



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 1, 2011

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 1, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
David Baker	County Administrator
Todd F. Lawson	County Administrator Appointee
Susan M. Webb	Finance Director
Everett Moore	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

Call to
Order

Mr. Vincent called the meeting to order.

Councilman
Vance
Phillips

Councilman Vance Phillips was absent as he is recovering at the University of Virginia Medical Center in Charlottesville, Virginia, where he is listed in serious condition as a result of an airplane accident that occurred Sunday evening (October 30th).

Mr. Vincent announced that he spoke with Mr. Phillips on this date and Mr. Phillips wanted to express his thanks to everyone for their prayers, phone calls, and emails.

M 587 11
Amend
and
Approve
Agenda

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting "Executive Session - Job Applicants' Qualifications, Personnel, Pending/Potential Litigation, and Land Acquisition pursuant to 29 Del.C. §10004(b)" and by deleting "Possible Action on Executive Session Items"; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea

Minutes	The minutes of October 25, 2011 were approved by consent.
DNREC Presen- tation	David Small, Deputy Secretary, Department of Natural Resources and Environmental Control, stated that the purpose of their visit on this date was to share with the Council an overview of what DNREC is doing with respect to meeting water quality goals in the Chesapeake Bay. He stated that this is a major initiative for DNREC.
DNREC Presen- tation/ Watershed Implemen- tation Plan for the Chesapeake Bay TMDL Program (continued)	<p>According to DNREC, the bay and many streams that drain to the Bay from each state suffer from excess pollution and must be cleaned up. The EPA is leading the effort by developing a Total Maximum Daily Load (TMDL) for nutrients and sediment for the Chesapeake Bay and its tidal branches. A TMDL is the maximum amount of a pollutant that a body of water can receive and still meet water quality standards that protect humans and aquatic life. Delaware has already established State TMDLs for impaired waters in the Chesapeake, but the EPA TMDL will call for additional reductions. Targets under the TMDL are to try and reduce about 60 percent of both nitrogen and phosphorus by 2017 and 100 percent by 2025.</p> <p>Delaware is among six Chesapeake Bay Watershed states – along with Maryland, Virginia, West Virginia, Pennsylvania, and New York – and the District of Columbia. He stated that this is the largest estuary in the country – 64,000 square miles drain into the watershed and there is 10,000 miles of shoreline - it is very important for aquatic life that depend on the estuary for their survival and it means \$750 million to local economies (recreationally, commercially, etc.). There are approximately 18 million people within the watershed. In regards to land use, drainage into the watershed (within all three counties) is: 10% developed, 48% agriculture, 3% rangeland, 16% forest, 1% water, 21% wetland, and 1% other. The total value of natural goods and services in the Delaware portion of the watershed is \$3.4 billion annually. There is an estimated 47,000 jobs with \$1.2 billion in annual salaries that are attributed to a healthy ecosystem and watershed.</p> <p>Mr. Small reported that, as part of the TMDL, each jurisdiction is required to develop a Watershed Implementation Plan (WIP) that details how load goals will be achieved and maintained into the future. This work is being done in three phases: Draft Phase I WIPs were due to EPA on September 1, 2010 with the final due on November 29, 2010. Phase II WIPs in draft and final forms are due to the EPA by December 1, 2011 and March 30, 2012, respectively. Phase III WIPs must be received by EPA in 2017. With each successive WIP, the detail of load goals and actions to achieve those goals will become increasingly more specific.</p> <p>Mr. Small explained what is in Delaware's Watershed Implementation Plan:</p> <ul style="list-style-type: none">• Farms must meet tougher state and federal requirements for management of nutrients such as manure and fertilizer and for feeding operations such as poultry houses and dairies.

- The plan sets many specific implementation goals for agriculture related Best Management Practices (BMPs). For example, goal of more than 90,000 acres of cover crops each year.

