



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 11, 2007

**9/11 Ceremony** At 6:00 p.m. on September 11, 2007, a special recognition ceremony was held to commemorate the sixth anniversary of 9/11 and to recognize local heroes who serve Sussex County. Special awards were handed out in recognition of the Firefighter, Paramedic, EMT and Communications Specialist of the Year, along with the Delaware State Trooper of the Year.

**Call to Order** A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 11, 2007 at 6:35 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

|                             |  |
|-----------------------------|--|
| <b>Dale R. Dukes</b>        | <b>President</b>                             |
| <b>Finley B. Jones, Jr.</b> | <b>Vice President</b>                        |
| <b>George B. Cole</b>       | <b>Member</b>                                |
| <b>Vance Phillips</b>       | <b>Member</b>                                |
| <b>Lynn J. Rogers</b>       | <b>Member</b>                                |
| <b>David Baker</b>          | <b>County Administrator</b>                  |
| <b>Susan M. Webb</b>        | <b>Finance Director</b>                      |
| <b>Hal Godwin</b>           | <b>Assistant to the County Administrator</b> |
| <b>James D. Griffin</b>     | <b>County Attorney</b>                       |

**M 529 07 Approve Agenda** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by (1) deleting "Old Business: Conditional Use No. 1705, The Commonwealth Group" and (2) moving "Executive Session – Pending Litigation and Property Acquisition" to immediately follow "Any Additional Business Brought Before Council", and to approve the Agenda, as amended.

**Motion Adopted:** 4 Yeas, 1 Absent.

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

**M 530 07 Approve Minutes** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of July 31, 2007.

**Motion Adopted:** 4 Yeas, 1 Absent.

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

**M 531 07** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve  
**Minutes** the minutes of August 7, 2007.

**M 531 07** Motion Adopted: 4 Yeas, 1 Absent.

**Approve**  
**Minutes**  
**(continued)**

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

**M 532 07** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve  
**Approve** the minutes of August 14, 2007.  
**Minutes**

Motion Adopted: 4 Yeas, 1 Absent.

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

**Corre-**  
**spondence**

Mr. Griffin read the following correspondence:

**DELAWARE QUARTER HORSE ASSOCIATION, GREENWOOD,  
DELAWARE.**

**RE: Letter in appreciation of the grant from Councilman Jones.**

**Mr. Jones joined the meeting.**

**M 533 07** A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt the  
**Adopt** Proclamation entitled "PROCLAIMING MONDAY, SEPTEMBER 24,  
**Procla-** 2007, AS FAMILY DAY".  
**mation**

Motion Adopted: 5 Yeas.

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

**M 534 07** A Motion was made by Mr. Phillips, seconded by Mr. Jones, to appoint Earl  
**Appoint-** Savage to the Library Advisory Board for a term of three years.  
**ment to**

**Library**  
**Advisory**  
**Board**

Motion Adopted: 5 Yeas.

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

**Prescrip-** Mr. Baker presented a proposal for a Prescription Drug Card Program

**tion Drug  
Card  
Program**

offered by the National Association of Counties (NACo), which would be sponsored by the County in collaboration with NACo.

**Prescrip-  
tion Drug  
Card  
Program  
(continued)**

Mr. Baker reported that Caremark was chosen as the program provider. He explained that the program provides great flexibility for participating counties. The prescription discount cards can be used by anyone – senior citizens, the elderly, or the uninsured. The card can also be used by those with existing health coverage, for drugs that are not covered by their health plan. There would be no cost to NACo, no cost to the counties participating in the program and no cost to the citizens using the discount card. Citizens do not have to fill out any forms to participate and; therefore, the counties do not have to maintain any database of who has the cards. The cards will be given to citizens with a brochure and can be used immediately by anyone who needs it. The overall average savings is about 20 percent; savings differences are based on brand-named prescriptions versus generic.

Mr. Baker stated that, once the cards are received, probably in late Fall, they will be available in local libraries and other County buildings.

