

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 8, 2002

**Call to
Order**

The regular meeting of the Sussex County Council was held Tuesday, October 8, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

**M 608 02
Amend
and
Approve
Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by deleting "Introduction of a Proposed Ordinance entitled 'AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE PURPOSE OF REFUNDING CERTAIN EXISTING DEBT OF THE COUNTY AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH'"; 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. Rogers, Yea;
Mr. Jones, Yea**

**M 609 02
Approve
Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of October 1, 2002, as distributed.

Motion Adopted: 5 Yea.

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

**Corre-
spondence**

Mr. Bayard read the following correspondence:

**GARY EMORY, MILFORD PARKS & RECREATION DEPARTMENT,
MILFORD, DELAWARE.**

RE: Letter in appreciation of grant funding.

**Corre-
spondence
(continued)**

**KAREN B. PROSSER, NATIONAL SUMMER PROGRAMS DIRECTOR,
THE JUNIOR STATESMEN FOUNDATION, SAN MATEO,
CALIFORNIA.**

RE: Letter in appreciation of grant funding.

BERNADETTE FRAZIER.

RE: Letter of thanks for the renovations to her home which were made possible by the Community Development Office.

**M 610 02
Adopt
Tribute**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the Tribute commending Jacob Mills for achieving the rank of Eagle Scout.

Motion Adopted: 5 Yea.

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

**Board
Vacancy**

Mr. Stickels announced that, due to the passing of L. William Wheatley, there is a vacancy on the Board of Adjustment.

**M 611 02
Appoint-
ment to
the
Board of
Adjustment**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to appoint Mr. Brent Workman to the Board of Adjustment to complete the term of L. William Wheatley.

Motion Adopted: 5 Yea.

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

**Committee/
Board
Appoint-
ments**

Mr. Cole commented that he still believes the board/committee appointment process needs to be changed. Mr. Cole suggested that nominees be interviewed by Council in public session to ascertain their philosophy on different issues.

**Ag Lands
Preservation
Funding**

The County Council discussed contributing up to \$500,000 to the Delaware Agricultural Lands Preservation Program. On September 24th, Council entertained a proposal presented by Michael Parkowski of Parkowski & Guerke, legal counsel for the Delaware Agricultural Lands Preservation Foundation, pertaining to a Foundation-County Match Program.

The State of Delaware has \$1,000,000 of funding available to be spent in Sussex County. This funding will require a \$1,000,000 match. It has been suggested that the County will contribute \$500,000 and the Sussex County Land Trust will use private sector funding in the amount of \$500,000.

**Ag Lands
Preservation
Funding
(continued)**

Mr. Stickels stated that he, along with Mr. Baker (Finance Director) and Ms. Webb (Director of Accounting) have reviewed the County's budget and feel that, based on the revenue projections for the remainder of the fiscal year, that \$300,000 can be allocated from Building Code and \$200,000 can be allocated from Industrial Revenue Bond Fees for the County's contribution.

Mr. Preston Schell, Land Trust Board Member, stated that he is confident that the Land Trust can raise at least \$200,000 by December and that their goal is to raise the entire \$500,000.

It was noted that if the Land Trust cannot come up with the full \$500,000, the County will match the Land Trust's donation.

It was further noted that Mr. Parkowski would like to know the County's and the Land Trust's intent to participate in the Program by November 1, 2002; the funding will be required to be received by late January/early February.

**M 612 02
Agree to
Match
Funding/
Ag Lands
Preservation
Program**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council agrees to match the funds of the Sussex County Land Trust, in an amount up to \$500,000, for the State of Delaware Agricultural Lands Preservation Program.

Motion Adopted: 5 Yea.

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

**University
of Delaware
Extension
Service
Funding**

The County Council presented a check in the amount of \$159,415.00 to the University of Delaware Research & Education Center, Sussex County Cooperative Extension Program, for programs to benefit local farmers and the poultry industry. The checks represented a donation of \$109,415.00 to the Extension Program and \$50,000.00 to the Poultry Production Efficiency Program. Dr. Mark Isaacs was present and provided a synopsis of how the funding is used. Dr. Garrett Van Wicklen was also present to discuss the poultry-engineering program.

Dr. Isaacs thanked Council for their continued support.

