

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 22, 2002**

**Call to Order** The regular meeting of the Sussex County Council was held Tuesday, October 22, 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 633 02** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the **Approve Agenda** Agenda, 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

**M 634 02** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the **Approve Minutes** minutes of October 15, 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

**Delaware State Police Vehicle Grant** The County Council presented the Delaware State Police with a check in the amount of \$167,076.00. Under the terms of the Memorandum of Understanding of August 9, 1994, Sussex County agreed to fund one-half of the purchase price of three replacement patrol vehicles for a total cost of \$30,000.00. In addition, under the terms of the Memorandum of Understanding of July 1, 2002, Sussex County agreed to fund the purchase of four fully equipped patrol vehicles at a cost of \$137,076.00.

Mr. Stickels noted that, since 1994, the County has provided financial assistance to the State Police for the purchase of twenty-six vehicles. In addition, the County is currently paying a portion of the salaries for sixteen police officers. Over the next five years, the County will be paying a portion of the salaries of thirty-two police officers, resulting in an increase

**Delaware  
State  
Police  
Vehicle  
Grant  
(continued)**

**of twenty more State Troopers in Sussex County. There are currently 156 troopers assigned to Sussex County.**

**State Police Superintendent Aaron Chaffinch said that as part of their strategic planning, the State Police has requested staffing increases to correspond with the anticipated population growth throughout the State. He stated however, that their personnel growth is subject to State budgeting decisions. Colonel Chaffinch commended the County Council for guaranteeing police service above and beyond what the State systematically allocates based on population expansion.**

**Sussex  
County/  
City of  
Rehoboth  
Beach/  
Joint  
Planning  
Study**

**Mayor Sam Cooper, City of Rehoboth Beach, and Michael Izzo, County Engineer, discussed a Joint Agreement between the State, the County, and the City to co-fund a study to investigate alternatives for the disposal of treated effluent from the wastewater treatment facilities owned and operated by the City of Rehoboth Beach and Sussex County. The County and the City is facing a need to upgrade and/or expand their treatment facilities in response to growth and changing permit conditions. The City of Rehoboth Beach must comply with a consent order agreement that ultimately requires the elimination of their effluent discharge into the Lewes-Rehoboth Beach Canal. The cost to meet these needs separately is expected to exceed available funding through the State Revolving Loan Fund (SRF). A regional solution may reduce the total capital cost and offers an opportunity to finance the project in a way that reduces the user charges to all those in the service area served by the region. In order for each jurisdiction to decide if they wish to participate in a regional solution, the cost impacts of pursuing such a path must be estimated. The objectives of the study are to:**

- **Identify the most cost-effective and technically feasible alternative for the City of Rehoboth Beach alone;**
- **Identify the most practical technology to pursue as a regional solution;**
- **Estimate the capital and operating costs of the project;**
- **Develop an equitable plan to share the cost (regional solution) and estimate the impact on the user fees of each of the jurisdictions.**

**The evaluation of a regional solution will proceed concurrently with the independent evaluation of effluent disposal alternatives for the City of Rehoboth Beach.**

**The Joint Wastewater Facility Planning Study will be performed by Stearns & Wheeler at a cost of \$196,000 with the State contributing \$98,000, and the County and City providing matching funds in the amount of \$49,000.**

**M 635 02  
Approve  
Wastewater  
Study**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council agrees to enter into a Joint Wastewater Facility Planning Study between the State of Delaware, Sussex County, and the City of Rehoboth Beach in an amount not to exceed \$196,000, as proportioned (State of Delaware - \$98,000; Sussex County - \$49,000; and City of**

**M 635 02      Rehoboth Beach - \$49,000).**

**Approve Wastewater Facility Planning Study (continued)**      **Motion Adopted:**      5 Yea.

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

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

**1.      Sussex County Volunteer Firemen's Association**

The Sussex County Council will be distributing \$620,665 to the Sussex County volunteer firemen on Tuesday, October 22, 2002, at the monthly Sussex County Volunteer Firemen's Association meeting. The meeting will take place at Convention Hall, Rehoboth Beach, Delaware, starting at 7:30 p.m. The County Council's contribution is part of \$1.9 million for FY 2003.

**2.      Smoking Ban Workshop**

The Delaware Departments of Labor and Health and Social Services will be conducting a workshop in Sussex County to inform business owners about the law banning smoking in most indoor public places. The Department of Labor and Delaware Health and Social Services have been charged with enforcing the smoking prohibition. The prohibition in smoking in most public places takes effect November 27, 2002.

