR 9 have been designated as a truck relief route for the Town of Georgetown. (The current road conditions are not safe for a truck relief route.)
- 7. Sussex County Aviation Projects.

Mr. Stickels noted that this list is not in final form and can be amended; however, he does need to prepare the final report and requested an endorsement from the Council for the proposed projects.

Mr. Stickels estimated that the County's requests for this year total approximately \$350 million. He noted that three public hearings have been scheduled:

- September 12th – Wilmington
- September 13th – Georgetown
- September 19th – Dover

M 490 01
Endorse
DeIDOT
Five-Year
Capital
Improve-
ment
Program
Requests

A Motion was made by Mr. Rogers, seconded by Mr. Jones, that the Sussex County Council endorses the proposed Capital Improvement Program requests, as prepared and presented by the County Administrator.

Motion Adopted: 5 Yea.

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

First
State
Inspection
Agency-
Contract
Extension

Mr. Milligan, Sussex County Building Code Supervisor, and Mrs. Nancy Shockley of First State Inspection Agency, were in attendance to ask Council to consider authorizing a two-year extension to the contract between Sussex County Council and First State Inspection Agency. In August, 1983 the County entered into a contract with First State Inspection Agency for services associated with performing single-family building code inspections in Sussex County. Extensions to the contract were authorized in 1995 and 1998. Mr. Stickels recommended approval of the two-year extension with the following contingencies:

- 1. First State Inspection Agency shall conduct onsite inspections consisting of footing, framing, energy and final inspections.
- 2. First State Inspection Agency shall provide at least five qualified inspectors which will conduct inspection requests within 48 hours after verbal or written request. First State agrees to pay liquidated damages of \$40.00 for each and every inspection which is not performed within 48 hours after a request is made.
- 3. The County agrees to pay First State 70 percent of the collection inspection fee.

First State Inspection Agency Contract Extension (continued)

4. First State agrees to indemnify and hold the County harmless from any and all liability.
5. The County's Director of Building Inspections shall be authorized to make a final decision regarding disagreements over Building Code interpretation.
6. Agreement shall remain in effect for a period of 2 years from September 1, 2001 to September 1, 2003. The County shall have the sole option to terminate at the completion of the first year by providing written notice at least 180 days prior to termination.
7. First State shall, at the request of the County, conduct plan reviews on an emergency basis to meet the 1992 CABO One and Two Family Building Code or the current code, as adopted by the County.
8. County will pay First State 90 percent of charges for any additional required inspections.

M 491 01 Authorize Contract Extension/ First State Inspection Agency

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to authorize a two-year extension to the contract between the Sussex County Council and the First State Inspection Agency.

Motion Adopted: 5 Yea.

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

Adminis- trator's Report

Mr. Stickels distributed his County Administrator's Report containing the following information:

1. U.S. 13 Corridor Capacity Preservation Program

The Delaware Department of Transportation is holding a public workshop to present the U.S. Route 13 Corridor Plan in the Bridgeville area, which will include proposed improvements as part of the U.S. Route 13 Corridor Capacity Preservation Program. The workshop will be held on Tuesday, September 18, 2001, at the Bridgeville Fire Hall, Main Street, Bridgeville, Delaware. The public is invited to attend between 4:00 p.m. and 7:00 p.m.

2. Scenic Byways Public Workshop

The Delaware Department of Transportation (DelDOT) is holding three public workshops to receive public input as it develops a State Scenic and Historic Highways Program. The Sussex County workshop will be held on Monday, September 17, 2001, at the DelDOT South District Office, Route 113, Georgetown.

Adminis-
trator's
Report
(continued)

At each public hearing, Department staff will be available from 4:00 p.m. to 7:00 p.m. to provide information on the program and to answer questions. At 6:00 p.m., Department staff will provide a presentation that includes an overview of the program and program guide, followed by an opportunity for the public to offer comments and ask questions.

DelDOT has completed a draft that establishes the program and its guidelines and provides the vision for Delaware's Scenic and Historic Highways Program, and also an overview of the designation process, including how citizens can nominate roadways for the program.

3. Holiday Schedule

Sussex County offices will be closed Monday, September 3, 2001, to allow employees to observe the Labor Day holiday. County offices will reopen at 8:30 a.m. on Tuesday, September 4, 2001.

