

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 7, 2003

**Call to
Order**

The regular meeting of the Sussex County Council was held Tuesday, October 7, 2003, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Lynn J. Rogers	President
Dale R. Dukes	Vice President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
James D. Griffin	County Attorney

**M 554 03
Approve
Agenda**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend the Agenda by striking "Luncheon Meeting – Delmarva Poultry Association, Jimmy's Bistro, Sussex County Airport, Georgetown" and to approve the Agenda, as amended.

Motion Adopted: 5 Yea.

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

**M 555 03
Approve
Minutes**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to approve the minutes of September 30, 2003, as distributed.

Motion Adopted: 5 Yea.

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

**Corre-
spondence**

Mr. Griffin read the following correspondence:

**SUE REVELLE AND TAMMY RUST, WOMEN SUPPORTING
WOMEN, SALISBURY, MARYLAND.**

RE: Letter in appreciation of grant funding.

**SAFE HAVEN ANIMAL SANCTUARY, SUSSEX COUNTY,
DELAWARE.**

**RE: Letter in appreciation of Council's letter of support for the Safe Haven
Animal Sanctuary.**

Corre-
spondence
(continued)

**BOY SCOUTS OF AMERICA, DEL-MAR-VA COUNCIL, INC.,
WILMINGTON, DELAWARE.**
RE: Letter in appreciation of grant funding.

Adminis-
trator's
Report

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

1. **Public Hearing**

The Delaware Department of Transportation (DelDOT) will be conducting a Public Hearing on Wednesday, November 5, 2003, at 2:00 p.m. at DelDOT's Administration Building, North DuPont Highway, Georgetown. The purpose of the Public Hearing is to receive input on the request for the abandonment and vacation of a portion of Lynn Road, Sussex County Road No. 266A, near Lewes, Sussex County, Delaware.

At this time, I know of no reason why the County would object to this closing. Planning and Zoning, the Emergency Operations Center, and the Engineering Department will be notified of this request.

2. **Beneficial Acceptance**

The Sussex County Engineering Department granted Beneficial Acceptance, effective October 2, 2003, for Oyster Bay Villas I and II in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, Agreement No. 250. Included with this report is a copy of the fact sheet for this project.

3. **Government Closing**

Sussex County government offices will be closed Monday, October 13, 2003, to allow employees to observe Columbus Day. County offices will reopen Tuesday, October 14, at 8:30 a.m. There will be a regularly scheduled Council meeting at 10:00 a.m.

Wastewater
Facilities

Mr. Green, Director of Utility Construction, discussed wastewater facilities to be constructed in the Bethany Beach Sanitary Sewer District and the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

M 556 03
Execute
Agreements/
Southamp-
ton
Addition

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 312, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Southampton, LLC, for wastewater facilities to be constructed in Southampton Addition, located in the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

**M 556 03
(continued)**

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

**M 557 03
Execute
Agree-
ments/
Marsh
Property**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 310, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and L & S Properties, L.L.C., for wastewater facilities to be constructed in Marsh Property, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

**Old
Business
(C/U
No. 1501)**

The County Council considered the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMUNITY RECREATIONAL CENTER AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 10.66 ACRES, MORE OR LESS” (Conditional Use No. 1501) filed on behalf of Rehoboth Bay Conservancy, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on August 14, 2003 at which time the Commission deferred action. On August 28, 2003 the Commission discussed the application under Old Business and recommended that the application be denied for the following reasons:

- The application, if approved for the proposed location, would be detrimental to the health, safety and general welfare of residents of the West Bay Park Mobile Home Community, neighboring property owners, and pedestrians and motorists in the area.**
- The area where the proposed recreational center or clubhouse would be located is not suited for this particular use. It is not contiguous to the rest of West Bay Park Mobile Home Community.**
- The proposed Conditional Use will have a significant impact upon traffic. It is located across Camp Arrowhead Road from West Bay Park Mobile Home Community, which it would serve. This would cause a potentially dangerous increase in vehicle, golf cart and pedestrian traffic crossing Camp Arrowhead Road at a location that is already hazardous.**
- The project, if approved, would have a negative impact on neighboring and adjacent properties, for the reasons previously stated. In addition, the project would lead to increased noise in the neighborhood.**

**Old
Business
(C/U
No. 1501)
(continued)**

The County Council held a Public Hearing on this application on August 26, 2003 at which time they deferred action. The County Council discussed and considered comments received during the Public Hearings and the recommendation and findings of the Planning and Zoning Commission.

It was noted that when the site plan was submitted to the County Council, it had been modified to address the concerns of the residents and the Commission. In the site plan presented to Council, sixty additional parking spots were added; the entrance was relocated to the center of the lot; a landscaped buffer was provided on both sides of the entrance; two street lights were added on either side of the entrance to fully illuminate the intersection. In addition, the applicant stated that he would seek approval from DelDOT to add signage and painted crosswalks on the road across from the main entrance to West Bay Park. It was further noted that the applicant has expressed that the facility will only be for residents of the community and that no outside usage will be allowed, so it will not increase traffic to the location.

