



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 27, 2007

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 27, 2007 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	Vice President
George B. Cole	Member
Vance Phillips	Member
Lynn J. Rogers	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Assistant to the County Administrator
James D. Griffin	County Attorney

M 688 07 Amend and Approve Agenda

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda, as follows:

Delete "Delaware Agriculture Lands Preservation Foundation Request" (place on December 4th Agenda);

Delete under "Old Business – AN ORDINANCE TO DELETE AND/OR MODIFY THE CONDITIONS IMPOSED IN ORDINANCE NO. 1770 FOR CHANGE OF ZONE NO. 1554, THE APPLICATION OF MARINE FARM, L.L.C.";

Move "Old Business – AN ORDINANCE TO AMEND CHAPTER 72, HOUSING UNITS, MODERATELY PRICED" to follow "Executive Session – Potential Litigation";

Delete "Industrial Park Sublease – Builders Supply of Delmarva" (place on December 4th Agenda);

Delete "Miller Creek Sanitary Sewer District Collection and Conveyance System, Contract A – Substantial Completion";

and, to approve the Agenda, as amended.

Motion Adopted: 3 Yeas, 2 Absent.

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

M 689 07 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve
Minutes the minutes of November 6, 2007.

M 689 07 Motion Adopted: 3 Yeas, 2 Absent.

Approve
Minutes
(continued)

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

M 690 07 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve
Approve the minutes of November 13, 2007.
Minutes

Motion Adopted: 3 Yeas, 2 Absent.

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

Corre-
spondence

Mr. Griffin read the following correspondence:

THE WAY HOME, INC., GEORGETOWN, DELAWARE.
RE: Letter in appreciation of the Council's contribution.

Mr. Cole joined the meeting.

Employee Mr. Baker and the County Council recognized Louanne Rogers as
of Quarter Employee of the Quarter.

M 691 07 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt the
Adopt Tribute commending Louanne Rogers as Sussex County Employee of the
Tribute/ Quarter (Fourth Quarter 2007).
Louanne

Rogers/
Employee
of the
Quarter

Motion Adopted: 4 Yeas, 1 Absent.

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

M 692 07 A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt the
Adopt Proclamation entitled "PROCLAIMING THURSDAY, NOVEMBER 29,
Procla- 2007 AS A DAY TO HONOR JOYCE FIGGS, DELMAR'S CITIZEN OF
mation/ THE YEAR".
Joyce

Figgs/
Delmar's
Citizen

Motion Adopted: 4 Yeas, 1 Absent.

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

of the
Year

Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Absent

Industrial
Park Lease
Agreement
Industrial
Park Lease
Agreement/
Common-
wealth
(continued)

Mr. Baker presented a proposal to terminate a Lease Agreement with PATS for 76,290 square feet of land at the County Airport and to enter into a Lease Agreement with Commonwealth for the land. PATS and Commonwealth are proposing to construct an airport hangar on the site. Commonwealth will fund the construction of the building and will enter into a Lease with PATS; the total initial rent cost will be approximately \$28,990 per year. Commonwealth is to build part of the County's stormwater system at the Airpark, at a cost of approximately \$500,000. This cost will be amortized over the first 15 years of the lease to Commonwealth. During the first 15 years, Commonwealth's lease amount will increase by the Consumer Price Index (CPI), or the maximum of 3 percent per year. The net income to the County is estimated to be zero during the first 15 years. After 15 years, Commonwealth would have the option to continue to lease the land for the new hangar based on a new appraised value of the land. During the second 15 years, the rent would escalate based on the CPI, or a maximum of 4 percent per year. After 30 years of lease, Commonwealth and the County would renegotiate the lease. It is estimated that this hangar will result in approximately 200 new jobs for PATS, bringing their employment base from 600 to 800 employees in Georgetown.

M 693 07
Approve
Lease to
Common-
wealth/
Industrial
Park

A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council approves the proposed terms, as described, for a Lease to Commonwealth for 76,290 square feet at the Sussex County Industrial Park.

Motion Adopted: 4 Yeas, 1 Absent.