**Adminis-
trator's
Report**

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

1. Industrial Revenue Bond Application

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

The Industrial Revenue Bond Committee has received an application on behalf of Carl M. Freeman Communities, LLC, a Delaware limited liability company, for an Industrial Revenue Bond in the amount of \$78,050,000. Carl M. Freeman Communities, LLC, has requested that the County issue bonds to pay a portion of the costs for certain capital expenditures of a commercial project at Americana Bayside development, a residential planned community consisting of up to 1,700 residential homes, mixed commercial/retail space, hotel uses, an assisted living facility, a medical facility, a volunteer fire department, State Police facilities, and a golf course to be constructed on 862.5 acres located on Route 54 at its intersection with the southwest side of State Route 20. Additional eligible items for bond use include the upgrading of an existing pump station, distribution and collection systems for water and wastewater, and stormwater management.

The revenue bonds to be issued will be payable solely from revenues of the project or from other sources provided by the applicant and will not constitute a debt or liability of the County. Some or all of the bonds may qualify for tax-exempt treatment for Federal income tax purposes.

The Bond Committee will hold a Public Hearing on October 22, 2002, at 9:00 a.m. in the Council Chambers of the County Administrative Building located on The Circle in Georgetown, Delaware.

2. Staff Development Day

Please be advised that all County libraries will be closed Thursday, October 10, 2002, to allow staff to attend educational classes at Delaware Technical & Community College. County libraries will reopen with regular hours on Friday, October 11, 2002.

**Public
Hearing/
General
Obligation
Bonds/
Bay View
Estates and
Sea Country
Estates
Sanitary
Sewer
Districts**

A Public Hearing was held to consider authorizing the issuance of up to \$2,636,000 of General Obligation Bonds of Sussex County for the construction and equipping of the Bay View Estates and Sea Country Estates Sanitary Sewer Districts. The purpose of the bonds is to finance or refinance a portion of the cost of the construction and equipping of the Project. The State of Delaware has preliminarily approved a grant for \$1.5 million and a SRF Loan in the amount of \$2,636,000. The loan term will be for 20 years at a 1 ½ percent interest rate. The bonds will be backed by the County's full faith and credit but it is expected that the debt service will be paid from revenues of the Bay View Estates and Sea Country Estates Sanitary Sewer Districts. It is anticipated that the Bonds will be sold to the State of Delaware Water Pollution Control Revolving Fund. The issuance of the Bonds is within the legal debt limit of the County.

**Public
Hearing
(continued)**

Public comments were heard. Joan Wright of Bayview Estates addressed Council and asked if the term of the loan could be extended to 30 years. Mr. Baker responded that, at this time, the State of Delaware can only authorize a term of 20 years.

The Public Hearing was closed.

**M 613 02
Adopt
Ordinance
No. 1563**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1563 entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,636,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE BAY VIEW ESTATES AND SEA COUNTRY ESTATES SANITARY SEWER DISTRICTS AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".

Motion Adopted: 5 Yea.

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

**Wastewater
Facilities**

Mr. Baker, Utility Construction Division, discussed the construction of wastewater facilities.

**M 614 02
Grant
Beneficial
Acceptance/
Cedar
Valley**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 240, that the Sussex County Council grants Beneficial Acceptance for the wastewater facilities constructed in Cedar Valley 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. Rogers, Yea;
Mr. Jones, Yea

**M 615 02
Authorize
Execution
of Agree-
ments/
Bayville
Shore**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 275, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Bayville Shore Associates, LLC, for wastewater facilities to be constructed in Bayville Shore, Phase IV, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

**M 615 02
(continued)**

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

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD VENDING TRAILER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.12 ACRES, MORE OR LESS” (Conditional Use No. 1476) filed on behalf of Elizabeth Little and Ed Grimm, t/a Beach Fries. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Rogers 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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 20,250 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1483) filed on behalf of Apple Electric, Inc. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Rogers 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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 7.53 ACRES, MORE OR LESS” (Change of Zone No. 1484) filed on behalf of Jacqueline M. Hickman & Others. The Proposed Ordinance will be advertised by Public Hearing.

**Public
Hearing/
General
Obligation
Bonds/
Miller
Creek
Sanitary
Sewer
District**

A Public Hearing was held to consider authorizing the issuance of up to \$6,750,000 of General Obligation Bonds of Sussex County for the construction and equipping of the Miller Creek Sanitary Sewer District.