There will not be a Council meeting on Tuesday, September 4. The next regularly scheduled Council meeting will be at 10:00 a.m. in the Council Chambers on Tuesday, September 11, 2001.

M 492 01
Amend
Agenda

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to amend the agenda by deleting "Russell Archut, Assistant County Engineer, 1. Proposed Miller Creek Sanitary Sewer District. A. Boundary Resolution", and moving it to the September 11, 2001 agenda; and, to move "Grant Requests" to the end of the afternoon agenda.

Motion Adopted: 5 Yea.

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

Luncheon

The Sussex County Council attended a luncheon with Secretary of Finance David W. Singleton at the Sussex Pines Country Club.

Council-
man
Phillips

Mr. Phillips advised that he would not be in attendance at the Public Hearings beginning at 1:30 p.m. He noted that he would listen to the taped proceedings of the Public Hearings on which action is deferred so that he can participate in the vote in the future.

M 493 01
Recess

At 12:21 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Dukes called Council back into session at 1:52 p.m.

Public
Hearing

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO A GR GENERAL

Public
Hearing
(C/Z
No. 1442)
(continued)

RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.0154 ACRES, MORE OR LESS” (Change of Zone No. 1442) filed on behalf of Allen S. Jester.

The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2001 at which time they recommended that the application be approved since it is a downzoning. Mr. Lank, Director of Planning and Zoning, distributed to Council the findings of the Planning and Zoning Commission and copies of all the correspondence and reports pertaining to the application. This information was made a part of the record.

The Council found that Allen S. Jester was present on behalf of his application. Mr. Jester stated that the site was originally zoned GR General Residential; that the property was approved for B-1 Neighborhood Business approximately eight years ago so that he could operate a business on the site; and that he wants to down-zone the property so that a mobile home can be permitted on the site

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

M 494 01
Adopt
Ordinance
No. 1488
(C/Z
No. 1442)

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Ordinance No. 1488 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.0154 ACRES, MORE OR LESS” (Change of Zone No. 1442) filed on behalf of Allen S. Jester.

Motion Adopted: 4 Yea, 1 Absent.

Vote by Roll Call: Mr. Phillips, Absent; Mr. Cole, Yea;
Mr. Rogers, 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 proposed change of zone will restore the property to its former residential zoning classification, which is consistent with the zoning classification of the surrounding area. As such, this change of zone is endorsed by the Comprehensive Land Use Plan. As a result, there is no adverse impact of any sort that can be caused by this change of zone.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Public
Hearings
(C/Z
No.1443
and
C/U
No. 1414)

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 M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 68.2873 ACRES, MORE OR LESS" (Change of Zone No. 1443) filed on behalf of Merritt Burke III and a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SEASONAL CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 43.78 ACRES, MORE OR LESS" (Conditional Use No. 1414) filed on behalf of Merritt Burke III.

The Planning and Zoning Commission held a Public Hearing on these applications on August 9, 2001 at which time they deferred action. Mr. Lank, Director of Planning and Zoning, distributed to Council the findings of the Planning and Zoning Commission and copies of all the correspondence and reports relating to the applications. This information was made a part of the record.

The Council found that Merritt Burke III was present on behalf of his application. Mr. Burke stated in his presentation that he has proven roots in the area; that he has a proven track record in historical and ecological development; and that he is involved in many preservation groups; that Cedar Creek is historically a commercial fishing village; that the area he is requesting to be rezoned for Marine Use is used for charter boats, docks, and other marine uses; that his plans for the site include boat storage, rebuilding boat slips, and kayak, motor boat and sail boat rentals; that the site has fallen into disrepair; that DNREC has granted approval for 17 boat slips on the Cedar Creek Canal and that he does not intend to expand the boating slips, only to repair and maintain them; that the site has been used for boat storage in the past; that the conditional use application is for a seasonal campground; that he only plans for the campsite to be open from the beginning of fishing season (in March) until the first day of deer season (in November) and then it will be closed and everything will be moved off of the site; that there will be no year-round structures; that there will not be sewer and water hook-ups to each campsite; that all directional signs to the site will be located along Route 1 and Route 36; that there are existing berms surrounding Fort Salisbury; that woods and trees grow on the berms; that it is an excellent site for a campsite location; that there is a need for primitive camping in Sussex County; that the Mispillion Light House and Fort Salisbury should be turned into an historical site and should be an area for tourists to come to; that the site is excellent for eco-tourism; that he has no plans to alter the wetlands; that he would not have a problem with the M-1 rezoning changed to stop at the existing access road to the campground (including the bunkers)

