



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 2, 2008

**Call to
Order**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 2, 2008, 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 |
| David Baker | County Administrator |
| Susan M. Webb | Finance Director |
| James D. Griffin | County Attorney |

**M 819 08
Approve
Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

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

**M 820 08
Approve
Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of November 18, 2008.

Motion Adopted: 5 Yeas.

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

**Corre-
spondence**

Mr. Griffin read the following correspondence:

**SENATOR TOM CARPER, UNITED STATES SENATE,
WASHINGTON, D.C.**

RE: Letter of congratulations to the South Coastal Regional Wastewater Facility for recently winning the U.S. Environmental Protection Agency's Region III Operations and Maintenance (O&M) Excellence Award for

Medium Advanced Treatment Category. “Being one of the only two recipients among 3,888 facilities in our region is a magnificent and highly admirable accomplishment!”

**Corre-
spondence
(continued)**

**DELAWARE STATE POLICE TROOP 4 EXPLORERS,
GEORGETOWN, DELAWARE.**

RE: Letter of thanks for the Council’s donation to the Explorer Program.

**FRED C. SEARS, II, PRESIDENT AND CEO, DELAWARE
COMMUNITY FOUNDATION, WILMINGTON, DELAWARE.**

**RE: Letter in appreciation of the Council’s recent donation to the Laurel
Alumni Scholarship Foundation, Inc. Fund.**

**SUSSEX COUNTY FOSTER PARENT ASSOCIATION,
GEORGETOWN, DELAWARE.**

RE: Letter in appreciation of the Council’s recent donation.

LAUREL HISTORICAL SOCIETY, LAUREL, DELAWARE.

**RE: Letter to Councilman Dukes in appreciation of his recent donation to
the Cook House Project.**

**Employee
of the
Quarter**

**The County Council recognized Jayne Ellen Dickerson, Employee of the
Quarter, for the Fourth Quarter 2008. Jayne Ellen started work at the
County in May 1980 in the Engineering Department, where she currently
works, serving as Office Manager for the Utility Permits Division.**

**M 821 08
Adopt
Tribute/
Employee
of the
Quarter**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the
Tribute thanking and congratulating Jayne Ellen Dickerson, Employee of
the Quarter, for the Fourth Quarter 2008.**

Motion Adopted: 5 Yeas.

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

**Personnel
Board**

**Mr. Baker advised that the three appointments on the County’s Personnel
Board have expired. This Board advises the County regarding personnel
and policies and hears appeals by County employees, upon request.**

**M 822 08
Reappoint
Personnel
Board
Members**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to reappoint
Scotty Wallace Amerine and Clay Yokum to the Personnel Board for a term
of 3 years.**

Motion Adopted: 5 Yeas.

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

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

(The third appointment to the Personnel Board will be made at the December 9th meeting.)

**Extension
Request/
C/U
No. 1619**

Mr. Baker reported that, on October 31, 2008, an extension request was received from Helena Dove, applicant of Conditional Use No. 1619, which was approved by the County Council in November 2005. The reason for the request is based on “the unforeseen circumstances encountered with the downward spiral of the real estate market”. The Planning and Zoning Commission has granted two one-year extensions, one in November 2006 and one in December 2007. The last extension expired November 1, 2008. In accordance with the County Code, the Commission is unable to grant any additional extensions and the applicant must seek the approval of the Council.

Mr. Cole expressed concern that approval of this request would set a bad precedent and that the request does not merit Council action as an emergency situation.

M 823 08

A Motion was made by Mr. Cole to deny the request. The Motion failed for the lack of a Second.

**M 824 08
Approve
Extension
Request**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to approve the extension request of Helena Dove regarding Conditional Use No. 1619 for one year; this extension will be the final extension.

Motion Adopted: 3 Yeas, 2 Nays.

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

**Adminis-
trator’s
Report**

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

1. Caroling on The Circle – December 8, 2008

The 25th Annual Caroling on The Circle program will be held at 6:30 p.m. on December 8, 2008. Attached is a press release. We are again requesting assistance in providing canned goods and food items for the needy in Sussex County. Nonperishable food items can be dropped off at the County Administrative Office Building from 8:30 a.m. to 4:30 p.m., Monday through Friday.

2. Clean Hands Ordinance Report

As a result of the Clean Hands Ordinance, over \$433,000 has been collected in delinquent property tax and sewer and water bills since

October 22, 2007. This ordinance provides us another effective means to collect outstanding bills.

(Attachments to the County Administrator's Report are not made a part of these minutes.)

**Pension
Committee
Recommendation**

Mrs. Webb presented information from the November 12, 2008 Sussex County Pension Committee meeting. Also in attendance to discuss the status of the County's Pension Plan was Michael Shone of the Peirce Park Group, the County's Pension Investment Consultant. They reviewed the Pension Plan performance and Post Employment Benefit Plan Fund as of September 30, 2008; recommended modifications to the Plan, recommended the annual contribution, and discussed how the economy has affected the Plan.

Mrs. Webb reported that, based on the Pension Committee's recommendation and the Consultant's recommendation, the County considered the selection of a Global Equity Manager. Requests for Proposals were advertised and responses were received from Dupont Capital Management, Marvin & Palmer, The Vanguard Group, and Artio Global Investors. An analysis of the four firms resulted in the Pension Committee's recommendation for the selection of two managers, Dupont Capital Management and The Vanguard Group.

Mrs. Webb reviewed spreadsheets regarding pension fund performance as of September 30, 2008. For the quarter ending September 30, 2008, the total return for all funds for the first nine months of 2008 was -14.21 percent, with a total value of \$39,924,021. In comparison, the total return for 2007 was 8.47 percent, with a total value of \$46,537,181. Mrs. Webb reported on the return for the first nine months of 2008, by manager and fund, as follows: Wilmington Trust (-14.25%), Fidelity Investments (-13.40%), and the State of Delaware (-14.35%), for an overall return of -14.21 percent.

Mrs. Webb reported that, at the beginning of 2008, the Pension Plan was 97.7% funded; through October 2008, the Pension Plan was 97.1% funded. This is due to the overall peaks and drops over the past five years, since long term assets are looked at over a period of years.