**M 535 07  
Authorize  
Partici-  
pation in  
Prescrip-  
tion Drug  
Program**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to authorize the County Administrator to execute the Prescription Drug Card Program contract between Sussex County, the National Association of Counties, and CaremarkPCS Health, L.P.

**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. Heron Bay, LLC, Buffer Update**

I am pleased to report to Council that the County has brokered a compromise solution to the Heron Bay buffer issue that developed earlier this summer.

On August 30, 2007, County staff received a third revised landscape plan for this subdivision and the area between the project and the property known as the Marsh Farm. This plan now has been approved by the Sussex Conservation District and the State Forester. The proposed plan includes a white vinyl post and rail fence extending along the entire length of the existing vegetative border. It also includes plantings of new trees and shrubs between the Marsh family's property line and the high water line of the storm water pond that was constructed. The area to be planted covers a strip approximately 25 to 30 feet wide between the Marsh property line and the high water mark of the storm water retention pond.

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

**In short, the proposal creates a new and suitable buffer, and it should provide the necessary protections to adequately separate the residential subdivision and the Marsh property.**

**This plan was voluntarily proposed and provided by the developer, Heron Bay, LLC. In the past two months the County has worked with the developer, the Sussex Conservation District, and the State Forester to finalize it and to bring about an amicable solution to the issue at hand.**

**That's where we are today and it is my hope that we can move forward. But it is important to note how this situation developed. It is equally important to outline what we are doing in its wake.**

**During the original approval process for Heron Bay undertaken by a previous developer, the Sussex Conservation District, the State Forester, and the County's Planning and Zoning Commission approved site plans that showed only a 10-foot utility easement between the Marsh property and the top edge of the slope of the storm water pond. This was consistent with past practice by the Sussex Conservation District and the Planning and Zoning Commission, all of which had, to that point, interpreted the forested buffer definition to allow storm water management areas next to agricultural lands or within 30-foot buffers where no lots exist next to the agricultural uses.**

**The 30-foot buffer was intended to provide protection between residential lots and homes and agricultural uses such as poultry houses, dairy farms, etc.**

**Because the development had received all final approvals regarding this aspect of the project, the County Attorney has advised that the County does not have authority to require a change in the approved plan regarding the buffer. To put it bluntly, no violation per se occurred, thereby making any enforcement action moot. Thus, our only avenue was to work with the developer and to voluntarily make changes to the approved plan.**

**Over the last few months since this was brought to our attention, we have worked with the developer, landscape architect, Sussex Conservation District, State Forester, and the Planning and Zoning Office to arrive at this revised and approved plan. The developer has advised that work will begin during October 2007 to install the fence and plantings.**

**This situation has illustrated some shortcomings within the wording of our existing buffer ordinance. We are now working to change**

Adminis-  
trator's  
Report  
(continued)

that. I believe it is fair to say that 14 years ago when the buffer ordinance was enacted, County Council did not consider whether buffers were required along storm water management ponds, or how storm water management ponds affected the buffer areas. Instead, the primary intent was to require buffers directly between residential lots and agricultural uses. Given the ordinance's ambiguity and the past interpretations of the ordinance by Planning and Zoning and the Sussex Conservation District, the ingredients were in place to create the current situation.

The County acknowledges its role in this whole process and is now taking a number of steps administratively, per the attachment, to ensure this does not occur again. Additionally, staff and legal counsel are working together on tightening the buffer ordinance. It is my belief that these actions will put us in sync with the intent and spirit of our buffer law and provide stronger safeguards for the future.

2. Delaware State Police Report – July 2007

Attached is a copy of the July report from the Delaware State Police for Sussex County. As per the report, there were 1,705 criminal arrests and 4,282 traffic arrests by the Delaware State Police during the month of July.

3. Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities Meeting – September 17, 2007

Attached is a copy of the agenda for the September 17, 2007, meeting of the Advisory Committee for the Aging and Adults with Physical Disabilities. The meeting will be held at 10:00 a.m. at the Sussex County West Administrative Complex in the conference room there.