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

Adminis-
trator's
Report

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

1. Surplus Property

As per the attached memos of request, the County has agreed to sell an abandoned tower at the airport to the Friends of Bellanca Airfield, Inc., for \$100.00. The tower has not been used for at least 30 years and is in a future development area for the airport.

Also, the County has agreed to donate a vehicle to the Sussex County Volunteer Firemen's Association. This vehicle is a 1995 Ford Crown Victoria surplus paramedic vehicle that is a spare unit in the County's fleet.

2. Recycling Workshop – December 6, 2007

	<p>On December 6, 2007, at 9:00 a.m. in the Sussex County Council Chambers, a workshop will be held by the Department of Natural Resources and Environmental Control, the Northeast Recycling Council, and the Town of Georgetown to present information about recycling for businesses, municipalities, and schools. Attached is information regarding the workshop.</p>			
<p>Adminis- trator’s Report (continued)</p>	<p>3. <u>Caroling on The Circle – December 3, 2007</u></p> <p>At 7:00 p.m. on December 3, 2007, the 24th annual Caroling on The Circle will be held. As in the past, we are requesting assistance with nonperishable food items to help the needy in Sussex County. A night of singing and celebration is planned.</p>			
<p>Introduction of Proposed Ordinance</p>	<p>Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$73,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE DAGSBORO-FRANKFORD SANITARY SEWER DISTRICT / DELAWARE AVENUE EXTENSION AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH”. The Proposed Ordinance will be advertised for Public Hearing.</p>			
<p>Local Law Enforce- ment Grant Request</p>	<p>Mr. Godwin presented the following request for funding through the Revenue Sharing for Local Law Enforcement Grant Program:</p> <table><tr><td>Fenwick Island</td><td>\$25,000.00</td><td>Bullet Proof Vests, Laptop Computers, Radar Units, Operations – Fuel and Ammunition</td></tr></table>	Fenwick Island	\$25,000.00	Bullet Proof Vests, Laptop Computers, Radar Units, Operations – Fuel and Ammunition
Fenwick Island	\$25,000.00	Bullet Proof Vests, Laptop Computers, Radar Units, Operations – Fuel and Ammunition		
<p>M 694 07 Approve Local Law Enforce- ment Grant</p>	<p>A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Revenue Sharing for Local Law Enforcement Grant in the amount of \$25,000 to the Town of Fenwick Island.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Absent</p>			
<p>Draft Ordinance/ Source Water Protection</p>	<p>Mr. Godwin presented a Draft Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION”. Mr. Godwin advised that the State of Delaware Source Water Protection Law requires county governments and municipalities of 2,000 or more to adopt, as part of the update and implementation of their 2007 Comprehensive Land Use Plans, the overlay maps delineating as critical areas, source water assessment, wellhead protection and excellent groundwater recharge potential areas. Furthermore, the counties and municipalities must adopt,</p>			

by December 31, 2007, regulations governing the use of land within those critical areas designed to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quality.

**Draft
Ordinance/
Source
Water
Protection
(continued)**

Mr. Godwin noted that the Draft Ordinance represents the proposal prepared and submitted by the Source Water Protection Citizen and Technical Advisory Committee for the Council's consideration.

Mr. Godwin also noted that the Committee first submitted a Draft Ordinance to the Council on June 12, 2007 after which DNREC submitted comments including recommended changes. Mr. Godwin reviewed the four major recommendations:

- That the County replicate the impervious cover limitations, contained in the excellent recharge area section of the draft ordinance, within the Wellhead Protection Area of the Draft Ordinance.
- The ground-water flow models should be approved by Council only after consultation with an "expert".
- The minimum wellhead protection area around a well should be 150 feet.