Mrs. Webb reviewed the proposed modifications to the Plan:

- Rebalance and decide on the reallocation mix; a 60 percent stock and 40 percent fixed income mix is being considered.**
- Move the Fidelity fixed portfolio to the Wilmington Trust fixed portfolio.**
- Keep Fidelity stock.**
- Move Wilmington Trust stock to one of the new Global Equity Managers, Dupont Capital Management.**
- With a piece of the 2009 contribution, open an account with the**

| | |
|--|--|
| Recommendation (continued) | <ul style="list-style-type: none">• other new Global Equity Manager, The Vanguard Group (\$500,000). Instead of putting the entire 2008 contribution (\$2,332,889) into the market, another option would be to slow down the contribution into Fiscal Year 2009 and stagger the balance of funds into Certificates of Deposit in a pension restricted account (\$1.8 million). As the CDs become due, the money could be entered into the market, depending upon market conditions. CD's would be competitively bid, possibly in amounts of \$300,000 to \$600,000. This would keep the principal amount secure. |
| M 825 08 Authorize Transfer of Fidelity Investments Fixed Portfolio | <p>A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council authorizes the Finance Director to transfer the Fidelity Investments fixed portfolio to the Wilmington Trust Company fixed portfolio (approximately \$1.8 million).</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p> |
| M 826 08 Authorize Transfer of WTC Stock Portfolio | <p>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council authorizes the Finance Director to transfer the Wilmington Trust Company stock portfolio to a new account with Dupont Capital, a new Global Equity Manager (approximately \$3.9 million).</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p> |
| M 827 08 Authorize Transfer of Budgeted Pension Contri- bution | <p>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council authorizes the Finance Director to transfer the 2009 budgeted pension contribution of \$2,332,889 into a new pension fund trust cash account and to transfer \$500,000 to open a new Vanguard Group investment account (new Global Equity Manager), while the balance is placed in staggered Certificates of Deposit over the next six months and managed by the Finance Director.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p> |
| M 828 08 Authorize | <p>A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council authorizes the Finance Director to transfer the 2009 budgeted Sussex County Post Retirement Employment Benefit contribution</p> |

| | |
|--|--|
| Transfer of Post Employment Benefit Contribution M 828 08 (continued) | <p>of \$3,182,934 to the State of Delaware Local Government Other Post Employment Benefit Pool.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p> |
| Municipalities MOU Report | <p>Hal Godwin, Deputy County Administrator, referred to the Resolution adopted by the Sussex County Council on September 23, 2008. The Resolution referenced a Memorandum of Understanding (MOU) between Sussex County and individual municipalities in the County regarding land use planning in their boundaries. Mr. Godwin reported that, to date, the County has received signed MOUs from the City of Lewes and the Town of Ellendale.</p> |
| Millville SSD Project | <p>Michael Izzo, County Engineer, requested authorization to issue Substantial Completion for the Millville Sanitary Sewer Project 05-06B, Banks Harbor, Mill Run and Miscellaneous Southern Extensions. The contract is with Teal Construction and the work was completed on November 14, 2008.</p> |
| M 829 08 Grant Substantial Completion/ Millville SSD Project 05-06B | <p>A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, and the County Engineering Department, that the Sussex County Council grant Substantial Completion, effective November 14, 2008, for Contract No. 05-06B, Millville Sanitary Sewer Project 05-06B, Banks Harbor, Mill Run and Miscellaneous Southern Extensions to Teal Construction Inc. and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p> |
| Public Hearing/ Proposed Ordinance Relating to Realty Transfer Tax | <p>A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 103 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV, IMPOSING A COUNTY REALTY TRANSFER TAX”.</p> <p>Mr. Baker advised that the purpose of this ordinance is to amend the County’s realty transfer tax to include construction contracts which may be entered into either prior to the date of the transfer of the land or within one year from the date of the transfer of the land to a grantee or buyer, within the meaning of documents which require the payment of the 1 1/2 percent County realty transfer tax in order to insure that the transfer taxes paid to</p> |

the County include the value of such improvements to the land. Further, this amendment makes the County transfer tax ordinance consistent with the wording of the State realty transfer tax law. The purpose of this amendment is to prevent sellers of real estate from attempting to split the improvements from the land and paying the transfer tax only on the value of the land while avoiding the payment of transfer tax on the improvements.

**Public
Hearing/
Proposed
Ordinance
Relating
to Realty
Transfer
Tax
(continued)**

Mr. Baker advised that the Proposed Ordinance is consistent with State Law.

Public comments were heard.

Joe Conaway, Town Council President, Town of Bridgeville, spoke in support of the Proposed Ordinance. He stated that the proposal is a matter of equity and he advised that the Town of Bridgeville has passed similar legislation.

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

**M 830 08
Adopt
Ordinance
No. 2007
(Realty
Transfer
Tax
Ordinance)**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 2007 entitled “AN ORDINANCE TO AMEND CHAPTER 103 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV, IMPOSING A COUNTY REALTY TRANSFER TAX”.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
North
Millville
Expansion
of the
BBSSD/
K&A
Property
Annexation**

A Public Hearing was held to consider extending the North Millville Expansion of the Bethany Beach Sanitary Sewer District (MVE) to include two parcels of land along State Route 26 (K & A Properties LLC Annexation), totaling approximately 2 acres. If approved, the parcels will be served by current sewer construction occurring along Route 26. The parcels are contiguous with the existing sanitary sewer district boundaries. The owners will be responsible for system connection charges in the amount of \$5,401.00 per EDU, based on current rates.

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

**M 831 08
Adopt
Resolution
No.
R 024 08/
North**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 024 08 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE NORTH MILLVILLE EXPANSION OF THE BETHANY BEACH SANITARY SEWER DISTRICT (NMX) TO ENCOMPASS A CERTAIN PIECE, PARCEL, OR TRACT OF LAND THAT IS CONTIGUOUS TO THE NMX, SITUATE ON THE NORTH SIDE OF ROUTE 26, EAST OF ROUTE 17, AND BEING IN

**Millville
Expansion
of the
BBSSD**

BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas.