4. Delaware Transit Corporation Workshop

A workshop will be held on September 20, 2007, between 11:30 a.m. and 1:00 p.m. at the Milford Library by the Delaware Transit Corporation regarding First State bus service in Sussex County. Attached is information regarding the upcoming meeting.

5. Fenwick Island Sewer District – Route 54 USDA Bond Funding

On August 31, 2007, the County received notice that \$2,800,000 has been approved for funding for the pump station upgrade for the Fenwick Island Sewer District along Route 54. This 40-year loan at 4.25 percent will help maintain affordable rates in the area.

6. Lochwood Suburban Community Improvements Project Election

On August 23, 2007, an election was held regarding providing

suburban community road improvements for the Lochwood Subdivision at the request of the residents there. The community elected to not proceed with the project. The vote was 91 No and 71 Yes votes.

Adminis-  
trator's  
Report  
(continued)

7. South Coastal Library Construction Project Update

The South Coastal Library will be closing on Monday, September 17, 2007, to begin its move to a temporary location next to the Millville Emergency Center by the Food Lion on Route 26. Attached is information regarding the move. The library expects to reopen at the new location by October 15.

8. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance to Acri Construction, L.L.C., Agreement No. 669, on August 31, 2007. The developer is Acri Construction, L.L.C., and the project is located within the town limits of Ocean View in the Ocean View Expansion of the Bethany Beach Sanitary Sewer District, consisting of nine single-family dwellings. Included with this report is a fact sheet on the project.

Introduction  
of Proposed  
Ordinance

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO AN ADDITIONAL \$1,203,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FRO THE CONSTRUCTION AND EQUIPPING OF THE OAK ORCHARD SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". The Proposed Ordinance will be advertised for Public Hearing.

Wastewater  
Agreements

Mr. Godwin presented Wastewater Agreements for the Council's consideration.

M 536 07  
Approve  
Wastewater  
Agreements/  
Bayshore  
Plaza II

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 632, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Bayshore Plaza III, LLC, for wastewater facilities to be constructed in Bayshore Plaza, II, located in the Long Neck Sanitary Sewer District.

Motion Adopted: 5 Yeas.

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

- M 537 07**  
**Approve**  
**Wastewater**  
**Agreements**
- M 537 07**  
**Approve**  
**Wastewater**  
**Agreements/**  
**Millville**  
**Expansion**  
**of the**  
**BBSSD**  
**(continued)**
- Edwin**  
**Walls/**  
**Lease**  
**Termination**  
**Agreement**
- M 538 07**  
**Authorize**  
**Lease**  
**Termination**  
**Agreement/**  
**Edwin**  
**Walls**
- Hangar**  
**Lease/**  
**Air**  
**Methods**  
**Corp.**  
**(LifeNet)**
- A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 668, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and The Millville Group, LLC, for wastewater facilities to be constructed at Millville by the Sea (Section 1), located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea
- Jim Hickin, Director of Airport and Industrial Park Operations, presented a Lease Termination Agreement between Sussex County and Edwin T. Walls. On May 16, 2006, Mr. Walls entered into a Lease Agreement with the County; under the terms of the Agreement, the lease would be terminated if the Tenant had not commenced construction of an aircraft hangar before November 16, 2006. Mr. Walls has indicated that he would like to terminate the lease.
- Mr. Hickin reported that there is a waiting list for hangar space and the termination of the lease would give them the opportunity to offer the site to someone on the waiting list.
- A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the Sussex County Council authorizes the termination of the existing Lease Agreement with Edwin T. Walls for Lot C-1 at the Sussex County Airport.
- Motion Adopted: 5 Yeas.
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea
- Mr. Hickin presented a Lease Agreement between Sussex County and Air Methods Corporation (Air Methods Corporation owns Rocky Mountain Holdings, LLC which operates in Delaware as LifeNet). He noted that LifeNet has been a sub-tenant at the Sussex County Airport for the past year.
- Mr. Hickin stated that the Lease Agreement is for Lot A-2 (the American Aerospace lot, which has been terminated through default). The terms of the lease are as follows: a three year lease ending in September 2010 with two 3-year options; the rent amount would be \$18,000 per year with a 3 percent increase with each option; no subletting would be permitted.