In Phase II of the Plan, Mr. Small stated that they will:

**DNREC
Presen-
tation/
Watershed
Implemen-
tation Plan
for the
Chesapeake
Bay TMDL
Program
(continued)**

- set interim implementation goals to identify which partners will be responsible for implementing which strategies; identify methods to support cost share programs
- identify when municipalities may require changes to their facilities, what options they may pursue, and potential funding mechanisms
- implement revised regulations; identify potential funding mechanisms to support upgrades and connections
- follow through on revision of state Sediment and Stormwater regulations, update Industrial Stormwater regulations and renewal of DelDOT/New Castle County municipal stormwater permit
- extensive outreach to local governments, ordinance reviews and recommendations; build-out analyses
- continue program development – all new nutrient and sediment loadings must be offset
- assess lands for restoration opportunities; plan for continued conservation; incorporate other publicly owned lands

Mr. Small stated that they are reviewing the assumptions the model has made for agriculture and they think that they have probably over-estimated agriculture's impact.

Mr. Small concluded by stating that the consequences of missing targets in 2017 and 2025 could be much more expensive to taxpayers than working together now. He stated that they look forward to working with the counties and the municipalities to identify local no/low cost, high impact measures that can help reach the goal and he stated that the ultimate goal is cleaner waters.

Mr. Small stated that they will be soliciting additional public input for their plan in November as the draft plan will go out in December.

**Farmers
Market**

Linda Allen, President of the Western Sussex Farmers Market, presented an overview of their activities and products available at the 2011 market. Ms. Allen thanked the County Council for its sponsorship grant of \$500.00.

**2012
Holiday
Schedule**

Mr. Baker reported that, at the October 25th meeting, the Council considered revising the County's holiday schedule by eliminating Columbus Day and Presidents Day and in lieu thereof, providing two floating holidays to eligible County employees.

Mr. Vincent reported that an employee petition in opposition to the proposed changes to the holiday schedule was circulated with erroneous information

(stating that the County was considering eliminating the Christmas Eve holiday). Of approximately 495 County employees, 26 people signed the petition.

**M 588 11
Approve
Schedule**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council approves the 2012 Holiday Schedule, as initially proposed (on October 25, 2011) except that two floating holidays will be offered instead of Presidents Day and Columbus Day; the Council also approves the Floating Holiday Policy, as proposed.

**M 588 11
Approve
2012
Holiday
Schedule
and
Floating
Holiday
Policy
(continued)**

<u>Holiday</u>	<u>State Observance</u>	<u>County Observance</u>
New Year's Day	January 2 (Monday)	January 2 (Monday)
Martin Luther King, Jr.'s Birthday	January 16 (Monday)	January 16 (Monday)
Good Friday	April 6 (Friday)	April 6 (Friday)
Memorial Day	May 28 (Monday)	May 28 (Monday)
Independence Day	July 4 (Wednesday)	July 4 (Wednesday)
Labor Day	September 3 (Monday)	September 3 (Monday)
Election Day	November 6 (Tuesday)	November 6 (Tuesday)
Return Day	November 8 (Thursday) (after 12:00 Noon)	November 8 (Thursday)
Veterans Day	November 12 (Monday)	November 12 (Monday)
Thanksgiving Day	November 22 (Thursday)	November 22 (Thursday)
Day After Thanksgiving	November 23 (Friday)	November 23 (Friday)
Christmas	----- December 25 (Tuesday)	December 24 (Monday) December 25 (Tuesday)

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**2012
Council
Schedule**

The Council discussed the “2012 No Meeting Schedule”, as presented on October 25th. It was suggested and discussed to add December 18, 2012 to the schedule.