**M 831 08
(continued)**

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

**Old
Business/
C/U
No. 1736**

Under Old Business, the Council considered Conditional Use No. 1736 filed on behalf of Matthew and Karen Weidmann.

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2008 at which time they deferred action. On July 16, 2008, the Commission recommended that the application be approved with six (6) conditions.

The County Council held a Public Hearing on this application on July 15, 2008 at which time action was deferred.

**M 832 08
Adopt
Ordinance
No. 2009
(C/U
No. 1736)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 2009 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO EXPAND CONDITIONAL USE NO. 1068 TO INCLUDE TOWING SERVICE AND STORAGE OF VEHICLES AND BOATS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.01 ACRES, MORE OR LESS” (Conditional Use No. 1736) filed on behalf of Matthew and Karen Weidmann, with the following conditions:

- 1. All towing and service vehicles shall be parked to the rear of the property behind the buildings.**
- 2. No more than five vehicles being serviced and/or waiting pick-up are to be parked in the front of the garage/shop building, on the asphalt parking area. No vehicles are to be parked on the grassy area. No towed vehicles shall be left on the property for more than 48 hours, unless they are being serviced.**
- 3. The site shall not be used as an impound lot or vehicle storage lot.**
- 4. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.**
- 5. Towing service shall be permitted at all times.**
- 6. The site plan shall be subject to the approval of the Planning and Zoning Commission. It shall show the location of all parking,**

including five (5) paved parking spaces in front of the buildings and the rear parking areas for towing service and personnel vehicles, and any other vehicles awaiting service. It shall also include a landscape plan showing fences and screening vegetation.

Motion Adopted: 5 Yeas.

**M 832 08
(continued)**

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

**Old
Business/
C/U
No. 1739**

Under Old Business, the Council discussed Conditional Use No. 1739 filed on behalf of Eric Sugrue, Big Trips, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2008 at which time they deferred action. On August 20, 2008, the Commission recommended that the application be approved with eight (8) conditions.

The County Council held a Public Hearing on this application on July 29, 2008 at which time action was deferred.

The Council considered the conditions recommended by the Commission and discussed possible revisions to the conditions as well as additional conditions.

**M 833 08
Amend
Recom-
mended
Conditions
of the
P&Z
Commission
Regarding
C/U
No. 1739**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that Condition No. 1 recommended by the Planning and Zoning Commission be amended to allow five units instead of two units and to add the following conditions to those recommended by the Planning and Zoning Commission for Conditional Use No. 1739:

- 9. The development shall be served by a central water system operated by a licensed public utility company.**
- 10. The applicant shall form a Homeowners or Condominium Association which shall be responsible for the maintenance of the entrance, any access street, buffers, stormwater management areas and other common areas.**
- 11. There shall be two buildings limited to two stories each with a maximum height of 35 feet.**
- 12. A non-disturbance buffer shall be provided on the southern boundary of the property following a line 50 feet from the ordinary high water line of Munchy Branch or the designated wetlands line, whichever is greater.**

**MOTION
FAILED**

Motion Failed: 2 Yeas, 2 Nays, 1 Abstention.

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

**M 834 08
Amend
Recom-
mended
Conditions
of the
P&Z
Commission
Regarding
C/U
No. 1739**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, that the following conditions be added to the conditions (1-8) recommended by the Planning and Zoning Commission for Conditional Use No. 1739:

- 9. The development shall be served by a central water system operated by a licensed public utility company.**
- 10. The applicant shall form a Homeowners or Condominium Association which shall be responsible for the maintenance of the entrance, any access street, buffers, stormwater management areas and other common areas.**
- 11. There shall be two buildings limited to two stories each with a maximum height of 35 feet.**
- 12. A non-disturbance buffer shall be provided on the southern boundary of the property following a line 50 feet from the ordinary high water line of Munchy Branch or the designated wetlands line, whichever is greater.**

Motion Adopted: 5 Yeas.

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

**M 835 08
Amend
Recom-
mended
Condition
for C/U
No. 1739
(continued)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, in regards to Conditional Use No. 1739, to amend Condition No. 1 recommended by the Planning and Zoning Commission to read “Only six (6) units shall be constructed upon the property.”

Motion Adopted: 4 Yeas, 1 Nay.

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

**M 836 08
Adopt
Ordinance
No. 2010
(C/U
No. 1739)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 2010 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.66 ACRES, MORE OR LESS” (Conditional

Use No. 1739) filed on behalf of Eric Sugrue; Big Trips, LLC, with the following conditions:

M 836 08
Adopt
Ordinance
No. 2010
(C/U
No. 1739)
(continued)

1. Only six (6) units shall be constructed upon the property.
2. The project shall be subject to the approval of the Sussex County Engineering Department. The Applicant shall be required to design, fund and construct any upgrades to the County sewer system that are necessary to serve the dwelling units.
3. Construction, site work, grading and deliveries of construction materials, landscaping materials, and fill on, off, or to the property shall only occur between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday.
4. All entrances and right-of-ways required by DelDOT shall be obtained by the Applicant in accordance with DelDOT's determinations.
5. Six (6) foot fencing shall be installed around the rear and side perimeter of the property with natural landscaping. The fence shall be shown on the Final Site Plan.
6. Lighting from the parking area shall be screened away from the neighboring properties. In addition, the lighting shall be low-intensity to prevent glare.
7. The Final Site Plan shall contain the approval of the Sussex Conservation District for the location and design of all of the Stormwater Management Facilities.
8. The Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
9. The development shall be served by a central water system operated by a licensed public utility company.
10. The applicant shall form a Homeowners or Condominium Association which shall be responsible for the maintenance of the entrance, any access street, buffers, stormwater management areas and other common areas.
11. There shall be two buildings limited to two stories each with a maximum height of 35 feet.
12. A non-disturbance buffer shall be provided on the southern boundary of the property following a line 50 feet from the ordinary high water line of Munchy Branch or the designated wetlands line, whichever is greater.

Motion Adopted: 4 Yeas, 1 Nay.