Doug Rambo of DNREC stated that, in reviewing the Draft Ordinance in its current form, the Department noted a lot of improvements and made the following comments in regards to recommended changes: the proposal introduces a term referred to as a "Safe Zone"; a Safe Zone is defined as "an area that shall be free of any structures, which would require a County Building Permit" (except buildings and access associated with the well, etc.); the draft states that the Safe Zone for wells pumping less than 50,000 gallons per day encompasses a distance of a 20-foot radius around the well; for wells pumping greater than 50,000 gallons per day, the Safe Zone is 100-feet around the well; this is inadequate and not protective of the public water supplies for Sussex County. Mr. Rambo stated that the Delaware Source Water Assessment Plan, which was approved by the EPA, states that the minimum wellhead protection area around a well shall be 150 feet. (Section 89-6 (B2), (C1) and (D1) – Pages 4 and 5 – Draft Ordinance).

In response to questions, Mr. Rambo stated that the 150 foot radius is not required by State Law; however, the State of Delaware Source Water Assessment Plan (approved by EPA and codified by Delaware Code) shows that the minimum wellhead protection area should be 150 feet and that it is by reference only.

Mr. Griffin referenced comments made by DNREC that provisions allowing for an engineer's determination of aquifer conditions from the wellhead protection standards section and from the geologic portions of the boundary determination section of the ordinance be stricken from the draft ordinance and he questioned why DNREC is making this recommendation. Mr. Rambo responded that since the letter was written by DNREC, they have

changed their position and are no longer recommending the removal of “engineer”.

Draft Ordinance/ Source Water Protection (continued)	<p>Dan Kramer, a member of the Source Water Protection Technical and Advisory Committee, stated that a landowner would not be able to build on one acre of land if a safe zone of a 150 foot radius is required. He noted that the current law allows for a well within 20 feet of a building and he questioned what that the difference is today that would require an additional 130 feet.</p> <p>The Council discussed whether or not to increase the radius distances. Mr. Griffin noted that the numbers can be decreased during the Public Hearing process; however, they can not be increased.</p>
M 695 07 Amendment to Draft Ordinance on Source Water Protection (Failed)	<p>A Motion was made by Mr. Cole, seconded by Mr. Rogers, to increase the Safe Zone radius from 20 feet to 60 feet (Section 89-6 D(1) – Page 4).</p> <p>Motion Failed: 2 Yeas, 2 Nays, 1 Absent.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Nay; Mr. Rogers, Yea; Mr. Jones, Nay; Mr. Dukes, Absent</p>
Introduction of Proposed Ordinance	<p>Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION”. The Proposed Ordinance will be advertised for Public Hearing.</p>
Millville Expansion of the BBSSD/ Contract C – Bid Award	<p>Mike Izzo, County Engineer, reported on the Bid Results for Sussex County Project No. 05-06-C, Millville Sanitary Sewer District Collection & Conveyance, to serve the subdivisions in the Millville area (Banks Acres and Banksville Park). Mr. Izzo noted that the bid proposal included an Alternate Bid which would include service to a 1500 foot section of SR 26. He also noted that work on SR 26 is planned in phases in an attempt to minimize the impact to businesses on SR 26; construction is proposed to begin in January and the work on SR26 should be completed in April.</p> <p>Mr. Izzo reported that eleven bids were received; the low bidder was A.P. Croll & Sons of Georgetown. Their total bid, including the alternate work on SR 26, was \$2,091,830.00. The Engineer’s Estimate was \$3,139,215.00.</p>
M 696 07 Award Bid – Millville Expansion of the BBSSD/ Contract C	<p>A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants, Whitman Requardt and Associates, LLP, and the Engineering Department, that Sussex County Project No. 05-06C, Millville Expansion of the Bethany Beach Sanitary Sewer District Collection and Conveyance, Banks Acres, Banksville Park and SR 26 East be awarded to A.P. Croll and Sons, Inc. of Georgetown, Delaware, at the Alternate Bid Amount of \$2,091,830.00, contingent upon the receipt of approval from the Rural Utility Service.</p>

Motion Adopted: 4 Yeas, 1 Absent.