Public comments were heard in support of the application. Comments included a discussion regarding the historical significance of Fort Salisbury, the only surviving World War I fort which is virtually unaltered and in its original state; that currently a PT308 (a World War II motor-control torpedo boat) restoration project is taking

Public Hearings (C/Z No. 1443 and C/U No. 1414) (continued)

place and upon completion, could be displayed in one of the bunkers at Fort Saulsbury; and that Mr. Burke has expressed an interest in preserving Fort Saulsbury and making a museum out of one of the bunkers for the display of the PT308.

Comments in support of the application also referred to the history of the site and that fact that the County rezoned the property to AR-1 Agricultural Residential in 1971 even though the property was being used for industrial activities. Comments were made that the site would make a wonderful recreational and historical facility; that roads and the beach in Slaughter Neck are public; that the use will not have a negative impact on Slaughter Neck; and that the uses proposed are consistent with the uses at Fort Saulsbury over the years.

Public comments were heard in opposition to the application. Robert Clendaniel, Mayor of Slaughter Beach, advised that the Town Council voted unanimously to oppose these applications since the proposed uses would result in a financial burden on the Town of Slaughter Neck; that with the influx of more people, lifeguards, police officers, and public works personnel will be needed; that the Town's budget for public services is very limited; and that tax increases may result so that the services could be provided. The Mayor requested that the public hearing record remain open.

Concern was expressed regarding what the M Marine zoning classification and the conditional use will allow; that the proposed uses would have an adverse effect on Fort Saulsbury; that Fort Saulsbury is too valuable a piece of Delaware history to be used for commercial uses; that the uses could put a great burden on the Town's public facilities; that the uses could be detrimental to the Town's quiet residential character; that the uses could result in public safety and environmental problems; that there will be an increase in traffic; that Route 36 cannot handle additional traffic; that Route 36 is an evacuation route; that the Town has no police force; that the creek cannot handle any more traffic from boats, wave runners, jet skis, etc.; and that a very fragile Eco-system exists in the marsh and beach areas.

The Public Hearing was closed.

Defer Action It was the consensus of Council to defer action and to leave the record open for written comments for a period 20 calendar days following the date that the Planning and Zoning Commission makes its recommendation.

Recess At 4:20 p.m., Mr. Dukes declared a ten minute recess.

Reconvene At 4:30 p.m., Mr. Dukes called Council back into session.

Public Hearing (C/U No. 1413) 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 EXPANSION OF AN EXISTING BORROW PIT (CONDITIONAL USE NO. 954 AND NO. 1079) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 200.5 ACRES, MORE OR LESS" (Conditional Use No. 1413) filed on behalf of Edward J. Kaye.

Public
Hearing
(C/U
No. 1413)
(continued)

The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2001 at which time they deferred action. Mr. Lank, Director of Planning and Zoning, distributed to Council the findings of the Planning and Zoning Commission and copies of all the correspondence and reports relating to the application. This information was made a part of the record.

Mr. Bayard submitted into the record 119 letters from area residents, all containing the same language in opposition to the application.

The Council found that Edward J. Kaye and John Sergovic, Attorney, were present on behalf of the application and stated that the application is for the expansion of an existing borrow pit that has been operating since 1984; that the applicant operates a construction and sand and gravel business; that this application pits two competing potential land owners, the Delaware Nature Conservancy who wanted to buy the property and Edward J. Kaye who bought the property; that a lot of comments received from State agencies say that the purpose of the Delaware Nature Conservancy is better than a borrow pit; that State agencies are using all of their power to limit the use of this property; that there is a lot of speculation on concerns regarding this particular operation that are well dispelled by actual evidence and testimony, particularly the evidence of the applicant operating a facility without any degradation to the environment and without any interference of land use values; that additional borrow is needed in the area; that they propose the same attributes as the existing borrow operation across the Branch; that the proposed site is not suitable for agricultural activities; that the Kaye borrow pit has been a source of supply for borrow for DelDOT highway and bridge projects for many years; that the existing borrow operation will be completed within five to seven years; that they have no written violations for activities on the existing site from DNREC or Planning and Zoning; that DelDOT did not require a traffic impact statement; that the bridge/pipeline on the site plan will be subject to review and approval by the Army Corps of Engineers and DNREC; and that the use is in compliance with the Comprehensive Land Use Plan.