M 836 08
(continued)

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

**Old
Business**

Under Old Business, the Council discussed Conditional Use No. 1742, filed on behalf of Pine Acres, Inc.

**(C/U
No. 1742)**

The Planning and Zoning Commission held a Public Hearing on this application on August 14, 2008 at which time they deferred action. On September 25, 2008, the Commission recommended that the application be approved with conditions.

The County Council held a Public Hearing on this application on September 9, 2008 at which time they deferred action.

M 837 08
Adopt
Ordinance
No. 2011
(C/U
No. 1742)

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 2011 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXPANSION OF EXISTING MANUFACTURED HOME PARK/CAMPGROUND BY ADDING 24 CAMPSITES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.0 ACRES, MORE OR LESS” (Conditional Use No. 1742) filed on behalf of Pine Acres, Inc., with the following conditions:

- 1. There shall only be 24 campsites on the property. There shall not be any permanent cabins on the property.**
- 2. The campsites shall be served by County sewer as part of the Long Neck Sanitary Sewer District. The Applicant shall comply with all County Engineering Department requirements for connection to the system.**
- 3. A landscaped buffer, as shown on the Preliminary Site Plan, shall be established. The Final Site Plan shall include a landscape plan for these areas. There shall also be fencing around the perimeter of the site.**
- 4. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

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

**Old
Business
Old
Business/
C/U
No. 1743**

Under Old Business, the Council discussed Conditional Use No. 1743 filed on behalf of John and Michelle Beaver.

The Planning and Zoning Commission held a Public Hearing on this application on August 29, 2008 at which time action was deferred. On September 17, 2008, the Commission recommended that this application be approved with conditions.

The County Council held a Public Hearing on this application on September 16, 2008.

**M 838 08
Adopt
Ordinance
No. 2012
(C/U
No. 1743)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 2012 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MOTOR VEHICLE SERVICE, RESTORATION, TOWING, AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.0 ACRES, MORE OR LESS” (Conditional Use No. 1743) filed on behalf of John and Michelle Beaver, with the following conditions:

- 1. There will not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.**
- 2. No vehicles for sale will be displayed outside on the premises. All vehicles for sale and repair shall be stored inside.**
- 3. The only repair work allowed in the shop will be for classic/antique/replica automobiles. All repair work is to be performed indoors.**
- 4. The normal business hours will be between the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday, with “appointment only” hours on Saturday and Sunday.**
- 5. There will be no non-relative employees working on the premises.**
- 6. There shall only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.**
- 7. Towing service is only for purposes of towing classic/antique/replica vehicles for minor repairs and delivery of said vehicles. No other commercial towing service is permitted.**
- 8. There will be no bodywork performed.**
- 9. The dumpster is to be screened from adjoining properties by fencing.**

10. The site plan shall be subject to the approval of the Planning and Zoning Commission.

M 838 08
(continued)

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Old Business
(C/U
No. 1810)

Under Old Business, the Council discussed Conditional Use No. 1810 filed on behalf of Artesian Water Company, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on August 28, 2008 at which time action was deferred. On September 17, 2008 the Commission recommended that this application be approved with conditions.

The County Council held a Public Hearing on this application on September 16, 2008 at which time action was deferred.

M 839 08
Adopt Ordinance
No. 2013
(C/U
No. 1810)

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 2013 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REGIONAL WATER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 74.61 ACRES, MORE OR LESS” (Conditional Use No. 1810) filed on behalf of Artesian Water Company, Inc., with the following conditions:

- 1. The treatment plant buildings shall appear to be agricultural buildings.**
- 2. All improvements for collection, treatment and disposal of water shall be constructed and maintained in accordance with the requirements of the Department of Health, the Public Service Commission, the Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site.**
- 3. With the exception of emergency generators that may be located on the site, all of the equipment needed in the operations of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.**
- 4. Any security lighting shall be screened so that it does not shine onto neighboring properties or County roads.**
- 5. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

M 839 08
(continued)

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

Old
Business
C/U
No. 1807

Under Old Business, the Council discussed Conditional Use No. 1807 filed on behalf of Tidewater Environmental Services, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on August 14, 2008 at which time they deferred action. On September 17, 2008, the Commission recommended that the application be approved with ten (10) conditions (A-J).

The Council held a Public Hearing on this application on September 9, 2008 at which time action was deferred.

M 840 08
Amend
Recom-
mended

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, in regards to the conditions recommended by the Commission for Conditional Use No. 1807, that Condition No. 6 (F) and Condition No. 9 (I), be amended as underlined and as follows:

Conditions
of the
P&Z
Commission
Regarding
C/U
No. 1807

6 (F) With the exception of emergency generators and holding and treatment tanks that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.

9 (I) There shall be vegetated buffers of at least 30 feet from all exterior property lines and any lagoons, rapid infiltration basins or similar structures and they shall be located at least 100 feet from any dwellings.

Motion Adopted: 5 Yeas.

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

M 841 08
Adopt
Ordinance
No. 2014
(C/U
No. 1807)

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Ordinance No. 2014 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PUBLIC UTILITIES (WATER AND WASTEWATER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 13.228 ACRES, MORE OR LESS” (Conditional

Use No. 1807) filed on behalf of Tidewater Environmental Services, Inc., with the following conditions:

**M 841 08
Adopt
Ordinance
No. 2014
(C/U
No. 1807)
(continued)**

- 1. All improvements for collection, treatment, and disposal of sanitary waste shall be constructed and maintained in accordance with the requirements of the Sussex County Engineering Department and the Delaware Department of Natural Resources and Environmental Control, and any other governmental agency with jurisdiction over the use of the site.**
- 2. The Applicant shall submit to the Sussex County Engineering Department a regional plan that shows all the areas and/or subdivisions to be served by the wastewater treatment and disposal facility. The plan shall include technical support that demonstrates that capacity exists at the treatment and disposal facility to serve the areas and/or subdivisions.**
- 3. The facility shall not receive sanitary waste for treatment and disposal from any property or parcel that is located within the Sussex County Sewer Planning Area or Sewer District.**
- 4. All improvements for central water production, including wells, pumps, and storage facilities, shall be constructed and maintained in accordance with the requirements of the Delaware Department of Health or any other governmental agency with jurisdiction over the use of the site, or any modification to it.**
- 5. One lighted sign shall be permitted on the site, not to exceed 32 square feet.**
- 6. With the exception of emergency generators and holding and treatment tanks that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.**
- 7. Any security lighting shall be screened so that it does not shine onto neighboring properties or County roads.**
- 8. The elevated water tanks shall be painted sky neutral to blend in with the horizon.**
- 9. There shall be vegetated buffers of at least 30 feet from all exterior property lines and any lagoons, rapid infiltration basins, or similar structures and they shall be located at least 100 feet from any dwellings.**
- 10. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.**

Motion Adopted: 4 Yeas, 1 Nay.