The purpose of the bonds is to finance or refinance a portion of the cost of the construction and equipping of the Project. The following funding has been preliminarily approved: a State of Delaware Grant in the amount of \$2,450,000; a Rural Development Grant in the amount of \$1,500,000; a Rural Development Loan in the amount of \$3,450,000; and a State of Delaware SRF Loan in the amount of \$3,300,000. The Rural Development loan term will be for 40 years at a 4 1/2 percent interest rate. The SRF State of Delaware loan term will be 20 years at a 1-½ percent interest rate. While the bonds will be backed by the County’s full faith and credit, it is expected that the debt service will be paid from revenues of the Miller

**Public
Hearing
(continued)**

Creek Sanitary Sewer District. It is anticipated that the Bonds will be sold to the State of Delaware Water Pollution Control Revolving Fund and/or to the United States of America, Rural Utilities Service. The issuance of the Bonds is within the legal debt limit of the County.

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

**M 616 02
Adopt
Ordinance
No. 1564**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1564 entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$6,750,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE MILLER CREEK SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".

Motion Adopted: 5 Yea.

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

**M 617 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$250.00 from Mr. Phillips' Councilmanic Account to the Roxana Volunteer Fire Company for new rescue tools and supplies.

Motion Adopted: 5 Yea.

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

**Cedar
Neck
SSD
Newsletter**

Mr. Cole referred to Page 4 of the Cedar Neck Sanitary Sewer District newsletter and more specifically, the section entitled "Proposed User Charge Estimates". Mr. Cole noted that he has commented many times that there is a problem with the way the County charges for sewer service; that homeowners are receiving the same service but paying different amounts based on front footage; that this is not an equitable way of billing; and that the County needs to try to find a fairer way of charging for sewer service.

**M 618 02
Recess**

At 11:10 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Jones called Council back into session at 1:40 p.m.

Amendment to 10/1/02 Minutes Mr. Phillips stated that the minutes of the Sussex County Council, dated October 1, 2002 needed to be amended/corrected. The minutes were erroneously approved during the morning session. The section of the minutes of October 1, 2002 regarding the Public Hearing on the Land Use Plan Update did not include the testimony and submission of written comments by Richard Collins of the Positive Growth Alliance.

M 619 02 Amend 10/1/02 Minutes A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend the minutes of October 1, 2002, to include the testimony and submission of written comments by Richard Collins of the Positive Growth Alliance.

Motion Adopted: 5 Yea.

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

[The Clerk of the Council wishes it to be known that the comments and testimony of Mr. Collins were inadvertently omitted from the minutes.]

Omission of Information Mr. Phillips stated that the same information was not included in the minutes of the Planning and Zoning Commission Public Hearing which was held on August 29, 2002.

Workshop/ Land Use Plan Update A workshop session was held on the Land Use Plan Update. Mr. Tom Shafer of Shafer Consulting was present to review with Council the draft Land Use Plan Update, comments made by the State of Delaware Office of State Planning; and public comments made during the Public Hearing held on October 1, 2002.

Mr. Stickels introduced Mr. Richard Kautz, who was recently hired by the County and who will be working in the Planning and Zoning Department. Mr. Kautz is an AICP Certified Planner.

Mr. Shafer opened the workshop by reviewing the comments made by the Office of State Planning, including the list of items were determined to be essential to be addressed in the final Plan:

1. A separate chapter on implementation should be included so that it is clear what the next steps will be for the County to implement the Plan. Ordinances that will be needed to implement the Plan should be listed and described.

Tom Shafer: There should be an implementation section in the Plan.

2. The vision for this area (Environmentally Sensitive Developing Area) needs to be made clear and the County's intentions for this area should be

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spelled out with an implementation plan that shows how the County will meet their goals in this area.

Tom Shafer: It will be stated in the Plan that development in the area will be sensitive to the environment; that the importance of the Inland Bays will be emphasized; that there is a need to describe and control development in the area for the purpose of maintaining the quality of the water in the inland bays. A description of a proposed overlay ordinance will be included for consideration.

3. The plan does not seem to indicate any phasing for the development areas. Phasing should be included to better guide State and County investments and decision-making in development areas.

Tom Shafer: The Draft Plan does not include phasing. We took what we got from the towns and that is what was used on our map; if they did not include phasing, we did not include phasing. There is a statement in the Plan that just because you are in a development area does not automatically entitle you to develop – it has to be evaluated in terms of the zoning and subdivision ordinances.

Robert Stickels: The Town Center District will be the primary and the Development District will be secondary. Development will be encouraged in the Town Center.

Tom Shafer: We are going to give an electronic version of the maps to the Office of State Planning and they are going to overlay it on their map.