**M 539 07**  
**Approve**  
**Agreement**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council approves the Lease Agreement with Air Methods Corporation for Lot A-2 at the Sussex County Airport.

**M 539 07**  
**Approve**  
**Lease**  
**Agreement**  
**(continued)**

**Motion Adopted:** 5 Yeas.

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

**Delta**  
**Airport**  
**Consultants**  
**Contract**  
**Amendment**  
**Runway**  
**10-28**  
**Project**

Mr. Hickin presented Amendment No. 21 to the County's contract with Delta Airport Consultants (Delta) for the Crosswind Runway 10-28 Project. He noted that, several weeks ago, Senator Carper and Congressman Castle were at the Airport to announce a 4.4 million grant for the project which will cover the Engineering Agreement and construction services with Delta. Mr. Hickin reported that the County needs to proceed with Delta for construction services. The total cost of the amendment is \$630,326.00, most of which is for construction administration (\$467,000). He noted that this would be a nine-month project that will involve having a project representative on site; work will also include quality insurance testing (\$100,000) and surveys to clear all the obstructions.

**M 540 07**  
**Approve**  
**Contract**  
**Amendment**  
**with Delta**  
**Airport**  
**Consultants**  
**for Runway**  
**10-28**  
**Project**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Amendment No. 21 to the Engineering Agreement between Sussex County and Delta Airport Consultants, Inc. to rehabilitate Crosswind Runway 10-28 (Reconstruct Crosswind Runway), Phase IV (Redesign, Repackaging, Bidding, and Construction Phase Services) for the Sussex County Airport, which increases the original contract amount by \$630,826.00, pending approval from the County Finance Director, DelDOT, and/or the FAA.

**Motion Adopted:** 5 Yeas.

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

**Requests**

Mrs. Webb presented grant requests for the Council's consideration.

**M 541 07**  
**Council-**  
**manic**  
**Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 (\$400.00 from Mr. Dukes' Councilmanic Grant Account and \$100.00 from Mr. Phillips' Councilmanic Grant Account) to the Bethel Historical Society for the Bethel Maritime Fall Festival.

**Motion Adopted:** 5 Yeas.



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

**M 542 07** A Motion was made Mr. Phillips, seconded by Mr. Jones, to give \$2,500.00  
**Community** from Mr. Phillips' Community Investment Grant Account to the Dagsboro  
**Investment** Boys & Girls Club for educational supplies.  
**Grant**

**Motion Adopted:** 5 Yeas.

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

**M 543 07** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00  
**Council-** from Mr. Cole's Councilmanic Grant Account to the Rehoboth Summer  
**manic** Children's Theatre for performances and workshops.  
**Grant**

**Motion Adopted:** 5 Yeas.

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

**M 544 07** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$100.00  
**Council-** from Mr. Cole's Councilmanic Grant Account to the Faith U.M. Women  
**manic** for their Walk-A-Thon which will benefit the homeless.  
**Grant**

**Motion Adopted:** 5 Yeas.

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

**Introduction** Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE  
**of Proposed** TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM  
**Ordinance** DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY  
DWELLING STRUCTURES (7 UNITS) TO BE LOCATED ON A  
CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE  
HUNDRED, SUSSEX COUNTY, CONTAINING 0.61 ACRE, MORE OR  
LESS" (Conditional Use No. 1764) filed on behalf of Buchanan Developers,  
Inc. The Proposed Ordinance will be advertised for Public Hearing.