**M 589 11
Approve
Council's
No
Meeting
Schedule
for 2012**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to approve the County Council's No Meeting Schedule (2012), as follows:

March 6	NACo Conference
March 13	Winter Holiday
April 10	Easter Holiday
May 29	Memorial Day Holiday
July 3	Summer Holiday
July 10	Summer Holiday

August 28	Summer Holiday
September 4	Summer Holiday
November 20	Thanksgiving Holiday
December 18	Christmas Holiday
December 25	Christmas Holiday

M 589 11
(continued)

Motion Adopted: 4 Yeas, 1 Absent.
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Draft
Ordinance
Relating
to Bonds
or Per-
formance
Guaranty**

Mr. Baker reviewed a draft ordinance relating to performance bond requirements. He reported that currently, the County Code requires guarantees, performance bonds, or letters of credit for improvements for new developments. These new improvements may include road improvements, storm water improvements, buffers, sewer infrastructure, and required amenities. Mr. Baker advised that it has been brought to the County's attention by a request from a developer that they would like to construct improvements without a bond, but with the condition that no building or zoning permits will be issued or approved until either all improvements are done and approved, or bonds and guarantees are in place to cover the cost of remaining work.

Mr. Baker reported that the proposed ordinance would authorize this change. In addition to the developer's request, it also prohibits the sale or transfer of lots without completing the work or providing a guaranty. If the ordinance is approved, a developer could construct part or all of the improvements without the bond, realizing that there would be no transfers or building permits allowed on the property until all of the improvements are made. If the developer only completed part of the improvements and then bonded the remaining amount, then lots could be sold or transferred and building permits could be issued.

Mr. Cole asked Lawrence Lank, Director of Planning and Zoning, and Michael Izzo, County Engineer, to comment on the draft ordinance. Mr. Lank stated that, in accordance with the draft ordinance, the developer would be making improvements at their own risk since they cannot get any building permits or sell any lots. Mr. Izzo stated that he is concerned that the County is going to have to try and track which phase/project has bonds or should have bonds. He also stated that they do not have the ability to track who is selling lots. He stated that he would favor a situation where everyone still has to bond but there would be a provision where a developer can request a hardship provision so that the lack of bonding would be more of an exception than a rule.

Mrs. Deaver and Mr. Cole expressed concerns about the draft ordinance. Mr. Cole advised Mr. Wilson that he does not like introducing ordinances that may have some problems and will have to be rewritten. Mr. Cole questioned if Mr. Wilson was in a hurry on the draft ordinance and Mr.

Wilson responded that “I will introduce that ordinance today”.

Mr. Moore questioned Mr. Wilson if he introduced the Draft Ordinance and Mr. Wilson responded in the affirmative.

Introduction of Proposed Ordinance (continued)	Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, SECTION 99-32, OF THE CODE OF SUSSEX COUNTY TO ALLOW A LANDOWNER TO PERFORM SITEWORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY”. The Proposed Ordinance will be advertised for Public Hearing.
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Administrator’s Report	Mr. Baker read the following information in his Administrator’s Report:
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1.	<u>Emergency Alert System Test – November 9, 2011</u>
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The first nationwide test of the Emergency Alert System will take place at 2:00 p.m. on November 9, 2011. The alert will be transmitted over television and radio broadcasts. The alert system is designed to make the public aware of specific emergencies and weather events. Attached is information regarding the test.

2.	<u>Delaware Solid Waste Authority Reports</u>
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There were 47,080 pounds of recycled material received at the Recycle Delaware pods at the West Complex in Georgetown during the months of July, August, and September. Attached are reports received for each month.

3.	<u>Sussex 9-1-1 Equipment Upgrade</u>
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We are pleased to note that the Sussex County Emergency Operations Center’s 9-1-1 equipment and software were upgraded effective October 26, 2011. At approximately 2:00 a.m. on October 26, the transfer occurred. During the previous week Sussex County dispatchers worked from the Kent County Emergency Operations Center while technicians worked on the software and hardware upgrades.

4.	<u>Substantial Completion – Forest Landing, Miller Creek Sanitary Sewer District</u>
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The Engineering Department granted Substantial Completion to Forest Landing – On Site – Phase 1B, Agreement No. 343-2, on October 24, 2011. The developer is Forest Landing Communities, LLC, and the project is located at the intersection of County Roads 368 and 84 in the Miller Creek Sanitary Sewer District, consisting of 46 townhouses. Included with this report is a fact sheet

on the project.