The workshop will take place at Delaware Technical & Community College, Jack F. Owens Campus in Georgetown, on October 29, 2002, starting at 9:00 a.m. For additional information, call 761-8200 or 744-4778.

**Cedar Neck Expansion/Contract B/Bid Award**      **Mr. Izzo, County Engineer, reported on the bid results for Sussex County Project No. 99-12B, Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District, Quillens Point Collection & Conveyance, as follows:**

<b><u>Bidder</u></b>	<b><u>Bid</u></b>	<b><u>Bid &amp; Hot Mix Upgrades</u></b>
Bunting & Murray Selbyville, DE	\$2,295,377.50	\$2,397,014.50
American Paving Salisbury, MD	\$2,690,072.80	\$2,750,495.80

<b>Cedar Neck Expansion/Contract B/</b>	<b>Hopkins Construction Bridgeville, DE</b>	<b>\$2,703,855.00</b>	<b>\$2,800,955.00</b>
<b>Bid Award (continued)</b>	<b>Bearing Construction Sudlersville, DE</b>	<b>\$3,004,341.21</b>	<b>\$3,052,665.21</b>
	<b>A.P. Croll &amp; Son Georgetown, DE</b>	<b>\$3,015,087.00</b>	<b>\$3,091,937.00</b>
	<b>Teal Construction Dover, DE</b>	<b>\$3,053,705.00</b>	<b>\$3,112,605.00</b>
	<b>George &amp; Lynch New Castle, DE</b>	<b>\$3,646,416.75</b>	<b>\$3,769,716.75</b>
	<b><u>Engineer's Estimate</u></b>	<b><u>\$2,619,000.00</u></b>	<b><u>\$2,701,000.00</u></b>

Mr. Izzo advised that this is the second contract for the Cedar Neck Project.

Mr. Izzo pointed out that the low bidder was Bunting & Murray at \$2,295,377.50 which is under budget when compared to the Engineer's Estimate of \$2,619,000.00. There was an alternative bid for upgrading the streets (hot-mix) in the Quillens Point Subdivision and the Bayside Hamlet Subdivision. Mr. Izzo stated that the bids received for the Hot Mix Upgrade were a little higher than they hoped for. For this reason, the Engineering Department is recommending that the County award the base bid only. Mr. Izzo stated that during the construction phase, negotiations will be made with the contractor for a better price for the Hot Mix Upgrade.

**M 636 02**  
**Award Bid/**  
**Cedar Neck**  
**Expansion/**  
**Contract B** A Motion was made by Mr. Cole, seconded by Mr. Phillips, based on the recommendation of the Engineering Consultants, Whitman, Requardt & Associates LLP and the Sussex County Engineering Department, that Sussex County Project No. 99-12B, Quillins Point Collection & Conveyance, be awarded to Bunting & Murray Construction Corporation of Selbyville, Delaware, at the bid amount of \$2,295,377.50, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and the Rural Utilities Service.

**Motion Adopted:** 5 Yea.

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

**Newsletter** Mr. Izzo distributed a copy of the Cedar Neck Sanitary Sewer Newsletter.

**M 637 02**  
**Grant** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00, \$250.00 each from Mr. Cole's and Mr. Phillips' Councilmanic Accounts, to

<b>M 637 02 Council- manic Grant (continued)</b>	<b>the Bethany – Fenwick Area Chamber of Commerce for The Quiet Resorts Charitable Foundation (scholarship funding).</b>
	<b>Motion Adopted:</b> 5 Yea.
	<b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
<b>Grant Request</b>	<b>Action on the grant request from First State Community Action was tabled for further review.</b>
<b>M 638 02 Youth Activity Grant</b>	<b>A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$250.00, \$50.00 from each Youth Activity Account, to Sussex County 4-H Clubs for their Exchange Trip Program.</b>
	<b>Motion Adopted:</b> 5 Yea.
	<b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
<b>M 639 02 Council- manic Grant</b>	<b>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$500.00 from Mr. Dukes' Councilmanic Account to the City of Seaford, Department of Parks and Recreation, for their football program.</b>
	<b>Motion Adopted:</b> 5 Yea.
	<b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
<b>Proposed Ordinance</b>	<b>Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR RESTORATION AND RESALE OF MOTORCYCLES, AND RETAIL SALES OF PARTS, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.0149 ACRES, MORE OR LESS, OF A 78.92 ACRE TRACT" (Conditional Use No. 1479) filed on behalf of Jeremy and Anastasia M. Day. The Proposed Ordinance will be advertised for Public Hearing.</b>
<b>Proposed Ordinance</b>	<b>Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX</b>