4. No comparison to the Strategies for State Policies and Spending document are made in the Plan. The Plan and the maps should reflect community and developing areas as currently in the Strategies so that the State can compare inconsistencies between the two plans.

Tom Shafer: It is my understanding that when this is adopted and the various municipalities have their plans adopted, they will go back to the State Strategies Map and make changes to make the maps as compatible as they can.

George Cole: Ms. Holland, Office of State Planning, should attend our next workshop.

5. The Environmentally Sensitive Developing Area's expansion in the Route 113 area of Dagsboro/Millsboro is questionable. This delineation would change this area from Rural to Environmentally Sensitive Developing. The State would like to see the entire Inland Bays watershed labeled as an Environmentally Sensitive Area and subject to stringent environmental standards to protect the quality of the bays. However, we do

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not want to use an expansion of the Development area. Therefore, the County should work with DNREC and OSPC to determine how best to approach development in the watershed.

The Council and Mr. Shafer discussed corrections to the Development Districts around the municipalities and specifically referenced Greenwood, Milton and Millsboro. Mr. Shafer noted that the corrections in the towns' proposals should be on the final map rather than continually changing the maps.

Mr. Stickels and Mr. Shafer agreed that the State is contradicting itself since the Inland Bays Environmentally Sensitive Area is only a small portion of the total watershed which encompasses areas including parts of Georgetown.

6. The Bridgeville annexation area, as described in their currently certified comprehensive plan, is incorrect in the County Plan.

Mr. Shafer: Whatever Bridgeville decides is what will be incorporated in the Plan.

Mr. Stickels: Our intent with these workshops is not to revisit issues that have been reviewed.

Mr. Shafer reviewed further comments made by the Office of State Planning:

Land Use Element

1. Demographic information is insufficient. The plan does not clearly link the overlay zones mentioned in the Land Use Element to either of the zoning districts mentioned on Page 20 or to the Future Land Use map. As a result, there is no way to determine what will be the resulting land use throughout the County.

Tom Shafer: More information will be added to the Plan.

2. The following items are not on the Future Land Use map: Rural Development District; Natural Resource Protection Area; Conservation District; Public and Private Resource District.

Tom Shafer: The items really are in the Plan, they are just not labeled in the legend. A disc has been obtained from the State and it will be reviewed to be sure that everything is on the map and labeled.

3. The land use element should detail recent development trends, if not on a parcel basis then on a sub regional basis (Census tracts, CCDs, TAZs,

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etc.). How many units have been built in the last 5 years; where are they located; how many in the pipeline has been approved for construction?

Mr. Shafer: Mr. Lank and I will obtain this information.

4. The population numbers given are not consistent with the 2001 Delaware Population Consortium. According to the Population Consortium report published October 18, 2001, the 2000 population of Sussex County was 156,638, and the projected 2020 population is 221,458. The 2002 Delaware Population Consortium projections will be published on October 8. Also, the change in population between 1990 and 2000 should be noted here.

Tom Shafer: New data regarding the Delaware Population Consortium will be obtained from the Economic Development Office.

5. Replace "The Route One Task Force" with "State Route 1 Land Use/Transportation Study, a joint effort of Sussex County and the Delaware Department of Transportation".

Tom Shafer: This is just nomenclature, it will be changed.

Robert Stickels: All of the things that need to be changed relating to the Land Use Element will be done by staff or by Mr. Shafer.

Mobility Element

1. This element seems to be taken directly from the Sussex County Long-Range Transportation Plan. The County should do some analysis of the data presented in this plan and should detail what the County will do with land use planning to help DelDOT achieve its transportation goals.

Tom Shafer: This was taken directly from the Sussex County Long Range Plan, but we did include some items that the Council discussed in other workshops, i.e. east-west routes and corridor-overlay zones. The whole thrust of the Plan is to create the growth around the existing areas.

Robert Stickels: The County Council adopts a list of Capital Improvement Requests each year, including a list of priorities for the next five years. This could be referenced in the Plan along with the statement that the Council feels that we have been under-funded for road improvements in Sussex County.

Tom Shafer: The following should be included in the Plan – The County is requesting a greater level of funding in the past because of the growth and the underfunded projects.

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Mr. Stickels will give this information to Mr. Shafer for inclusion in the Plan.

2. Discussion of the current County partnership with DelDOT on the SR 1 Transportation and Land Use Study should be included.

(This was not discussed.)

