



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 19, 2010

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 19, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

| | |
|-----------------------|----------------------|
| Vance Phillips | President |
| Michael H. Vincent | Vice President |
| George B. Cole | Councilman |
| Joan R. Deaver | Councilwoman |
| Samuel R. Wilson, Jr. | Councilman |
| David Baker | County Administrator |
| Susan M. Webb | Finance Director |
| Hal Godwin | Deputy Administrator |
| J. Everett Moore | County Attorney |

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

Mr. Phillips called the meeting to order.

M 054 10 Amend and Approve Agenda

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to amend the Agenda by deleting "Fleet Report" and by deleting "Pending/Potential Litigation" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

M 055 10 Amend Minutes

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to amend the minutes of January 5, 2010, Page 2, Motion No. M 003 10, to read as follows:

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to nominate Michael Vincent to serve as Vice President of the Sussex County Council for the Year 2010 and that nominations be closed.

Motion Adopted: 5 Yeas.

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

**M 056 10
Approve
Minutes as
Amended**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to approve the minutes of January 5, 2010, as amended.

Motion Adopted: 5 Yeas.

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

**Corre-
spondence**

Mr. Moore read the following correspondence:

**WEST SIDE NEW BEGINNINGS, CHILDREN AND YOUTH
PROGRAM, REHOBOTH, DELAWARE.**

RE: Letter in appreciation of grant.

MASON DIXON WOODWORKERS, DELMAR, DELAWARE.

RE: Letter in appreciation of grant.

THE SALVATION ARMY, WILMINGTON, DELAWARE.

RE: Letter in appreciation of grant.

**Retirees
Running
for Public
Office**

Mr. Moore stated that, at the January 12th meeting, a question was raised concerning pensions and whether or not a retiree from the County could run for public office. Mr. Moore stated that retirees can run for public office; however, if they serve as an elected official in Sussex County, they would not be entitled to receive a pension during their time in that elected position. Mr. Moore stated that State law has no similar statute; likewise, News Castle County and Kent County have no such restriction.

**Property
Tax
Penalty
Amnesty
Program**

Mr. Baker discussed the Property Tax Penalty Amnesty Program. Under this program, a delinquent taxpayer would have 30 days to pay the total amount due to the County, including school taxes, to qualify for a 50 percent forgiveness in interest and penalties. Mr. Baker reported that it appears that all eight school districts in Sussex County may agree to support the proposal. The County's goal is to send out notices offering the program, which will show the savings to the taxpayer and encourage them to pay within the 30 day period. The notices should go out in January or February. Mr. Baker stated that this program could result in substantial savings for delinquent taxpayers and improve the County's tax collections.

Mr. Baker stated that, in regards to sewer and water districts, delinquent

sewer and water customers can take advantage of the 50 percent amnesty program. The County will send out notices in late January to the Dewey Beach, South Bethany, Fenwick Island, Ellendale, Blades, Ocean View, and Millville districts. Customers will have 30 days to pay in full. Mr. Baker reported that, last month, the County offered this to the Long Neck and Oak Orchard customers and approximately 315 customers participated.

No action by the Council was necessary.

**Adminis-
trator's
Report**

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

1. Delaware Department of Transportation Public Workshop

The Delaware Department of Transportation will be holding a public workshop regarding improvements at the intersection of Zoar Road, Speedway Road, and Bethesda Road south of Georgetown. The workshop is scheduled on January 25 from 4:00 to 7:00 p.m. at the Sussex Central High School cafeteria.

2. Delaware Solid Waste Authority Report

25,050 pounds of recycled material was received at the recycle station at the West Complex property parking lot during the month of December 2009.

**Local Law
Enforce-
ment
Grant**

Mr. Godwin presented the following grant request through the Local Law Enforcement Grant Program:

_____Dewey Beach_____ \$15,000.00 _____Prisoner Transport Van

**M 057 10
Approve
Local Law
Enforce-
ment
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, that the Sussex County Council approves the following disbursement from the Local Law Enforcement Grant Program: \$15,000.00 to the Town of Dewey Beach.

Motion Adopted: 5 Yeas.