**M 558 03
Adopt
Ordinance
No. 1635
(C/U
No. 1501)**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1635 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMUNITY RECREATIONAL CENTER AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 10.66 ACRES, MORE OR LESS" (Conditional Use No. 1501) filed on behalf of Rehoboth Bay Conservancy, L.L.C., with the following conditions:

1. No home sites (with the exception of the existing farmhouse) shall be permitted on the site.
2. No parking or storage of campers shall be permitted on the site.
3. A representative of West Bay Park Mobile Home Community or a representative of the Homeowners Association shall be present during activities at the clubhouse.
4. Pedestrian pathways shall be properly marked as required by DelDOT.
5. Pedestrian pathways shall be illuminated.
6. Hours of operation shall be limited to 7:00 a.m. to 11:p.m.
7. No portable toilet facilities will be permitted on the site on a permanent basis.
8. Activities shall be limited to tenant related activities.
9. Fencing of the entranceway shall be required.
10. Plants, trees, vegetation, and buffer areas shall remain as undisturbed as much as possible.
11. The entrance shall be approved by DelDOT.
12. Site plan review shall be subject to the approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yea.

**M 558 03
(continued)**

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

**Conditional
Use
Extension
Request/
Raymond
Michitti**

The County Council discussed the letter, dated September 17, 2003 from Kenneth A. Simpler regarding Conditional Use No. 1360 filed on behalf of Raymond Michitti, which was adopted by Ordinance No. 1407 on October 17, 2000. This request was previously discussed by the County Council on September 30, 2003 at which time action was deferred so that Mr. Griffin could research the matter.

In his letter, Mr. Simpler requested an eight-month extension for the conditional use. He noted that there have been two previous extensions granted by the Planning and Zoning Commission and that the extension is necessary due to the delay in sewer completion. He further noted that they have been unable to begin the project because their lender will not finance the project until sewer is available.

It was noted that one of the conditions of approval for Conditional Use No. 1360 was "The development shall be served as part of the Cedar Neck Sanitary Sewer District." Comments were made that this condition, which was imposed by the County Council, was out of the control of the applicant.

In a letter received from the applicant's attorney, James Fuqua, it was stated that at the time of the approval in October of 2000, it was anticipated that the new sewer district would be operational by the Summer of 2002; that due to delays in the construction of the sewer district, service will not be available until the Summer of 2003; that the delay in starting the project is entirely due to the delay in the completion of the sewer district; and that Mr. Michitti has neither abandoned the conditional use nor let it expire.

Mr. Lank read the Engineering Department's comments, which were submitted as part of the record of the Public Hearing on this conditional use. The Engineering Department stated that the site is in the Cedar Neck Sanitary Sewer District and that sanitary sewer service is scheduled to be available by the Summer of 2002.

Mr. Lank noted that the applicant has not submitted a site plan and has not submitted any agency comments.

Mr. Griffin referred to the Sussex County Code, which states that the Commission has the authority to grant up to two one-year time extensions and that the Commission may not grant more than two (2) such one-year extensions. He noted however, that the County Council has inherent authority to act when the Commission cannot act.

**M 559 03
Grant
Extension
Request**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to approve the extension request for Conditional Use No. 1360, filed on behalf of Raymond Michitti, for a period of one year to relieve a circumstance resulting from a condition imposed by the County Council on October 17, 2000.

**M 559 03
Grant
Extension
Request
(continued)**

Motion Adopted: 3 Yea, 2 Nay.
**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Nay; Mr. Jones, Yea;
Mr. Rogers, Nay**

**Land
Acquisition
Recommendation/
Glatfelter
Pulpwood
Company**

Mr. Izzo, County Engineer, presented a land acquisition proposal to accommodate wastewater disposal options and sewer capacity needs. The property, which is located immediately west of the Inland Bays Regional Wastewater Facility, is owned by the Glatfelter Pulpwood Company. The Engineering Department initiated discussions with Glatfelter earlier in the year and at that time, the County was interested in purchasing a 460-acre section. Soil tests were performed on the 460-acre section and it was determined that the soil was well suited for the purpose of wastewater disposal. Mr. Izzo reported that since that time, Glatfelter decided to sell all of their land totaling 1,187 acres through an auction-type scenario.

Mr. Izzo commented that he believed if the County pursued purchasing only the 460-acre section, that the proposal would not be favorably considered and that the County would not be able to competitively submit a purchase proposal to Glatfelter in comparison to someone interested in purchasing the entire 1,187 acres. Mr. Izzo stated that there was a collective decision to put together a bid on the entire 1,187 acres.

Mr. Izzo noted that with the purchase of the 1,187 acres, when combined with the land acquisitions approved at the September 30, 2003 Council meeting, the County should have sufficient wastewater capacity to serve Oak Orchard, Long Neck, Angola and West Rehoboth through the year 2025.