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

**EOC
Center
Console
Furniture
Project/
Change
Order**

Mr. Izzo presented a Change Order in the amount of \$648.00 to the Emergency Operations Center Console Furniture Project. Joe Thomas, Director of Emergency Operations, has requested the installation of data ports and power ports on the conference table in the Situation Room at the new Emergency Operations Center. Mr. Izzo, noted that, following the review process, it became necessary to extend the contract time by 27 days. In exchange for the time extension, the contractor (SMC) has agreed to work over the holiday.

**M 697 07
Approve
Change
Order/
EOC
Center
Console
Furniture**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for the Emergency Operations Center Contract No. 07-02, Communications Center Furniture, with SMC – EDP be approved, which increases the contract amount by \$648.00, for a new total of \$260,016.00, and increases the contract time by 27 days.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
Proposed
Ordinance
Relating
to Lot
Main-
tenance,
Storing
Vehicles &
Boats and
Prohibited
Growths**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV, SECTION 115-191, RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM”.

It was noted that it has been determined by the County that in order to assist in the more effective enforcement of the Code, Chapter 80 should be repealed and the provisions thereof incorporated within Chapter 115, Section 191, and the expanded and incorporated provisions thereof should be amended to more clearly define the circumstances and conditions which shall give rise to enforcement of the matters addressed within this amendment and the consequences which may result from the violation of the expanded and amended provisions of Section 115-191.

The Planning and Zoning Commission held a Public Hearing on this application on November 8, 2007 at which time the Commission deferred

action.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 8, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

**Public
Hearing/
Proposed
Ordinance
Relating
to Lot
Main-
tenance,
Storing
Vehicles &
Boats and
Prohibited
Growths
(continued)**

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

At the Public Hearing before the Commission, Rick Kautz stated that there may be a need for a definition for an "antique vehicle" or a "vintage car" and that there may be a need for a vehicle licensing reference in the proposed amendment.

Mr. Lank reported that, on November 21st, correspondence by email was received from Tom Ford stating that vegetative guidelines are hard to enforce and maybe should be avoided. Mr. Ford asked that the following be excluded from the ordinance: ornamental grasses, perennials, herbs, vegetable gardens, shrubs and trees, wetland establishment in stormwater basins or bio-swales, meadow growth and re-establishment of succession growth by a no-mow technique, golf course rough areas, and the perimeters of water basins. He stated that, maybe, a distinction is needed for small lot ownership but even this is problematic. He suggested that the ordinance stick to rubbish, debris, vehicles and the like and to leave the vegetative growth issue alone. Mr. Lank reported that correspondence was also received from Rich Collins relating to these same issues.

Mr. Lank distributed petitions in support of the application containing 108 signatures that were received at the Public Hearing before the Planning and Zoning Commission. The Petition stated that, under Chapter 115-191, in regards to no more than 2 unlicensed automotive vehicles or trailers, boats, or other watercraft, (the undersigned) would like the ordinance to read: (0) unlicensed vehicles, or trailers, boats, or watercraft.

Mr. Griffin stated that the County's current Ordinance found in Chapter 80 of the Code is proposed to be repealed because, when it was adopted many years ago, it placed the responsibility for policing matters related to lot maintenance with the County's Transfer Station Division and the County no longer has a Transfer Station Division. The Proposed Ordinance would place the jurisdiction of this under the Zoning Ordinance and enforcement would be by the Planning and Zoning Department. Mr. Griffin noted that a current provision in the Zoning Ordinance states that no more than two automotive vehicles or trailers of any type without current license plates shall be parked or stored on any residentially zoned property (other than in a completely enclosed building). The draft ordinance expands on the vehicles and trailers component to include boats and watercraft.

Public comments were heard.

Carol Swanson opposed the limitations on grasses and weeds. He stated that enforcing the ordinance in its current form would be difficult and arbitrary and he requested that the Council give property owners some leeway in the way they maintain their land. Mr. Swanson submitted four alternatives for the Council's consideration:

**Public
Hearing/
Proposed
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to Lot
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tenance,
Storing
Vehicles &
Boats and
Prohibited
Growths
(continued)**

- Eliminate all clauses concerning vegetation.
- Reference should be made to the Delaware Department of Agriculture's Noxious Weed Program. (Mr. Swanson included information in his hand-out to the Council.)
- Come up with better language for the vegetative section of the ordinance for a more reasonable and enforceable ordinance. (Mr. Swanson included a section of New Castle County's Maintenance Code in his hand-out to the Council, which he stated that, although it has good points, it is too restrictive.)
- Expand the exception clause (on Page 7) – add ornamental grasses, areas maintained for wildlife habitat, flower beds, vegetable gardens, wetlands and marshes.