5. Councilman Vance Phillips – Airplane Accident

Adminis-
trator's
Report
(continued)

Councilman Vance Phillips, as you may have heard, is recovering at the University of Virginia Medical Center in Charlottesville, Virginia, where he is listed in serious condition as a result of an airplane accident that occurred Sunday evening. The crash occurred near Lynchburg, Virginia, in Amherst County at a private airstrip. We certainly wish Mr. Phillips the best as he recovers. Our thoughts and prayers are with Mr. Phillips and his family.

[Attachments to the Administrator's Report are not attachments to the minutes.]

Old
Business/
Proposed
Ordinance
Regarding
Re-
districting

The Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO REPEAL ORDINANCE NO. 1548 RELATING TO COUNCILMANIC ELECTION DISTRICTS AND ADOPTING COUNCILMANIC ELECTION DISTRICTS".

Mr. Moore reported that a Public Hearing was held on the Proposed Ordinance on October 25th at which time the record was held open for written comments until Noon on Friday, October 28th.

Mr. Moore stated that comments were received from Wolfgang von Baumgart, State Chairman, Independent Party of Delaware; Valerie Cloutier of Lewes; and Diane Maddex of Fenwick Island. Mr. Moore read the three comments into the record.

Mr. Moore asked the Council that this matter not be voted on (at this meeting) and that it be placed on the November 8th Agenda for action. He stated that, when drafting the ordinance, they used the new road names on all the changes; however, on the districts that remained the same, there are only road numbers and they would like to correct that.

Legislative
Update/
Licensing
and
Certifi-
cation of
County
Assessors

Hal Godwin, Deputy County Administrator, discussed legislation for an amendment to the State statutes regarding the licensing and certification of county assessors. He stated that House Bill 152 was introduced on June 2, 2011 which would have made Title 24 § 4019(e) effective only after a County or municipality has done a reassessment of all real estate located in that jurisdiction. The Bill was tabled in Committee.

Mr. Godwin read § 4019(e): "The Council on Real Estate Appraisers shall develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments or his designee for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards."

**Legislative
Update/
Licensing
and
Certifi-
cation of
County
Assessors
(continued)**

Mr. Godwin reported that the Delaware Code requires that the Council on Real Estate Appraisers develop new standards for assessing; on October 18, 2011, the Council on Real Estate Appraisers adopted new standards; one of the requirements adopted is: Duties of an Assessor – Licensed assessors shall perform their duties in accordance with the general and specific County assessment laws and generally accepted assessment standards. Licensed assessors shall perform all assessments in accordance with Uniform Standards of Professional Appraisal Practices (USPAP). This would essentially require the County’s assessors to use market value appraisal principals when assessing properties for taxing purposes. Mr. Godwin noted that the County’s assessment principals have been established on 1974 construction costs and he stated that the new standards adopted on October 18th by the Council on Real Estate Appraisers will cause the County a legal problem because the County will be required by law to assess properties at (some) market value.

Mr. Godwin stated that, on September 28, 2010, the Council approved a Motion that the County pursue legislation for an amendment to the State statutes regarding the licensing and certification of county assessors.

Mr. Godwin stated that Mr. Moore directed him to draft a piece of legislation and he distributed the draft legislation entitled “AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO REAL ESTATE APPRAISERS”. The Act would remove §4019(e), Title 24, of the Delaware Code from the Code and dismisses all standards thereby adopted. He noted that Mr. Moore has not yet reviewed the draft.

Mr. Godwin stated that New Castle and Kent counties will support the legislation if it is introduced.

**M 590 11
Pursue
State
Legislation
Regarding
Assessment
Standards**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council directs staff to continue to pursue State legislation to remedy problems with assessment standards recently adopted by the Council on Real Estate Appraisers.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Library
Update**

Kathy Graybeal, County Librarian, reported on the new databases purchased by the Department of Libraries: (1) Mango languages – an on-line language learning program and (2) Universal Class Courses – on-line continuing education classes.