**Introduction** Mr. Rogers introduced the Proposed Ordinance entitled "AN  
**of Proposed** ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN  
**Ordinance** AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MULTI-  
FAMILY DWELLING STRUCTURE (3 UNITS) TO BE LOCATED ON A

**CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 38,054 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1765) filed on behalf of Rick and Juli Folmsbee. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of Proposed  
Ordinance**

**Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE SPACE FOR MEETINGS WITH CLIENTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 1.208 ACRES, MORE OR LESS” (Conditional Use No. 1766) filed on behalf of William and Elizabeth Jiron. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of Proposed  
Ordinance**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS” (Change of Zone No. 1625) filed on behalf of Darren Shaffer, c/o DGS Services, LLC. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of Proposed  
Ordinance**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26,400 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1626) filed on behalf of Nicholas and JoAnn T. Varrato. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of Proposed  
Ordinance**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.77 ACRES, MORE OR LESS” (Change of Zone No. 1627) filed on behalf of P.G.S. Properties, LLC. The Proposed Ordinance will be advertised for Public Hearing.**

**Additional  
Business**

**Under Additional Business, Dan Kramer stated that churches should not be permitted to ask for grant funding, which is taxpayers’ money.**

**M 545 07**

**At 7:25 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Jones, to**

|   |  |
|---|--|
| <b>Recess and go into Executive Session</b>                                 | <b>recess and go into Executive Session for the purpose of discussing property acquisition and pending litigation.</b><br><b>Motion Adopted: 5 Yeas.</b>   |
| <b>M 545 07 (continued)</b>   | <b>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b>  |
| <b>Executive Session</b>  | <b>At 7:26 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Sussex County Council Chambers for the purpose of discussing property acquisition and pending litigation. The Executive Session concluded at 7:43 p.m.</b>   |
| <b>M 546 07 Come out of Executive Session and Reconvene Regular Session</b> | <b>At 7:44 p.m., a Motion was made by Mr. Jones, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.</b><br><b>Motion Adopted: 5 Yeas.</b><br><b>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b>   |
| <b>Public Hearing (C/U No. 1695</b>   | <b>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 AGRICULTURAL MACHINERY AND TRUCK REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.79 ACRES, MORE OR LESS” (Conditional Use No. 1695) filed on behalf of Donald and Kimberly Jefferson.</b><br><br><b>The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2007 at which time the Commission recommended that the application be approved with eight conditions.</b><br><br><b>(See the minutes of the meeting of the Planning and Zoning Commission dated August 9, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)</b><br><br><b>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.</b><br><br><b>The Council found that Donald Jefferson was present and he stated that he proposes to do repair work on farm trucks and machinery; that he proposes the construction of a building on the property; that he does a lot of the repair work off-site; that he currently operates his business from leased</b> |

property located on Route 5; and that he would like a small sign at the end of the driveway for location purposes.

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

**M 547 07  
Adopt  
Ordinance  
No. 1930  
(C/U  
No. 1695)**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Ordinance No. 1930 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AGRICULTURAL MACHINERY AND TRUCK REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.79 ACRES, MORE OR LESS” (Conditional Use No. 1695) filed on behalf of Donald and Kimberly Jefferson, with the following conditions:

1. Work shall only be performed on farm equipment, tractor trailers and similar equipment, with only an occasional auto or pick-up repair.
2. There shall only be one 60 foot by 80 foot building on this site for this use.
3. There shall be no outside work on the equipment being serviced or repaired.
4. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m. from Monday through Saturday, with emergency hours as needed.
5. There shall not be any junked, salvaged or inoperable parts, equipment or tractor trailers on the site. All junk and scrap materials shall be removed regularly.
6. There may be one unlighted 32 square foot sign to identify the site.
7. There shall be no more than two employees associated with the business.
8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**Motion Adopted: 5 Yeas.**

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

It was the consensus of the Council that the Public Hearing on Conditional Use No. 1720, filed on behalf of DANSK, LLC, be held last.

**Public  
Hearing  
(C/U  
No. 1720)**

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 ARCHERY REPAIR AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.0018 ACRES, MORE OR LESS” (Conditional

Use No. 1720) filed on behalf of Wayne and Janet Sansone.

The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2007 at which time the Commission recommended that the application be approved with seven conditions.

Public  
Hearing  
(C/U  
No. 1720)  
(continued)

(See the minutes of the meeting of the Planning and Zoning Commission dated August 9, 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 reported that one additional piece of correspondence has been received since August 9th; a Memorandum from the Sussex County Engineering Department stating that the site is not located within a County owned and maintained sanitary sewer or water district; that the site is located in the Western Sussex Planning Area No. 4; that currently there is on-site septic; and that a concept plan is not required.