Mr. Swanson submitted a letter addressed to Councilman Jones in opposition to the ordinance, as proposed. The letter was made a part of the record.

Joe McCann spoke in support of the ordinance. (A letter along with pictures was received from Joe McCann and Kathryn Teller.) Mr. McCann stated that their adjacent property owner has deposited a junk sailboat on his lot and he presented pictures to illustrate the problem. Mr. McCann stated that he has asked his neighbor to remove the sailboat, with no results.

Paul Blust spoke in favor of the ordinance. He stated that he is a representative of the signers of the petition. Mr. Blust submitted photographs of unkempt yards and abandoned vehicles in his neighborhood and he described the yards with unlicensed boats and trailers, debris around the property, and excessive grass height. Mr. Blust stated that he has been dealing with the County Constable's Office for three months in regards to one of the neighborhood properties. Mr. Blust expressed concern that complaints cannot be called into the Constable's Office on weekends and, in some cases, that is the only time the property owners are at home. Mr. Blust stated that he spoke to the Constable who said that, in the nine years that he has been Constable, he has addressed two or three ornamental grass issues and when they go and investigate these issues, it is obvious that the person has a purpose to grow the ornamental grasses.

Virginia Donnelly spoke in support of the ordinance. She stated that in her neighbor's yard there are 6 or 7 vehicles, weeds, refrigerators, old camping trailers, etc. She stated that she is concerned about the safety of children in the area. She stated once the Constable fines violators, judges reduce the

finer.

Public
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to Lot
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(continued)

Roland West spoke in opposition to the ordinance. He stated that he gave an easement to the State and that they let the grass grow high; that he still owns the land and he is concerned he will get in trouble; that determining compliance of the height of weeds, flowers, etc would be difficult; that higher tipping fees result in more trash being thrown out on the roadways; and that he has seen an increase in trash along his property and he has to take it to the dump.

The Vice President of the Oak Orchard Home Association, who was representing the people of the Association, spoke in favor of the ordinance. He stated that there is a salvage yard in Oak Meadows; that it is an unauthorized salvage yard in a residential area; that there are 6 boats, 2 cars, 5 trucks, 9 trailers/campers; that the vehicles are licensed in Pennsylvania; that the property owner continues to haul more in; and that they want to get rid of it. Photographs of the property were submitted for the record.

Alan Lynch spoke in support of the ordinance. He stated that in the "Forgotten Mile" in Dewey Beach there is a building with a blue tarp on it that has been under repair for ten years; that this negatively impacts property values in the area; that the Fire Marshal's Office has said that they cannot condemn it; and that abandoned cars are in the area.

Helene Guilfooy spoke in support of the ordinance. She stated that there are properties on James A. Street and Holland Glade owned by the same person; that the property owner has been cited and has gone to court and paid fines several times; that one time the fine was \$30,000 and he paid it; and that she supports the escalation of penalties and the Clean Hands clause in the proposal.

Curtis Barros (a resident of Dodd's Addition in between Dewey and Rehoboth) spoke in support of the ordinance. He stated that Josephine Street has so many boats and cars on it, that only one car can pass through; and that he also supports the grass and weed control portion of the proposal.

Dan Kramer spoke in opposition to the ordinance. He stated that people should work with their neighbors; that he is opposed to someone telling him what he can and cannot do with his property; that the ordinance does not specify acreage and he questioned how the County would determine what one lot is; that he questions if this will be applied to more than one acre, five acres, ten acres, etc.; that the ordinance will create more complaints; and that the current ordinance should remain, as is.