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

Mrs. Webb presented grant requests for the Council's consideration.

Requests

M 842 08
Community Grant
A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$5,000.00 from Mr. Rogers' Community Grant Account to the Lewes Public Library for computers.

Motion Adopted: 5 Yeas.

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

M 843 08
Community Grant
A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$10,000.00 from Mr. Rogers' Community Grant Account to the Lewes Senior Center for maintenance costs.

Motion Adopted: 4 Yeas, 1 Nay.

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

M 844 08
Community Grant
A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$700.00 (\$350.00 each from Mr. Phillips' and Mr. Dukes' Community Grant Accounts) to the Laurel Lions Club for a time and temperature sign.

Motion Adopted: 4 Yeas, 1 Nay.

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

M 845 08
Community Grant
A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$5,000.00 (\$1,000.00 from each Community Grant Account) to The Family & Workplace Connection for the community educational resource center.

Motion Adopted: 4 Yeas, 1 Nay.

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

M 846 08
A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 (\$500.00 each from Mr. Phillips' and Mr. Jones' Community

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

Mr. Jones, Yea

M 851 08
Community Grant
A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 (\$250.00 each from Mr. Phillips' and Mr. Jones' Community Grant Accounts) to Sussex Central High School for the Varsity Cheerleading Program.

Motion Adopted: 4 Yeas, 1 Nay.

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

M 852 08
Community Grant
A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$4,000.00 (\$1,500.00 from Mr. Cole's Community Grant Account, \$1,500.00 from Mr. Phillips' Community Grant Account, and \$1,000.00 from Mr. Jones' Community Grant Account) to the Lower Sussex Little League, Inc. for press box improvements.

Motion Adopted: 5 Yeas.

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

M 853 08
Community Grant
A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$5,000.00 (\$2,500.00 each from Mr. Jones' and Mr. Rogers' Community Grant Accounts) to the Milford Public Library for new library expansion.

Motion Adopted: 4 Yeas, 1 Nay.

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

M 854 08
Community Grant
A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$2,000.00 from Mr. Rogers' Community Grant Account to the Town of Ellendale for equipment/supplies.

Motion Adopted: 4 Yeas, 1 Nay.

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

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$2,500.00

M 855 08 **from Mr. Rogers' Community Grant Account to the Milton Ladies**
Community **Auxiliary for the Children's Fire Prevention Program.**
Grant

Motion Adopted: 4 Yeas, 1 Nay.

M 855 08 **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Nay;**
(continued) **Mr. Dukes, Yea; Mr. Rogers, Yea;**
 Mr. Jones, Yea

M 856 08 **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give**
Community **\$1,000.00 (\$500.00 each from Mr. Rogers' and Mr. Cole's Community**
Grant **Grant Accounts) to Cape Henlopen FFA for programs and projects.**

Motion Adopted: 4 Yeas, 1 Nay.

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

There was no additional business.

M 857 08 **At 12:21 p.m., a Motion was made by Mr. Cole, seconded by Mr. Rogers, to**
Recess **recess the Regular Session and to go into Executive Session for the purpose**
Regular **of discussing pending/potential litigation and property acquisition.**
Session/

Motion Adopted: 5 Yeas.

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

Executive **At 12:22 p.m., an Executive Session of the Sussex County Council was held**
Session **in the County Administrator's Office for the purpose of discussing**
 pending/potential litigation and property acquisition. The Executive
 Session concluded at 12:41 p.m.

M 858 08 **At 12:42 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes,**
Come **to come out of Executive Session and to reconvene the Regular Session.**
Out of

Motion Adopted: 5 Yeas.

Executive **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;**
Session/ **Mr. Dukes, Yea; Mr. Rogers, Yea;**
Reconvene **Mr. Jones, Yea**
Regular
Session

M 859 08 **At 12:43 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes,**
Recess **to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

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

Reconvene

**Public
Hearing**

**Public
Hearing
(C/U
No. 1817)
(continued)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND ORDINANCE NO. 1187 FOR CONDITIONAL USE NO. 1198, A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT, FOR AN EXPANSION OF AN EXISTING MANUFACTURED HOME PARK, KNOWN AS SUSSEX WEST, BY ADDING 82 LOTS (PHASE 2) TO THE CURRENTLY CONSTRUCTED 108 LOTS (PHASE 1), CREATING A MANUFACTURED HOME COMMUNITY OF 190 LOTS, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE, CONTAINING 55.29 ACRES, MORE OR LESS” (Conditional Use No. 1817) filed on behalf of Colonial East, Ltd.

The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2008 at which time the Commission recommended that the application be denied.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 13, 2008.)

Mr. Griffin advised that this application was before the Council on a prior occasion; that this Public Hearing is being held because the first time that this matter came before the Council and the Planning and Zoning Commission, it was not properly advertised; that the version of the Ordinance that is before the Council on this date has corrected those mistakes; that after the first Public Hearing before the County Council, this application was approved, then a lawsuit was filed and as a result of the technical errors being pointed out in the lawsuit, the attorneys who represented the parties stipulated that the approved Ordinance would be void and the applicant would have to start over; that the Applicant has started over, re-filed the same application, and now the application is back before the Council, properly advertised.

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank distributed copies of the Exhibit Book which were submitted by the Applicant.