**SCRWF/
Pump
Station 30**

Michael Izzo, County Engineer, presented the bid results for Sussex County Project No. 09-17, South Coastal Regional Waste Water Facility, Pump Station #30 Improvements, for force main improvements. Six bids were

Improvements Project received; the low bidder was Bearing Construction Company of Sudlersville, Maryland, at the bid amount of \$3,449,460.00. The Engineer's estimate was \$4,059,800.00.

M 591 11 Award Bid A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 09-17, South Coastal Regional Waste Water Facility, Pump Station #30 Improvements, be awarded to Bearing Construction Company of Sudlersville, Maryland, at the bid amount of \$3,449,460.00, contingent upon the receipt of approval from the Rural Utility Service.

M 591 11 Award Bid/ SCRWF/ Pump Station 30 Motion Adopted: 4 Yeas, 1 Absent.

Improvements Project (continued) Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Wilson, Yea; Mr. Vincent, Yea

Angola Neck SSD Contract/ Substantial Completion Michael Izzo, County Engineer, stated that, in the Angola Sanitary Sewer District, four pumping stations were being constructed by Howard Robson, Inc. of Landisville, Pennsylvania. Mr. Izzo reported that the four pumping stations are now complete and he recommended granting Substantial Completion.

M 592 11 Grant Substantial Completion/ Angola Neck SSD Contract A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Engineering Consultants and the County Engineering Department, that the Sussex County Council grant Substantial Completion effective September 20, 2011, for Sussex County Contract No. 09-21, Angola Neck Sanitary Sewer District, to Howard Robson, Inc., and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Wilson, Yea; Mr. Vincent, Yea

Angola Neck SSD Contract/ Balancing Change Order Michael Izzo, County Engineer, presented a Balancing Change Order for Sussex County Project No. 09-21, Angola Neck Sanitary Sewer District, Regional Pump Station 317 and PS 313 / PS 318 / PS 319. The Balancing Change Order is in the credit amount of \$29,705.45 and includes a time extension of 118 days, which resulted mainly from the residents in Angola By The Bay requesting that a fence be installed around the pump stations.

M 593 11 Approve Balancing Change A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 3 with Howard Robson, Inc. of Landisville, Pennsylvania, for Sussex County Project No. 09-21, Angola Neck Sanitary

**Order/
Angola
Neck SSD
Contract** **Sewer District – Regional Pump Station 317 and PS 313 / PS 318 / PS 319, be approved, which decreases the contract amount by \$29,705.45 for a new total of \$2,424,919.55, and increases the contract time by 118 days contingent upon the receipt of approval from the funding agencies.**

Motion Adopted: 4 Yeas, 1 Absent.

**M 593 11
(continued)** **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Absent; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

**Grant
Requests** **Mrs. Webb presented grant requests for the Council’s consideration.**

**M 594 11
Community
Grant** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00 (\$100.00 from each Community Grant Account) to the Mason Dixon Woodworkers for toys for needy children.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Absent; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

**M 595 11
Community
Grant** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$250.00 each from Mrs. Deaver’s and Mr. Cole’s Community Grant Accounts) to Mt. Joy Civic Association for community projects.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Absent; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

**Introduction
of Proposed
Ordinance** **Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A HOTDOG / HAMBURGER VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 24,743 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1916) filed on behalf of Tim Elder. The Proposed Ordinance will be advertised for Public Hearing.**

**Additional
Business** **Under Additional Business, Bobbie Hemmerich questioned when a response would be received to a letter sent to the County in April 2011 regarding Sea Air. She stated that the letter asked for a legal interpretation from the County Attorney and to date, they have only received a response from Lawrence Lank, Director of Planning and Zoning.**

Under Additional Business, John Walsh stated that for the third year,

Sussex County has not had a Land Use Planner. Mr. Walsh referenced the ordinance relating to performance bonds and the presentation on the Chesapeake Bay Watershed on this date and he stated that the County needs a Land Use Planner for issues such as these.

**M 596 11 A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to adjourn
Adjourn at 11:56 a.m.
M 596 11 Motion Adopted: 4 Yeas, 1 Absent.
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Absent; Mr. Wilson, Yea;
 Mr. Vincent, Yea**

Respectfully submitted,

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