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

**Inland
Bays
Regional
Wastewater
Facility/
Phase I
Expansion**

Michael Izzo, County Engineer, presented the bid results for the Inland Bays Regional Wastewater Treatment Plant, Phase I Expansion. Nine firms bid on the Contract. The Engineer's Estimate for the Base Bid and the 15 alternate bid items was \$14.6 million. Mr. Izzo reported that, when the bids were opened, the apparent low bidder was Bearing Construction, Inc.; however, after a review of the bid documents with the County Attorney, it was apparent that Bearing had not filled out the bid documents properly

and their bid was determined to be non-responsive. As a result, the apparent low bidder is Whiting-Turner Construction Co., Inc. of Baltimore, Maryland, at a total bid of \$13,212,197.00. Mr. Izzo reported that it is the recommendation of the Engineering Department and the County Attorney that the bid be awarded to Whiting-Turner.

M 058 10
Award
Bid/
Inland
Bays
Regional
Wastewater
Facility/
Phase I
Expansion

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, the County Engineering Department and the County Attorneys, that Sussex County Project No. 09-21, Inland Bays Regional Wastewater Facility: Phase 1 Expansion, be awarded to Whiting – Turner Contracting Co. of Baltimore, Maryland, at the Alternate Bid amount of \$13,212,197.00, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and the Rural Utility Service.

Motion Adopted: 5 Yeas.

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

Information
on Inland
Bays RWF
Project

Mr. Izzo reported that this bid will increase the capacity of the Inland Bays Regional Wastewater Facility from 1.4 mgd (million gallons per day) to over 2 million mgd; it will increase the level of treatment; and, at its completion, will meet the Pollution Control Strategies, adopted by DNREC in 2008 for the Inland Bays Watershed.

Millville
Expansion
of the
Bethany
Beach
SSD

Brad Hawkes, Director of Utility Engineering, presented a Balancing Change Order for the Millville Expansion of the Bethany Beach Sanitary Sewer District Contract. Mr. Hawkes reported that the work, performed by Teal Construction, has been completed and that it has been determined, as a result of final quantity adjustments, that there will be a credit to the contract in the amount of \$92,415.12. Mr. Hawkes noted that the contract time was exceeded due to inclement weather.

M 059 10
Approve
Balancing
Change
Order/
Millville
Expansion
of the
Bethany
Beach SSD

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Whitman, Requardt and Associates, LLP, that the Balancing Change Order for Sussex County Contract No.05-06D, Millville Expansion of the Bethany Beach Sanitary Sewer District, Northwest Subdivisions and Railway Road North, with Teal Construction, Inc. be approved which decreases the contract by the amount of \$92,415.12 for a new Contract total of \$2,356,052.88 and increases the Contract time by 50 calendar days, contingent upon the receipt of approval from the funding agencies.

Motion Adopted: 5 Yeas.

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

Fenwick Island SSD/ Bob Jones, Project Engineer, presented a Balancing Change Order and request for Substantial Completion for the Pump Station No. 31 Force Main Project for the Fenwick Island Sanitary Sewer District. Mr. Jones reported that the work was performed by Underground Utilities Corporation.

Fenwick Island SSD Pump Station Project (continued) Mr. Jones reported that the work has been completed and that it has been determined, as a result of final quantity adjustments, that there will be a credit to the Contract in the amount of \$57,951.69. Mr. Hawkes noted that the Contract time was exceeded by 21 calendar days due to inclement weather; the project was substantially complete on July 9, 2009.

M 060 10 Grant Substantial Completion and Approve Balancing Change Order/ Fenwick Island SSD Pump Station Project A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Whitman, Requardt and Associates, LLP, that the Balancing Change Order for Sussex County Contract No. 08-11, Pump Station 31 Force Main, with Underground Utilities Corporation, be approved, which decreases the Contract by the amount of \$57,951.69 for a new contract total of \$570,053.31 and increases the Contract time by 21 calendar days; Substantial Completion is granted effective July 9, 2009 and final payment is to be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

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

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

M 061 10 Human Service Grant A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to give \$1,000.00 from Human Service Grants to Polly Branch Civic Association for their After School Program.

Motion Adopted: 5 Yeas.

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

M 062 10 Community Grant A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$2,000.00 from Mrs. Deaver's Community Grant Account to the Lewes Senior Center for programs and projects.

Motion Adopted: 5 Yeas.

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

M 063 10 A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give
Community \$2,500.00 (\$1,700.00 from Mr. Vincent's Community Grant Account and
Grant \$800.00 from Mr. Phillips' Community Grant Account) to the Laurel Little League for project expenses.