Mr. Griffin clarified that the purpose of this ordinance is to make it clear what the authority of the County is and to create standards for enforcement with progressive penalties. Mr. Baker stated that the existing penalty is

“not more than \$100 per day” which can be interpreted by the courts as \$0; that this amount does not cover the costs of the County; that the proposal changes the penalty for the first offence to “not less than \$250 or more than \$500”; and that the intent of the County has been to target overgrown and neglected lots, not gardens, ornamental lots, etc.

(continued) There were no additional comments and the Public Hearing was closed.

M 698 07
Defer
Action on
Proposed
Ordinance
Relating
to Lot
Main-
tenance, etc.

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV, SECTION 115-192, RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM”.

Motion Adopted: 4 Yeas, 1 Absent.

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

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

M 699 07
Community
Improve-
ment
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$5,000.00 from Mr. Phillips’ Community Improvement Grant Account to the Town of South Bethany for the new Town Hall/Police Station project.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 700 07
Youth
Activity
Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Youth Activity Grant Account) to Delaware Magic to sponsor the Fastpitch Softball Team in 2008.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 701 07
A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give

Councilmanic Grant **\$600.00 from Mr. Rogers' Councilmanic Grant Account to the Milton Fire Department, Inc. for the Milton Community Christmas Parade.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 702 07 Councilmanic Grant **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Retired and Senior Volunteer Program (RSVP) for the Nimble Fingers Project.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 703 07 Go Into Executive Session **At 12:27 p.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to come out of Regular Session and go into Executive Session for the purpose of discussing potential litigation.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Executive Session **At 12:28 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing potential litigation.**

Absent **Mr. Phillips was not present for the remainder of the meeting.**

M 704 07 Come out of Executive Session/Reconvene Regular Session **At 12:43 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 3 Yeas, 2 Absent.

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

Introduction of Proposed Ordinance **Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND**

LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23.471 ACRES, MORE OR LESS” (Conditional Use No. 1777) filed on behalf of Beebe Medical Center, Inc. The Proposed Ordinance will be advertised for Public Hearing.

**Old
Business/
Ordinance
Amending
MPHU
Ordinance**

The County Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 72, HOUSING UNITS, MODERATELY PRICED”.

The County Council held a Public Hearing on the Proposed Ordinance on November 6, 2007 at which time they deferred action in order to allow Mr. Griffin time to review the legality of the Ordinance. During the Public Hearing, Dan Kramer presented information on a procedural issue. He stated that the Ordinance was not properly written or properly introduced in accordance with State Law. State Law requires that, in draft ordinances, text that is proposed to be eliminated in an existing ordinance is to be enclosed in brackets and additions are to be underlined. In the draft proposed on November 6th, it was pointed out that additions made in the draft ordinance were underlined and the items to be deleted were lined-through and not enclosed in brackets.

**M 705 07
Amend
Proposed
Ordinance
Relating
to MPHUs**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, that the Sussex County Council amends the Proposed Ordinance relating to Moderately Price Housing Units by removing the line outs or strike throughs indicating the wording to be deleted and enclose all the wording proposed for deletion in brackets.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 706 07
Adopt
Ordinance
No. 1941
(MPHU
Ordinance)**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to Adopt Ordinance No. 1941 entitled “AN ORDINANCE TO AMEND CHAPTER 72, HOUSING UNITS, MODERATELY PRICED”, as amended.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 707 07
Recess**

At 12:47 p.m., a Motion was made by Mr. Cole, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

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

**Public
Hearing
(C/U
No. 1707)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL STORE AND MINI-STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 9.47 ACRES, MORE OR LESS” (Conditional Use No. 1707) filed on behalf of The Keith Corporation.

**Public
Hearing
(C/U
No. 1707)
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on November 8, 2007 at which time the Commission deferred action to await the receipt of PLUS comments and left the record open for 14 additional days after receipt of the PLUS comments for written comments pertaining to those comments.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 8, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

Mr. Lank distributed an Exhibit Book provided by the Applicant.

Mr. Lank stated that, on this date, the PLUS comments were received by fax from the Office of State Planning Coordination. Mr. Lank noted that the PLUS comments were dated November 19, 2007.