Elizabeth Brown, a Geologist with Davis, Bowen and Friedel gave her professional opinion that the proposed use will have no adverse impact on groundwater; that excavation does not affect the water level; and that the natural hydraulics of the area will not be changed.

Jim Huston of Huston Appraisal Company was present and stated that he sees no reason to anticipate any depreciation of property values if the site is bermed and landscaped.

David Hardin of Environmental Resources Inc.; Ted Simpler, Surveyor; and Rick Sizemore, Realtor, commented on the concerns of the Office of State Planning and various environmental advocacy organizations in relation to environmental issues; commented on the existing entrance designed by DelDOT; and commented on property values.

Public
Hearing
(C/U
No. 1413)
(continued)

Michael McGroerty, Attorney for the Opposition; Elizabeth Zucker of the Nature Conservancy; and area residents stated that the proposed use will affect people that live in the area; will harm habitat on the preserve and on the river; will create personal safety issues especially with children in the area; will destroy the quietness of the area; will have a negative impact on property values; will cause a fragmentation of forest lands; will cause a loss of wetlands; and will affect the watershed. Concern was expressed that area roads were not intended for heavy truck traffic; that the use will create noise and dust; that the use does not comply with the Comprehensive Land Use Plan; that high sediment discharges would end up in the River; that water quality downstream will deteriorate; that there is a dangerous 90 degree turn at the entrance of the borrow pit; and that the use is incompatible with the area's established agricultural, residential, and conservation lands.

The Public Hearing was closed.

Defer
Action

It was the consensus of Council to defer action and to leave the record open for written comments for a period of 20 calendar days following the date that the Planning and Zoning Commission makes its recommendation.

M 495 01
Council-
manic
Grant

A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$500.00, \$250.00 each from Mr. Jones' and Mr. Rogers' Councilmanic Accounts, to the Sussex Central High School for the German American Exchange.

Motion Adopted: 4 Yea, 1 Absent.

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

M 496 01
Council-
manic
Grant

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$250.00, \$125.00 each from Mr. Jones' and Mr. Rogers' Councilmanic Accounts, to the Bad Company Softball Team for the Co-Ed Regionals.

Motion Adopted: 4 Yea, 1 Absent.

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

M 497 01
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$500.00, \$250.00 each from Mr. Dukes' and Mr. Phillips' Councilmanic Accounts, to the Bethel Historical Society for Heritage Day.

Motion Adopted: 4 Yea, 1 Absent.

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

M 498 01
Youth
Activity
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$250.00 from Mr. Phillips' Youth Activity Grant Account to the Delaware 4-H Foundation for the 2001 State Camp.

Motion Adopted: 4 Yea, 1 Absent.

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

M 499 01
Youth
Activity
Grant/
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$1,000.00, \$750.00 from Mr. Cole's Youth Activity Grant Account and \$250.00 from Mr. Cole's Councilmanic Account, to the Town of Selbyville for the ballfield and equipment.

Motion Adopted: 4 Yea, 1 Absent.

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

M 500 01
Youth
Activity
Grant

A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$750.00 from Mr. Jones' Youth Activity Grant Account to the Woodbridge Pop Warner for equipment, insurance, transportation, and uniforms.

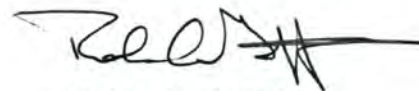
Motion Adopted: 4 Yea, 1 Absent.

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

M 501 01
Adjourn

A Motion was made by Mr. Jones, seconded by Mr. Cole, to adjourn at 8:12 p.m.
Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council