Heidi Balliett, Attorney, was present with Steve Class of Colonial East, Ltd. and Dan Speakman of McCrone, Inc. They stated that the 20.79 acre parcel was originally approved for a conditional use in 1985; that Mr. Class proposes to extend the current use of the property for the manufactured home park; that there will be no retail sales or other buildings erected on the site; that the use is an appropriate type of conditional use as per Sussex County Ordinance; that the applicant has addressed all items set forth in the Code relating to Mobile Home Park Conditional Uses; that access to this

Public
Hearing
(C/U
No. 1817)
(continued)

site is from the public highway known as Minos Conaway Road and no manufactured home will have direct access from that road to its interior driveway; that all interior roadways will be hard-surfaced and maintained along with the current roads in accordance with County specifications; that the entrance is constructed and is built to DelDOT standards based on the additional 82 home sites that are being requested with this amendment; that the topography of the site will facilitate proper drainage; that the size of the parcel being in excess of 20 acres satisfies the minimum requirements of the Code; that the minimum site area for each manufactured home is proposed to range in size from approximately 6,600 square feet to 15,000 square feet; that their proposal averages approximately 20 percent more than the minimum 5,000 square feet requirement; that the average size is over 6,800 square feet; that the community has a recreational area available to the park residents; that the recreational area is member restricted with card access; that there is a clubhouse on the current site; that the current community works with organizations to provide services within the community such as the Bookmobile, CHEER, Paraservices, Meals on Wheels, and the Tunnell Cancer Center; that they do allow various groups to use the clubhouse; that the park has a natural, vegetative buffer surrounding the boundary lines of the property which remains free of buildings and streets; that the proper setbacks between buildings has been followed and will continue to be complied with as per the Code for structures erected; that there is interior driveway access to each home erected on the site providing the required parking spaces; that there are currently no retail services provided nor requested with this application; that the property is serviced by central water and sewer; that they have been allocated the proper number of EDUs from the County Engineering Department based on the requested additional 82 home sites; that there are proper electrical connections and fire protection throughout the community; that there is proper trash collection within the community; that the site is a manufactured housing community permitting multi-sectional housing that is not single width; that the community is restricted for housing type as well as being age-restricted for adults 55 and older; that no sheds are permitted, but garages are included in the permitted structures; that the 82 additional housing sites will be located within the community; that these sites are leased only subject to community restrictions; that there are no current violations pending for this community; that the community is clean and attractive to area residents; that this community is highly sought after due to its location in the Lewes area, its easy access to public transportation, and its proximity to supportive services; that there is a great demand for these affordable home sites and the demand waiting list continues to grow; that the applicant will continue to work with DelDOT to minimize the traffic impact in this area and has proposed solutions to DelDOT for this growing area, such as installing and relocating bus stops that can support the residents of the community; that traffic impact to this site will be minimal based on the fact that there are two existing entrances to this site and this community is an established facility; that the visibility on this section of the roadway is very good; that the community is currently monitored with speed signs and radar; that the interior streets are 100

Public
Hearing
(C/U
No. 1817)
(continued)

percent maintained by the applicant; that the proposed use is in accordance with the Sussex County Comprehensive Plan; that the residential use proposed will be consistent with the use in the general area; that central water and sewer are currently available to the site; that the subdivision is adjacent to four other subdivisions; that it is anticipated that very few trees will be removed and existing trees will be protected; that there will be a 50 foot forested or landscaped buffer along Minos Conaway Road; that the site contains no wetlands; that the Department of Agriculture has no objections to the proposed project; that no construction is proposed in the natural wooded area; that open space was provided in the first section of this project; that community facilities currently exist; that they exceed the minimum open space requirement; that the build-out will provide 23 percent open space; that Best Management Practices will be utilized in the maintenance of the site; that this Conditional Use will revise the number of units from 108 to 190 units; and that the density calculates to 3.44 units per acre on a total of 55 acres.

Ms. Balielt submitted eighteen (18) letters in support of the application for submission into the record.

Public comments were heard.

Virginia Keiser, Lori Rigby, Jim Scalio, Lisa Brittingham, Georgia Spade, and Carly Class spoke in support of the application. That stated that the Applicant runs a well-managed and well-maintained community; that the use provides a much-needed affordable retirement community; and that the clubhouse on the site provides recreational facilities and functions.

Wayne Baker spoke in opposition to the application. He stated that the 1997 application was opposed because there were too many lots proposed on 55 acres; that he objects to the additional 82 lots since it will increase the density on the property from approximately 2 units per acre to almost 3 units per acre; that when the applicant developed the 108 units on the 55 acre parcel of land, he chose to locate those 108 units on about 33 acres of that property; that it appears the applicant had full intention to come back and apply again; that many developments in the area have a density of 2 units per acre; that there should be criteria to change an existing conditional use; that the 50 foot buffer along Minos Conaway Road has not been maintained; and that the proposed project will cause additional problems on Minos Conaway Road.

The Council discussed a phasing plan for the proposed project. It was suggested that one of the proposed conditions of approval should read “The preliminary site plan shall include a phasing schedule and a projected timetable under which the number of units permitted to be constructed shall not exceed an average of 25 per year.”

There were no additional public comments and the Public Hearing was

closed.

M 860 08

**M 860 08
Adopt
Ordinance
No. 2015
(C/U
No. 1817)**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 2015 entitled “AN ORDINANCE TO AMEND ORDINANCE NO. 1187 FOR CONDITIONAL USE NO. 1198, A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT, FOR AN EXPANSION OF AN EXISTING MANUFACTURED HOME PARK, KNOWN AS SUSSEX WEST, BY ADDING 82 LOTS (PHASE 2) TO THE CURRENTLY CONSTRUCTED 108 LOTS (PHASE 1), CREATING A MANUFACTURED HOME COMMUNITY OF 190 LOTS, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE, CONTAINING 55.29 ACRES, MORE OR LESS” (Conditional Use No. 1817) filed on behalf of Colonial East, Ltd., with the following conditions:

- 1. The preliminary site plan shall be required to be reviewed by the Technical Advisory Committee, the Planning and Zoning Commission, and, if required and not waived, by the Office of State Planning.**
- 2. The preliminary site plan shall include a phasing schedule and a projected timetable under which the number of units permitted to be constructed shall not exceed an average of 25 per year.**
- 3. The development shall comply with requirements of DelDOT regarding entrance, intersection, roadway, and multi-modal improvements, a street connection to the existing Sussex East development, construction of a sheltered bus stop on Route 9 of a design and location acceptable to DelDOT, and no signs advertising commercial use shall be directed toward Route 9.**
- 4. The lots may be developed at a minimum of 5,000 square feet per lot, and the number of lots shall not exceed 190, for lease only.**
- 5. The project shall be served by central sewer as part of the existing West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and shall comply with all requirements of the Sussex County Engineering Department regarding public sewer service. The applicant may be responsible for the construction of any upgrades to the sewer system at its cost and shall be subject to the approval of the County Engineer.**
- 6. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**

**M 860 08
Adopt
Ordinance
No. 2015
(C/U
No. 1817)
(continued)**

7. The applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design. The fifty (50) foot buffer shall be landscaped and maintained along Minos Conaway Road and the railroad to screen the project.
8. Final plans shall be submitted to the Planning and Zoning Commission for review upon receipt of all appropriate agency approvals and/or permits.
9. Amenities previously required by the Planning and Zoning Commission have been constructed.
10. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and will utilize Best Management Practices.
11. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
12. Construction, site work, grading and deliveries of construction material, landscaping materials and fill on, off or to the project shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. There shall be no construction activities on Sunday.
13. Road naming and addressing shall be approved by the Sussex County Mapping and Addressing Department.

Motion Adopted: 5 Yeas.

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

At 2:43 p.m., Mr. Jones declared a brief recess.

Recess

Mr. Jones called the Council back into session at 2:50 p.m.

Reconvene

**Public
Hearing/
Proposed
Ordinance
Relating
to Open**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE OPEN SPACE AND TO INCORPORATE OPEN SPACE REQUIREMENTS INTO THE APPLICATION AND APPROVAL PROCESS IN ALL RESIDENTIAL ZONING DISTRICTS AND IN RESIDENTIAL PLANNED COMMUNITIES AND TO CLARIFY PROVISIONS RELATING TO

Space

RESUBDIVISION, PERMITTED USES, BONDS, SITE PLANS AND OTHER APPROVAL CRITERIA”.

This Ordinance defines open space in both the subdivision and zoning ordinances and amends those portions of each ordinance as necessary to implement the provisions relating to open space for residential subdivisions or developments in all residential zoning districts.

**Public
Hearing/
Proposed
Ordinance
Relating
to Open
Space
(continued)**

On November 13, 2008, the Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance. On that date, the Commission recommended that the Proposed Ordinance be amended with the following changes:

- 1. The exclusion of buffers from open space calculations in mobile home parks in Section 115-172 G (6) should be deleted.**
- 2. The County Council should consider changing Section 99-5 and 115-4 regarding the definition of Open Space to allow certain types of stormwater management to be included in open space calculations, such as green technologies, etc.**
- 3. The County Council should consider all of the written recommendations considered by the Planning and Zoning Commission during the public hearing.**

(See the minutes of the meeting of the Planning and Zoning Commission dated November 13, 2008.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Public comments were heard.

Lee Ann Walling, Chief of Planning for DNREC, commented that a distinction needs to be made between active open space (amenities) versus passive open space (natural areas) and that a developer should be given credit when utilizing green technology/Best Management Practices. Ms. Walling referenced a letter that was previously submitted to the Planning and Zoning Commission regarding this Proposed Ordinance and she advised that the letter contains more detailed information.

Mr. Cole asked that DNREC submit examples of green technology.

Mike Tyler stated that the Proposed Ordinance is a “pretty decent document”; that he questions what is considered “safe” recreational value and purpose; that maintaining land in a predominantly undeveloped or natural state is very important; that the natural aspect adds value to a development; that spray irrigation areas can be made safe and usable; that

**Public
Hearing/
Proposed
Ordinance
Relating
to Open
Space
(continued)**

open space should remain in perpetuity; that golf courses should not be included as open space; that there should be buffers for tidal wetlands, preferably 100 feet; that “density neutral” is important; that only pre-existing ponds should be allowed as open space; and that a lined pond or swimming pool is not open space.

Esther Shelton, President of the League of Women Voters, stated that the League supports the preservation and/or protection of critical land areas as well as coordination among all levels of government, specifically flood plain and erosion and sedimentation control, natural areas preservation, and increased coordination in siting major facilities. She stated that their policy urges particular concern for coastal zone planning to ensure protection of ecologically fragile estuaries and coastal areas and accordingly, they urge the Council to strengthen the protection of the Inland Bays and other environmentally sensitive areas. Ms. Shelton also stated that the League suggests that the Council defer action to allow amendments, taking into account all the public input received during the Public Hearing.

Carol Bason, who was present on behalf of the Center for the Inland Bays, presented a mark-up of the Proposed Ordinance with suggested changes for the Council’s consideration. She stated that the CIB believes these changes will further support the Center’s and the County’s joint efforts to provide areas for recreation, natural resource protection and conservation County-wide. (See the Planning and Zoning Report of November 13, 2008 and the correspondence and mark-up of the Proposed Ordinance submitted into the record by Ms. Bason.)

Deborah Schultz presented several suggestions to improve the Proposed Ordinance. She stated that a major area of concern is with the proposed definition of open space and its relation to permitted uses; and that in order for open space to serve the bona fide purposes of environmental conservation and wildlife protection, there must be a critical mass that is contiguous; that the current ordinance, even with the proposed language change, does not appear to take into account the State’s Investment Levels and that it would be a good idea to make use of these levels in this ordinance; and that this Proposed Ordinance could help create a greenway which would provide a network of paths for both humans and wildlife. (Mrs. Schultz submitted written comments into the record.)