The Council found that Wayne and Janet Sansone were present and stated that they built a building in the rear of their property which will be used for the proposed use, if approved; that they want to serve hunters in the area; that they propose to repair archery equipment and provide supplies for archery hunting; and that there is a need in the area for this use.

In regards to the conditions proposed by the Commission, the applicants stated that they would like to be able to do emergency work after 7:00 p.m. and on Sundays and that they would like to put a solar light near the sign.

It was noted that the Applicants would have to obtain approval from the Board of Adjustment to operate an archery range on the site; therefore, the use, if approved, would be limited to archery sales and repair.

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

M 548 07  
Adopt  
Ordinance  
No. 1931  
(C/U  
No. 1720)

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1931 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR ARCHERY REPAIR AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.0018 ACRES, MORE OR LESS" (Conditional Use No. 1720) filed on behalf of Wayne and Janet Sansone, with the following conditions:

1. The use shall be limited to the repair and sales of archery equipment and related items.

**M 548 07  
(continued)**

2. There shall not be an archery range on the site without the approval of the Sussex County Board of Adjustment.
3. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m. Monday through Saturday, except for emergency service.
4. There shall be no more than one sign on the site.
5. There shall not be a dumpster on the site.
6. There shall not be any employees other than the applicants.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**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  
(C/U  
No. 1697)**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A WATERPARK AND MINIATURE GOLF COURSE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.352 ACRES, MORE OR LESS” (Conditional Use No. 1697) filed on behalf of DANSK, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2007 at which time the Commission deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated August 9, 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 Book that was provided by the Applicant at the Public Hearing before the Commission. Mr. Lank distributed an additional Exhibit Book, received on this date, from the Applicant, containing a Parking Study.**

**Mr. Lank reported that additional correspondence was received on this date from The Wicker Outlet Ltd., Charlie’s Bayside Restaurant and Duncan Donuts, all in support of the application.**

**Mr. Lank referred to DelDOT’s comments in a letter dated April 30, 2007 requiring a 10 foot wide strip reserved for future DelDOT road improvements on the entire frontage [Parcel 54 (Lighthouse Road) and Parcel 55 (Virginia Avenue)]. Mr. Lank reported that a revised statement**

Public  
Hearing  
(C/U  
No. 1697)  
(continued)

from DelDOT was received by fax on August 31, 2007, stating that they have amended their requirement and that the 10 foot wide strip would be required only on the second lot from Virginia Avenue (Parcel 55). In their correspondence, DelDOT stated that access to this site shall be from Virginia Avenue and no direct access to Route 54 (Lighthouse Road) will be permitted.

Mr. Lank distributed a revised survey, which shows the stop sign location.

Mr. Lank reported that, since the Public Hearing before the Commission, a letter of support was received from the Village of Fenwick, LLC and that letters in opposition were received from: Deley Trailer Court, Hudson, Jones, Jaywork & Fisher, LLC, Robert and Ruth Haferl, Betsey Mitchell (including a petition containing ten signatures of business owners), Virginia L. Thomas, Odetta Bennett, Town of Fenwick Island, Virginia Cunningham, Patricia Riggan, David Hall, and V. M. Hall (with drawings). Mr. Lank distributed the letters to the Council for their review.

Mr. Lank noted that some of the letters of opposition were sent to the Planning and Zoning Office and some were sent directly to the Sussex County Council. He further noted that all correspondence would be filed in the Planning and Zoning Office for review by all interested parties.

Mr. Dukes questioned why DelDOT is requesting the reservation of a 10 foot wide strip on one parcel only.