Water & Wastewater Element

1. The Wastewater map appears to be incorrect. Ocean View is shown as a municipal system, while it is part of the County System. The map does not show the extension of the Georgetown Sewer District that is intended to service the Stockley School site (new Indian River High School), and the map does not show the County sewer districts at all.

Tom Shafer: I will take care of correcting all of these things.

2. The Wastewater Plan Element should provide details about each sewer district. It should include an analysis of current capacities, allocations, excess capacity, etc., to determine how much development the sewer system can serve. Are there any technical limitations on the any of the districts? Where are there areas of failing septic systems that the County has prioritized for sewer to handle existing development? The capacity of the systems should be linked to the anticipated growth specified in the land use plan to determine if there is available capacity, and if not, what plans the County has for providing capacity? It also appears that some of the numbers should be updated from the 1997 plan if data is available.

Tom Shafer: I will be meeting with the Engineering Department on this date to obtain updated data. The information will be brought up to date: existing capacities, plans for expansion, and what might be needed.

Robert Stickels: The data has already been provided in the form of a memo from Steven Hudson, Director of Maintenance, referencing Wastewater Treatment Facilities Average and Permitted Flow Rates.

Conservation Element

1. Page 37 lists the state parks and Prime Hook National Wildlife Refuge, but the plan does not mention the many acres of State Fish and Wildlife lands or the private conservation lands owned and managed by The Nature Conservancy, Delaware Wild Lands and others. The Plan also omitted the existence of the Redden State Forest which consists of 9,528 acres.

2. Also, the State Land Protection Act requires counties to adopt land use regulations to protect the “unique ecological functions” of these State

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Resource Areas, most likely through zoning overlays. The Plan does not address this requirement. Natural Areas should also be included in the discussion and mapped (at least where they are not encompassed by State Resource Areas).

3. Figure 6, Conservation and Recreation Plan, shows the State Resource Areas in one color. This should be changed to show one color for protected lands, and another color for land proposed to be protected.

Tom Shafer: I went and visited State Parks/DNREC and obtained the most recent information. The Plan will be updated with this information.

Recreation and Open Space Element

1. On pages 43 and 44, the Plan refers to the Statewide Comprehensive Outdoor Recreation Plan (SCORP), 1989 – 1994 Demand and Needs Assessment. This was an assessment completed for the 1990 SCORP. The information in this assessment is used to support the County's claim that there is no need for local or regional recreation. There are two more current surveys, one conducted in 1995 and one completed in spring 2002, that show that Sussex County residents do believe there is a need for more close-to-home recreation opportunities. The County should use current information.

Tom Shafer: Results of the survey need to be obtained.

Robert Stickels: The survey was a telephone survey and the results have just become available.

Housing Element

1. The Housing Element should include a more detailed analysis of housing stock.

Tom Shafer: I can get this information from the 2000 Census.

Robert Stickels: Sussex County Community Development may have this information.

Mr. Cole: A public comment at the Land Use Plan Update Public Hearing was that the County needs to do more for affordable housing.

There was not a consensus of Council to add the affordable housing sector to the supporting ordinance list. It was the consensus of Council to include a notation in the Plan that Council acknowledges that affordable housing is a concern of the County and that the situation will be studied.

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Intergovernmental Coordination Element

Page 51 refers to Intergovernmental Coordination Zones. These zones should be mapped around each municipality, and the specific strategies for how the County will coordinate with municipalities in these zones should be included.

Tom Shafer: There are some Intergovernmental Coordination Agreements with the municipalities that provide for review of rezonings within one mile of the Town boundaries. These agreements will be referenced in the Plan.

Maps

Although maps are discussed throughout the letter, I thought we should summarize some of our comments regarding maps. We have been unable to evaluate that the plan is consistent with State Strategies due to lack of access to digital data files. In order to adequately review the consistency of the Future Land Use map with the State Strategies, the State requests the digital data files associated with the Town Centers, Developing Areas, and Environmentally Sensitive Developing Areas. We would also like to see more clarity in the maps and more continuity and consistency between maps and text. The plan should also include the maps from the State Strategies and a County Zoning Map.

Tom Shafer: Electronic data will be provided to the Office of State Planning. We will address the comments regarding more clarity in the maps; more continuity and consistency between the maps and text; and inclusion of the maps from the State Strategies and a County Zoning Map.

This concluded the State's comments.

Mr. Lank, Director of Planning and Zoning, read correspondence received since the October 1, 2002 Public Hearing and the close of business on October 7, 2002.

HARRY HAON, DEPUTY MAYOR OF FENWICK ISLAND, FENWICK ISLAND, DELAWARE.