Ed Klinge stated that there is a need for a clear County plan for the selection and siting of open space, a plan that ties the individual developments’ open spaces together in a way that provides contiguous boundaries for wildlife habitat and preserves the high priority environmental features in the County; that habitat and conservation should be given priority in the selection and siting of the open space acreage within each proposed subdivision; that the Proposed Ordinance does not provide for continuity; that it should provide for connections between individual developments’ open spaces; that the County could create a greenway system, with boundaries and a defined purpose to preserve important environmental features that are not confined to individual subdivisions; and

Public
Hearing/
Proposed
Ordinance
Relating
to Open
Space
(continued)

that he suggests a change in the language of the Proposed Ordinance regarding the definition of open space. (Mr. Klinge submitted written comments into the record.)

Sandy Spence spoke regarding birding opportunities in Sussex County. She suggested that the Proposed Ordinance be amended to ensure that there is open space not only in individual subdivisions, but that the County encourage and protect interconnected wildlife corridors comprised of natural areas. (Ms. Spence submitted written comments into the record.)

Joanne Cabry questioned if the following were considered in the Proposed Ordinance: a County-wide greenway system, the State's Investment Levels, the issue of open space and storm water management; impermeable surfaces; spray irrigation systems, forested buffer zones and wetlands. (Ms. Cabry submitted written comments into the record.)

Valerie Cloutier stated that she supports the following statement in the County Comprehensive Plan – that the County should “strengthen County development regulations to ensure that open space dedicated by developers contains enough contiguous legitimate open space to facilitate environmental protection and/or passive recreation.” (Ms. Cloutier submitted written comments into the record.)

Kevin Burdette of McCrone, Inc. presented a mark-up of the Proposed Ordinance with changes for the Council's consideration. (See the mark-up of the Proposed Ordinance submitted into the record by Mr. Burdette.) Mr. Burdette also commented that non-tidal wetlands should not be included in this version of the ordinance since a definition is needed in the County Code.

Mary Dean stated that, in regards to Mr. Burdette's suggestion to insert “natural agricultural” into open space, she is concerned about run-off of fertilizer, nitrates, etc.; that if “natural agricultural” is inserted, it should be narrowed down to a certain amount of space; that she is concerned about the insertion of recreational uses that would include some building structures (i.e. pavilion, pool house, tennis courts); that a differentiation of passive versus active open space is needed; and that she opposes the exclusion of non-tidal wetlands.

Judy Dean spoke on behalf of the Sussex County Association of Realtors. She commented on the existing standards for open space and stated that the Proposed Ordinance is not limited to the larger residential projects; that it could be construed to include individual lots; that it does not appear to adhere to the spirit of the provisions of the Comprehensive Plan; that the Proposed Ordinance does not include standards for the required amount of open space; that in regards to bonding and guarantees, they can find no reference in the Comprehensive Plan or this Ordinance as to the process to approve open space; that under the definition of open space, where it says “land area within designated lot lines”, this is not clear; that on Page 2 – C

in the Proposed Ordinance, the open space definition excludes impervious surfaces; however, under A on Page 1, it includes sidewalks, pools, game courts, etc. which are impervious; that there is a question about storm water management areas and their inclusion as open space; and that on Page 1 – B, ponds have demonstrated recreational value and purpose; however, on Page 2 – D, they do not.

(continued)

The Public Hearing was closed and action was deferred.

**Defer
Action on
Open Space
Ordinance**

The Council directed staff and the County Attorney to look at the cumulative changes heard during the Public Hearing on the Proposed Ordinance relating to Open Space and to determine what changes could be incorporated without making a major change to the Proposed Ordinance since major changes would require a new Public Hearing. The Proposed Ordinance will be placed on the December 9th Agenda for further discussion and consideration.

Recess

At 4:32 p.m., Mr. Jones declared a brief recess.

Reconvene

Mr. Jones called the Council back into session at 4:39 p.m.

**Public
Hearing/
Proposed
Ordinance
Relating
to Signs**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND THE PROVISIONS RELATING TO SIGNS AND TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS FOR FEES FOR PERMITS FOR SIGNS”.

On November 13, 2008, the Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance. On that date, the Commission recommended that the Proposed Ordinance be amended with the following changes:

- 1. Revise Page 17, Section 115-159-1D – A (4), Line 5, where there should be a period (.) rather than the comma (,) after “moves”.**
- 2. Revise Page 18, Section 115-159-1E – A (4), Line 5, where there should be a period (.) rather than the comma (,) after “moves”.**
- 3. Revise Page 16, Section 115-159-1A – B which should be revised to read “No off-premises signs shall be permitted.”**

(See the minutes of the meeting of the Planning and Zoning Commission dated November 13, 2008.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Public comments were heard.

Kevin Burdette of McCrone, Inc. spoke in support of the Proposed Ordinance.

Daniel Kramer spoke in opposition to the increase in fees in the Proposed Ordinance.

Mr. Rogers stated that the Proposed Ordinance mirrors State Law.

**Public
Hearing/
Proposed
Ordinance
Relating
to Signs
(continued)**

Mr. Rogers stated that the Board of Adjustment has been approving some sign variances that are out of character with County Ordinance and State Law and that after the Applicant has received a variance for an off-premise sign (directional) from the County, DelDOT won't allow it. Mr. Rogers questioned whether the Applicant should be advised during the County's application process that DelDOT will not allow an off-premise/directional sign. A discussion ensued in regards to whether there should be limits on variances and/or directional signs.

Mr. Dukes expressed concern about the proposed fee increases.

Mr. Cole questioned the enforcement of the Sign Ordinance and whether or not it would be complaint-driven. Mr. Lank, Director of Planning and Zoning, responded that inspectors will enforce as violations are found.

The Public Hearing was closed.

**M 861 08
Amend
Fees in
Proposed
Sign
Ordinance**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the fees in the Proposed Sign Ordinance shall remain as they are presently.

Motion Adopted: 5 Yeas.

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

**M 862 08
Adopt
Ordinance
No. 2008**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 2008 entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND THE PROVISIONS RELATING TO SIGNS AND TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS FOR FEES FOR PERMITS FOR SIGNS", with the three amendments proposed by the Planning and Zoning Commission and with the fees to remain as they currently are.

Motion Adopted: 5 Yeas.

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

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to adjourn at

M 863 08
Adjourn

5:05 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith, Clerk of the Council