The Council found that Dennis Schrader, Attorney, and Ken Christenbury of Axiom Engineering were present on behalf of the application. They stated that the site has been a water park for more than thirty years; that many similar uses exist in the area for amusements; that the site is currently improved by a water park with 18 paved parking spaces and grassy overflow parking; that they plan to renovate the water park to update it; that a total of 39 parking spaces will be provided (21 spaces for the water park and 18 spaces for the golf course); that they will post signage to designated parking areas; that the proposed water park will be taller (33 feet to the platform) with more modern slides; that the park will conform to the County's height requirements; that a miniature golf course is proposed along the front and westerly side; that the golf course is proposed to be added where the existing parking lot is now located; that parking would be pushed to the rear of the property to facilitate smoother traffic flow; that the pool areas will be fenced; that the water park is primarily used during the daytime; that the miniature golf course is primarily used during evening hours; that they propose to incorporate fencing to provide for a safer, pedestrian traffic circulation and along Virginia Avenue, improving vehicular circulation as well; that the project will relocate the existing entrance to a safer location along Virginia Avenue; that the project includes fencing and landscaping to provide a buffer from adjacent residential properties; that a 6 foot high privacy fence would be erected to lessen the impact on adjacent property owners; that along the edge of the golf course will be landscaping and a privacy fence; that the site plan will address the

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Hearing  
(C/U  
No. 1697)  
(continued)

conflict between vehicles and pedestrians, which will be greatly improved by the approval of this application; that there are no regulatory wetlands on the site; that a boardwalk will be installed with fencing between the boardwalk and the water park; that they will try to cut down on the amount of run-off; and that the proposal has been reviewed and approved by DelDOT and the Town of Fenwick Island.

Mr. Schrader stated that during the Public Hearing before the Planning and Zoning Commission, different points of views were expressed:

- Catherine Fornwalt, an owner of the Fenwick Crab House was in opposition (signed a petition) to the application due to inadequate parking. Mrs. Fornwalt's husband, Scott Fornwalt, submitted a letter to the Planning and Zoning Commission saying that the current parking is more than adequate for their current needs and that there have been no parking conflicts of late.
- The Town of Fenwick Island submitted two letters – one in opposition and one in support.

Mr. Schrader stated that they are proposing the sequential use of the parking lots; that an analysis has been performed which shows that the peak use of the water park and the peak use of the miniature golf course do not coincide time-wise; that the County's Shared Parking Ordinance would apply to this application; and that the number of parking spaces proposed is adequate for the two uses.

Ken Christenbury, presented a power point presentation on the Parking Study of the Fenwick Water Park and surrounding properties. Mr. Christenbury gave a detailed explanation of the Parking Study. He explained how he came up with the proposed number of parking spaces (39); based on the combination of the two uses, as they exist today, 26 spaces would be required. He stated that they contacted the Rural Water Park Association and requested their formulas/standard for the industry. Mr. Christenbury stated that the industry standard quoted by the Rural Water Park Association is that the estimated parking required is the maximum facility capacity times 80 percent. Mr. Christenbury noted that they did this since the County does not offer a formula.

Mr. Schrader submitted proposed findings of fact and proposed conditions for the Council's consideration.

Mr. Schrader concluded by stating that the project is an approved use in an approved zoning district and that most of the issues discussed are subject to site plan review by the Planning and Zoning Commission.

Mr. Cole requested that Mr. Christenbury solicit parking requirement information from Ocean City relating to miniature golf courses, water parks and shared parking, and to submit the information to the Council.