RE: Suggested text modifications to the Land Use and Conservation Element of the Draft Plan dated September 5, 2002.

STEVE CALLANEN, OCEAN VIEW, DELAWARE.

RE: Comments related to coastal sprawl from the Pew Oceans Commission

Mr. Shafer briefly reported on the public comments which were made at the Public Hearing held on October 1, 2002.

Council discussed the list of 2002 Land Use Plan supporting ordinances, as

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distributed at the October 1, 2002 Public Hearing. These ordinances will be incorporated in the implementation section of the Plan.

Mr. Cole stated that the list of B-1 zoning classifications is too broad and questioned whether the supporting ordinances can include a B-2 Zoning Classification, with no grandfathering clause.

Mr. Stickels stated that the problem with this is that Council has previously given the directive that there will be no downzonings.

Mr. Dukes stated that he would not support the concept if grandfathering is not permitted; that he does not feel the zoning categories are too wide; that they may need to be redefined; however, property owners should not lose something they already have.

Mr. Phillips expressed his opinion that this would constitute a taking from property owners and he would not support the concept.

Mr. Cole asked Mr. Bayard to provide some case law on this issue at the next workshop to determine whether or not giving a property owner a new zoning classification is considered a taking.

Mr. Shafer stated, based on his experience, that changing zoning is not against the law; because the fact is you have not taken away the use of the property. However, it has been stated since the very first Land Use Plan Update meeting, that zoning would be grandfathered. Everyone that has attended the meetings has heard this. Mr. Shafer recommended that Council's stance should not be changed.

Mr. Stickels discussed the supporting ordinances to the Land Use Plan relating to commercial zoning density reduction, wetlands setbacks – tidal/non-tidal, Route 13/Route 113 corridor overlay, east-west corridor overlay, defined open space requirements, community design, TAC review for RPC developments, schedule of construction clause for RPC developments, environmentally sensitive area; overlay zones, clustering, Transfer of Development Rights sending program, Biotech Industry Campus, agriculture-business zone, C-2 zoning, and pre-application program.

Mr. Phillips asked that a component allowing increased density for affordable housing be included in the ordinance pertaining to Commercial Zoning Density Reduction. Mr. Stickels stated that this will be considered when the ordinance is drafted.

Mr. Stickels stated that the Planning and Zoning Commission has suggested that consideration be given to increasing wetlands setbacks to 100 foot (tidal) and 25 foot (non-tidal). Currently, the tidal wetlands setback is 50

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feet. Mr. Cole stated that testimony has supported this recommendation. Mr. Stickels stated that the Plan will reference that consideration should be given to looking at the environmental/scientific benefits of increasing buffers to 100 foot (tidal) and 25 foot (non-tidal). It will also reference that consideration should be given to look at what the benefits would be to come up with other types of drainage plans.

Mr. Shafer stated that he will contact the State of Delaware, Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation, for additional information regarding types of buffers.

Mr. Stickels advised that the Planning and Zoning Commission has recommended that non-tidal wetlands be excluded from density calculations.

Community Design standards will incorporate requirements for sidewalks, curbing, streetlights, and street trees. Concern was expressed that this will raise the costs of affordable housing.

Mr. Phillips stated that he does not want to include community design standards that are going to escalate the cost of housing and only accentuate the affordable housing issue.

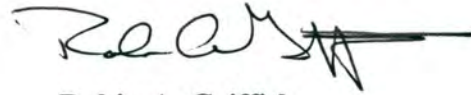
Mr. Phillips stated that it is important that there is enough flexibility in the language in the Land Use Plan so that the public can make appropriate comment during the ordinance phase, after which revisions can be made, if they are deemed appropriate.

Mr. Stickels referred to TAC review for RPC Developments and a Schedule of Construction Clause for RPC Developments. Mr. Dukes expressed concern that developers cannot do any site work until they have all permits in hand. Mr. Lank stated that developers have been permitted to start the stormwater management portion of the site work once approval has been received for their stormwater management plan, if previously authorized in the conditions of approval.

Mr. Shafer stated that there are six important points that are going to require considerable discussion including revisions to the map, density calculations, open space, Environmentally Sensitive Development Area, Town Center, etc. Mr. Shafer will submit information on the points to be discussed to Council prior to the next workshop on October 15, 2002.

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to adjourn at 3:38 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Griffith', followed by a horizontal line.

Robin A. Griffith
Clerk of the Council