Mr. Baker stated that the total estimated cost of the property, including the purchases approved on September 30th, is \$28.9 million. Funding scenarios have been developed with the United States Department of Agriculture (USDA), the State Revolving Fund Loan Program, and County funds. Mr. Baker stated that the USDA has given the County an oral commitment regarding funding for their new fiscal year which began on October 1st; they will provide loan funding and possibly grant funding for the purchase. In addition, the County expects the Wastewater Council to act on a funding request on November 19th. Funds have also been projected to be available from the Long Neck Sanitary Sewer District, the Oak Orchard Sanitary Sewer District, and some funds from the West Rehoboth Sanitary Sewer District. In addition, funding is proposed to be made available from Realty Transfer Tax.

Mr. Stickels noted that this land purchase proposal is being made now because land is not going to get any cheaper and growth in the eastern part of the County will necessitate increases in sewer capacity.

**M 560 03
Approve
Purchase
of Lands/
Glatfelter
Pulpwood
Company**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the purchase of lands totaling 1,187 acres ± and authorizes the President of the Sussex County Council to execute the contract of sale with Glatfelter Pulpwood Company.

Motion Adopted: 4 Yea, 1 Abstention.

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

**Pinetown
Collection
and Trans-
mission
Sewer
System/
Bid
Results**

Mr. Stewart, Project Engineer, reported the bid results for Sussex County Project No. 96-03, West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, Pinetown Collection and Transmission Sewer System, as follows:

Teal Construction, Inc. Dover, Delaware	\$718,204.00
Bearing Construction, Inc. Sudlersville, Maryland	\$903,628.75

The Engineer's estimate for the project is \$429,275.00

Mr. Stewart stated that, in consideration of the very high amount by which the bid amount exceeds the Engineer's estimate and the project's budget, it is the recommendation of the Engineering Department that the bids be rejected and the project be value engineered.

**M 561 03
Reject All
Bids/
Pinetown
Collection
and Trans-
mission
Sewer
System**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that all bids submitted for Sussex County Project No. 96-03, West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, Pinetown Collection and Transmission Sewer System, be rejected, and that the project be value engineered and re-bid in a timely manner.

Motion Adopted: 5 Yea.

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

**Heritage
Village
Street-
lighting
District**

Mr. McCabe, Director of Public Works, reported on the petitions received requesting that the Engineering Department obtain cost estimates to install streetlights in order to administer an election on the question of forming the Heritage Village Streetlighting District. Seventeen (17) fully executed petitions were received representing 29 percent of the improvement owners.

**M 562 03
Obtain
Estimates
and Costs/
Heritage
Village
Street-
lighting
District**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, that the Sussex County Engineering Department has received and verified petitions from improvement owners in the subdivision known as Heritage Village requesting that the Sussex County Engineering Department obtain estimates of costs and charges for the purpose of establishing a streetlighting district, as required by Chapter 95 of the Sussex County Code; and therefore, the Sussex County Council authorizes the Sussex County Engineering Department to obtain estimates of costs and charges for streetlighting for the purpose of administering a streetlighting district election.

Motion Adopted: 4 Yea, 1 Absent.

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

(Mr. Cole was out of the room during the vote.)

**M 563 03
Council-
manic
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Jones, to give \$500.00 from Mr. Dukes Councilmanic Account to the Downtown Seaford Association, Inc. for the annual Christmas Parade.

Motion Adopted: 4 Yea, 1 Absent.

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

(Mr. Cole was out of the room during the vote.)

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE AND WAREHOUSING FOR A BOTTLED WATER COMPANY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS" (Conditional Use No. 1536) filed on behalf of Mr. Natural Bottled Water. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPUTER REPAIR AND TRAINING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS" (Conditional Use No. 1537) filed on behalf of Jeff Springfield Computer Services. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF CAMPING TRAILERS AND BOATS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 16.55 ACRES, MORE OR LESS" (Conditional Use No. 1538) filed on behalf of Kevin's Trailer Sales, Inc. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECYCLING AND STORAGE FACILITY FOR RECYCLING CONCRETE, BLACKTOP, AND SOILS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.45 ACRES, MORE OR LESS" (Conditional Use No. 1539) filed on behalf of Russell Banks. The Proposed Ordinance will be advertised for Public Hearing.

**Sheriff
Department**

Mr. Dukes told Council that he has had constituents report to him that four of the County Sheriff's vehicles were seen at the Harley Davidson store in Seaford on a Sunday and they questioned what they were doing. Mr. Dukes reported that he checked into it and found out that they were there to escort a convoy of motorcycles to the Maryland line.

Mr. Dukes asked the following questions noting that he understood that the matter had to be looked into:

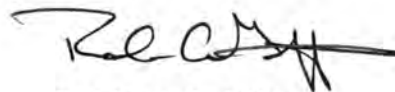
- (1) Did the Sheriff's personnel receive comp-time or over-time or did they volunteer their time?
- (2) Who bought the gas in the vehicles?
- (3) Is the Department being compensated in any way?
- (4) Were there any potential liability issues for the County?

Mr. Dukes stated that he does not believe this is a duty of the Department and that the County Council may have to consider requiring the Sheriff Department's vehicles to remain on County property over the weekend.

**M 564 03
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 11:31 a.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council