Mr. Lank reported that, following the Public Hearing before the Commission, a letter was received from Environmental Consultants International (ECI) in response to the PLUS comments and a letter was received from the Sussex Conservation District regarding soil types.

The Council found that James Fuqua, Attorney, was present with Wendy Fulton of The Keith Corporation and Gary Cuppels of ECI. They stated that the application is for two proposed uses – a retail store (tractor supply) and a self-storage facility; that the location is along Route 13 in Seaford; that 50 percent of the site will be used by the Tractor Supply store and 50 percent of the site will be used by the self-storage facility; that they propose to subdivide the property and that the other half of the property would be sold to a third party for the self-storage facility; that the Keith Corporation owns the property and they have a leasing arrangement with the Tractor Supply Company; that the Tractor Supply Company is a nationwide company (started in 1938); that DelDOT has had no objection to the joint-use entrance; that in the future, DelDOT intends to build a service road to the rear of the site; that the site plan shows a 50 foot easement area along the rear of the site for a future service road; that the area will be left as open space until DelDOT decides to build the service road; that there is a wide variety of commercial uses in the area; that the proposed use is

compatible with the area; that the Office of State Planning has “no objection to this Level 1 development along U.S. Route 13 north of Seaford; that they have responded to the PLUS letter; that they have explored the possibility of landscaping along Route 13; however, they have to consider the visibility; and that it is likely that the landscaping will include low shrubs and trees.

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

M 708 07 A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action
Defer on Conditional Use No. 1707 filed on behalf of The Keith Corporation.

Action on
C/U
No. 1707

Motion Adopted: 3 Yeas, 2 Absent.

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

Public
Hearing
(C/U
No. 1708)

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT/POND RECLAMATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 19.248 ACRES, MORE OR LESS” (Conditional Use No. 1708) filed on behalf of Lisa Phillips, Trustee.

The Planning and Zoning Commission held a Public Hearing on this application on November 8, 2007 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 8, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

Mr. Lank distributed an Exhibit Book provided by the Applicant.

Mr. Lank reported that, following the Public Hearing before the Commission, a letter was received from the Sussex Conservation District regarding soil types.

Dennis Schrader, Attorney; R. B. Kemp, Surveyor; and Spencer Weller were present on behalf of the application. They stated that the site contains 19.248 acres and it is part of a 350-acre farm; that they are seeking a conditional use for a farm pond and a wildlife habitation area (Borrow Pit and Reclamation Project); that the area of the proposed farm pond will be

**Public
Hearing
(C/U
No. 1708)
(continued)**

approximately 5 acres; that the area is wooded on the north and west by woodlands and on the east by woodlands and a ditch; that the property is located in a sparsely populated rural area; that the pond will be isolated and out of sight from other residents; that there are no new public or private streets to be included in the project; that there will be no requirements for any public or private sanitary or wastewater disposal; that no water supply will be involved; that there are no delineated wetlands on the project; that a landscaping plan and a reclamation/restoration plan are proposed; that they plan to restore the wildlife habitat; that there will be a 50 foot wide buffer between the proposed farm pond and all adjoining properties; that the proposed farm pond will be a depth of 28 feet and a water depth of 25 feet; that the proposed access is via a temporary 25-foot wide access across other lands of the Applicant; that planting and landscaping for wildlife will be established around the pond; that the pond will provide a feeding area for migrating geese, ducks and shorebirds and a wildlife habitat area for turkeys, quail, rabbits, and nesting birds; and that they propose it will take no longer than five years to excavate the pond.

In response to a question raised by Mr. Cole, Mr. Lank stated that the following hours of operation were proposed at the Public Hearing before the Planning and Zoning Commission: 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturdays.

Public comments were heard.

Nicole Theis spoke in support of the project.

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

**M 709 07
Defer
Action
on C/U
No. 1708**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action on Conditional Use No. 1708 filed on behalf of Lisa Phillips, Trustee.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 710 07
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to adjourn at 2:18 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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