<b>Proposed Ordinance (continued)</b>	<b>COUNTY, CONTAINING 124.80 ACRES, MORE OR LESS" (Change of Zone No. 1490) filed on behalf of Daniel McGreevy-Caldera Properties, L.P. The Proposed Ordinance will be advertised for Public Hearing.</b>
<b>Proposed Ordinance</b>	<b>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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 19.0 ACRES, MORE OR LESS" (Change of Zone No. 1491) filed on behalf of Jesse and Julie Hall, t/a Bayside Auto Sales. The Proposed Ordinance will be advertised for Public Hearing.</b>
<b>M 640 02 Recess</b>	<b>At 10:55 a.m., a Motion was made by Mr. Cole, seconded by Mr. Rogers, to recess until 12:30 p.m. Motion Adopted by Voice Vote.</b>
<b>Reconvene</b>	<b>Mr. Jones called Council back into session at 12:40 p.m.</b>
<b>Workshop/ Land Use Plan Update</b>	<b>A workshop was held on the County's Land Use Plan Update.</b>  <b>Mr. Stickels advised that at the October 1, 2002 Public Hearing on the Land Use Plan Update, Kathy Johnson, President, Consumers for Housing Choice, submitted correspondence to be read into the record. On that date, the letter was received in the form of a disc by the Clerk of the Council. Mr. Stickels presented the letter for inclusion in the record.</b>  <b>Mr. Shafer of Shafer Consulting, the County's consultant on the Land Use Plan Update, presented the following issues for discussion:</b>
	<b><u>The Future Land Use Map</u></b>  <b>At the October 15<sup>th</sup> Workshop, it was the consensus of Council to include all of the Development Area (yellow area) around Route One into the Environmentally Sensitive Developing Area (crosshatched area). Mr. Shafer advised that the map has been revised to reflect this change. Mr. Shafer clarified that the Environmentally Sensitive Developing Area is not just a residential area; other uses are permitted in the area, including commercial and RPCs.</b>  <b>Mr. Shafer advised that language has been added in the Environmentally Sensitive Developing Area section of the Plan that "Since utilities are generally installed in the roadways forming the boundary of the area, the Environmentally Sensitive Developing Area should extend to the properties fronting on these roads provided that the maximum depth does not exceed 600 feet".</b>  <b>Mr. Shafer advised that the Map has been revised to conform with the Town of Bridgeville's approved Land Use Plan.</b>

**Workshop/  
Land Use  
Plan  
Update  
(continued)**

**Responses to Comments of the Office of State Planning Coordination**

Mr. Shafer advised that demographic information has been added, including a breakdown of population by age, race, and employment; density of population in various areas of the County; number of building permits issued; employment statistics, etc.

Mr. Shafer advised that a section has been added on recent development trends.

Mr. Shafer advised that the County's 5-Year CIP (Capital Improvement Plan) request to the State of Delaware Department of Transportation will be included in the Mobility Element. A section will also be added on evacuation routes.

Mr. Shafer advised that information has been obtained from the County Engineering Department regarding the Water and Wastewater Element and the information will be included in the Plan.

Mr. Shafer advised that information on parks has been obtained from the State and the information will be added to the Conservation Element.

Mr. Shafer stated that there is one statement in question – “The State Land Protection Act requires counties to adopt land use regulations to protect the unique ecological functions of the State resource areas most likely through zoning overlays”. Mr. Shafer stated that this has not yet been addressed and that he is not sure what the County's position is on the issue. Mr. Shafer stated that he will look into it and that if it is required, then it should be mentioned in the Plan.

Mr. Shafer referred to the Recreation and Open Space Element. He advised that he has the 2002 telephone survey results and that the information will be included in the Plan.

Mr. Shafer advised that more information will be obtained from the Census and the additional information will be included in the Housing Element.

Mr. Shafer discussed different elements of the Plan.

**Land Use Element**

Mr. Shafer stated that he is working on the Land Use Element and that he is using the language that Council agreed on at the October 15<sup>th</sup> meeting, as follows:

**Town Centers** – Medium to high density is encouraged in the Town Center areas; however, the densities should not exceed the maximum density allowed by the adjacent municipality. Typical densities would range from four dwellings per acre for single family detached housing units to twelve dwellings units per acre for multi-family housing in areas where a central

**Workshop/  
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(continued)**

water and sewer system is provided. On-site wastewater systems should be discouraged in these areas. When no alternative exists, single-family detached units should be clustered on one-half acre lots, where permitted by DNREC, and a dry wastewater collection system installed. These areas could serve as receiving areas for the transfer of development rights if an ordinance is adopted and the municipality agrees to annex the area.