**Public comments were heard.**

**Public  
Hearing  
(C/U  
No. 1697)  
(continued)**

**David Weidman, Attorney with Hudson, Jones, Jaywork and Fisher, was present and he stated that he represents a group of people in opposition to the application. Mr. Weidman stated his objection to the Parking Report that was submitted by the Applicant; that the Study was submitted “last minute”; that no one had fair or ample opportunity to look at the Study; that the Study was not presented to the Planning and Zoning Commission; and that it would be prudent to have someone look at the assumptions that were made and look at the validity of some of the numbers presented. Mr. Weidman stated that there are two factors that the Applicant cannot change - the Sussex County Code and the size of the parcel; that the parking is being moved near the residential area; that they propose to expand the use and decrease the parking; that his clients are not against the use itself; that they are opposed to the project due to inadequate parking; that it is a logistical parking nightmare; that under the legal requirements of the Code, it cannot work; that Sections 115-162 and 115-172 of the Code state that, if a use is not specifically listed, then “you have to look at similar uses for the number of required parking spaces”, i.e. indoor commercial recreation which requires 1 per 150 square feet of floor area (under this designation, the proposed use would require 262 parking spaces); that if you compare this use with any of the most closely related uses, the required number of parking spaces far exceeds the 39 that the Applicant is proposing; that the Applicant has not addressed the problem; that under Section 115-172 F of the Code, there is a special requirement for certain indicated conditional uses, one of which is a swimming club, private or commercial operated; that the Code requirement for this scenario is 1 for every 70 square feet of pool area; that the proposed site plan is analogous to a swimming club, where it depicts approximately 2,150 square feet of pool area; that under this calculation, the Applicant’s proposed site plan requires 31 spaces for the pool use alone and that on top of that, the Council must calculate into the parking requirement additional parking spaces for the waterslides and the miniature golf course, as well as parking spaces for the business’ employees; that the Shared Parking Ordinance, as proposed by the Applicant, does not apply to this case; and that this proposal is for three intensive uses on the same site and that it makes no sense to consider those uses as shared uses for the same parking that is intended to serve the same parcel of property; that the parking study presented on this date contains a lot of assumptions and a lot of figures that do not matter; and that what does matter is the County’s Code requirements and the Applicant has not addressed those requirements.**

**Betsy Rickards Mitchell, co-owner of the Fenwick Shopping Center, spoke in opposition to the application. She stated that she was representing the store owners that could not be in attendance; that all five business owners have written letters to the Council in opposition to the application due to the lack of parking for the proposed water park and miniature golf; that they do not oppose the project; that their objection is to the lack of adequate parking for the proposed new facility; and that the proposal is for a larger**

Public  
Hearing  
(C/U  
No. 1697)  
(continued)

water park and golf course and less parking; that the Applicant has not commented on employee parking; that in past years, golf course and water slide customers have used their shopping center for a parking lot. Ms. Mitchell distributed photographs showing parking lots in the area, an aerial view of the water slide, photographs of wetland vegetation on the site, drawings of the existing use of the water park property and an overview of other business uses in the area and related parking. Ms. Mitchell questioned “if this use is approved without adequate parking, how would it promote the general welfare of the citizens of Sussex County?” Ms. Mitchell stated that “we the owners of the Fenwick Center and the five business owners in the center vote “No” to the expansion of DANSK, LLC”.

On behalf of herself and her husband, Betsy Mitchell stated that no one has received (to her knowledge) a notice about the improvements or expansions in 2007 of DANSK, LLC; that she questions how they built a beach area without a permit, how they added water to their grass parking lot without a permit; and how the arcade and boardwalk were put in without a permit. She stated that the entrance to the dumpster is 9-foot and that she questioned the trash collection company and they stated that they would not be able to maneuver their truck in that small of an area.

Margaret Steele stated that the two people who did write in opposition to the project actually rent from the Applicant; that parking is at a premium in the area; that she is constantly having to call to request the removal of a dumpster off of Delaware Avenue; and that when the Applicant took pictures on August 11th and 12th, that is the time when there are fewer people using the facility since parents and kids are preparing for back-to-school.

In response to questions raised by Mr. Dukes, Mr. Lank stated that DANSK, LLC did not obtain permits for the expansion of the parking lot or the beach area; that it is a commercial site; and that the matter would need to be looked into further.

In response to questions raised by Mr. Cole, Mr. Lank stated that the Planning and Zoning Commission must authorize the use of shared parking calculations.

M 549 07  
Defer  
Action on  
C/U  
No. 1695

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1697 filed on behalf of DANSK, LLC and to leave the record of the Public Hearing open until October 1, 2007 for written comments including the submission of an Ocean City parking report.

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. Cole read the following correspondence:

**spondence**

**RABBIT'S FERRY CENTER, INC.**

**RE: Letter in appreciation of Mr. Cole's \$5,000 contribution.**

**M 550 07**

**Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adjourn at 10:08 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted**

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