**Developing Areas** – Developing Areas are suitable for medium density and mixed-use developments. The base density for projects with central wastewater systems should be four dwellings per acre based on the net acreage. Increases in density could be allowed in unique circumstances where the proposed development is adjacent to existing high density areas. Clustering of lots for a minimum of 7,500 square feet should be allowed and open space should be provided as described in the Community Design Element of the Comprehensive Plan. When on-site wastewater systems are permitted, the section entitled “Low Density Area” should apply.

**Environmentally Sensitive Developing Area** – Both the State and the County recognize that the area around the Inland Bays is desirable for appropriate development. However, the Inland Bays are ecologically vulnerable to the impact of insensitive development. Accordingly, the County should enact an ordinance requiring any applicant of a major development, as defined in the ordinance, to provide information and analysis addressing the development’s environmental impact, including the treatment of stormwater quality and quantity, TMDL impact, mitigation of wetland and woodland disturbance, provision of wastewater treatment and water systems and other matters affecting the ecological sensitivity of the site around the Inland Bays. When a central wastewater system is provided, residential density would be permitted up to the maximum allowable density of the underlying zoning district. Clustering of lots in any zoning district to a minimum lot size of 7,500 square feet should be permitted, but should not increase density permitted in that zoning district. Any increased density by rezoning should only be permitted with proper environmental safeguards. When on-site wastewater systems are used, the provision for density as described in the section “Low Density Area” should apply.

Mr. Cole stated that it was his understanding that the maximum allowable density in the Environmentally Sensitive Developing Area would be capped at two units per acre and that no change of zones would be allowed. Other members of Council did not agree with Mr. Cole’s understanding that no change of zones would be allowed.

Mr. Stickels stated that it was never decided that the opportunity to rezone would not be allowed.

Mr. Shafer stated that the basis for a rezoning decision should be the quality of a development and that there is a list of approximately ten conditions that should be met before any rezoning approval.

**Workshop/  
Land Use  
Plan  
Update  
(continued)**

**Mr. Lank, Director of Planning and Zoning, read the Planning and Zoning Commission's recommendation for the paragraphs describing "Guidelines for Density" for the Environmentally Sensitive Developing Area, as follows:**

**"Both the State and the County recognize that the area around the Inland Bays is desirable for appropriate development. However, the Inland Bays are ecologically vulnerable to the impact of insensitive development. Accordingly, the County shall enact an ordinance requiring the Applicant of any major development, as defined in the ordinance, to provide information and analysis addressing the development's environmental impact, including the treatment of stormwater quality and quantity, TMDL impact, mitigation of wetland and woodland disturbance, provision for wastewater treatment and water systems and other matters affecting the ecological sensitivity of the site around the Inland Bays.**

Without a central wastewater system, three-quarter acre minimum lot size for single family detached homes. With a central wastewater system, residential density would be permitted up to the maximum allowable density of the underlying zoning district. Clustering of lots in any zoning district to a minimum size of 7,500 square feet may be permitted, but shall not increase the density permitted in that zoning district.

For the purpose of this section, the net acreage is defined as the total acreage of a tract less any State regulated wetlands (tidal wetlands) or federally regulated wetlands (non-tidal wetlands). Open space should be provided as described in the Community Design Element of the Comprehensive Plan."

Following a lengthy discussion on the language for the "Guidelines for Density" in the Environmentally Sensitive Developing Area, it was the consensus of Council to use the language recommended by the Planning and Zoning Commission with the addition of the following sentence: "Increased density in the Environmentally Sensitive District shall be discouraged unless there are circumstances to justify the increased density. Increased density shall be permitted with proper environmental safeguards."

**Commercial District Density**

**The density for the Commercial District is four units per acre (for any new commercial).**

Mr. Cole stated that the existing commercial zoning districts should sunset and should not be grandfathered. There was no consensus to Mr. Cole's proposal.

**Calculation of Densities**

**It was decided at the October 15<sup>th</sup> Workshop that non-tidal wetlands be deleted from the definition of Open Space and that golf courses be included**

**Workshop/  
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(continued)**

in the definition of Open Space. It was also decided that the following sentence be included – “A portion of the non-tidal wetlands may be counted as open space if sufficient recreational and buffer areas are provided”.

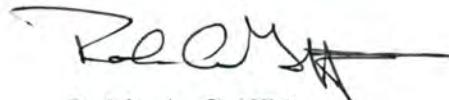
Council discussed commercial uses and areas in RPCs. No consensus was reached.

Mr. Stickels reported that on Tuesday, October 29, 2002 a written Land Use Plan will be submitted to Council for introduction.

**M 641 02  
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to adjourn at 2:30 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



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