Motion Adopted: 5 Yeas.

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

M 064 10 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00
Community (\$250.00 each from Mr. Cole's and Mrs. Deaver's Community Grant
Grant Accounts) to Long Neck PTO Imagination Library for a children's book program.

Motion Adopted: 5 Yeas.

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

M 065 10 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00
Community (\$100.00 from each Community Grant Account) to Delaware Envirothon
Grant for program expenses.

Motion Adopted: 5 Yeas.

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

M 066 10 A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to give
Community \$400.00 (\$200.00 each from Mr. Vincent's and Mr. Phillips' Community
Grant Grant Accounts) to North Laurel Elementary School for the Sport Stacking Championship event.

Motion Adopted: 5 Yeas.

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

Mr. Phillips, Yea

**Public
Hearing/
Bonds/
Inland
Bays
RWF
Public
Hearing/
Bonds/
Inland
Bays
Regional
Wastewater
Facility
(continued)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$ 15,600,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE INLAND BAYS REGIONAL WASTEWATER FACILITY AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH”.

Mrs. Webb reported that the Proposed Ordinance would authorize the issuance of negotiable general obligation bonds in the maximum aggregate principal amount not to exceed \$15,600,000 to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the project. The term of the bonds will not exceed 40 years. It is anticipated that the bonds will be sold to both the USDA and State SRF agencies. A portion of the SRF funds will come from the Federal Stimulus Package. The principal forgiveness on this Bond is \$1.3 million. The Bonds are backed by the County’s full faith and credit and it is expected that the debt service will be paid from revenues of the users of the Inland Bays Regional Wastewater Facility.

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

**M 067 10
Adopt
Ordinance
No. 2098**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Ordinance No. 2098 entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$ 15,600,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE INLAND BAYS REGIONAL WASTEWATER FACILITY AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH”.

Motion Adopted: 5 Yeas.

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

**Legal
Counsel**

Mr. Moore excused himself from the discussion on the application of LT Associates, LLC (and from the Public Hearing on September 29, 2009) and Vince Robertson joined the meeting to serve as Legal Counsel.

**M 068 10
Bring
C/Z
No. 1690
Off of
the Table**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to bring Change of Zone No. 1690, filed on behalf of LT Associates, LLC, off of the table.

Motion Adopted: 5 Yeas.

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

C/Z The County Council considered Change of Zone No. 1690 filed on behalf of
No. 1690 LT Associates, LLC.

C/Z The Planning and Zoning Commission held a Public Hearing on this
No. 1690 application on September 10, 2009; on October 14, 2009, the Commission
(continued) recommended that the application be denied.

The County Council held a Public Hearing on this application on September 29, 2009 at which time they deferred action.

Mr. Lank read the Planning and Zoning Commission's reasons for their recommendation of denial.

At the request of Mr. Wilson, Mr. Robertson read the Applicant's Proposed Findings of Fact, which were previously included in their Exhibit Book.

M 069 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt the
Adopt Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE
Proposed COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN
Ordinance/ AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1
C/Z COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL
No. 1690 OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED,
SUSSEX COUNTY, CONTAINING 45.77 ACRES, MORE OR LESS"
(Denied) (Change of Zone No. 1690) filed on behalf of LT Associates, LLC.

Motion Denied: 3 Nays, 2 Yeas.

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

Recess At 11:13 a.m., Mr. Phillips declared a five minute recess.

Reconvene At 11:23 a.m., Mr. Phillips called the meeting back into session.

Mr. Moore rejoined the meeting.

C/U The Council considered Conditional Use No. 1803 filed on behalf of Tim
No. 1803 Elder.

The Planning and Zoning Commission held a Public Hearing on this application on December 10, 2009 at which time the Commission recommended approval, with the following conditions:

C/U
No. 1803
(continued)

1. The hours of operation will be 9:00 a.m. to 7:00 p.m., 7 days per week, April 1 through October 31.
2. The uses will be limited to outdoor food sales and produce. No sales or displays shall be located in front of the existing dwelling.
3. The existing dwelling will remain as a single family rental property. The backyard will remain screened with a 6-foot high privacy fence and at the discretion of DelDOT, the existing entrance will remain for the dwelling only.
4. All trash container areas and porta-potty areas shall be screened with a 6-foot high privacy fence and landscaping.
5. All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT and within the time periods required.
6. The use shall be served by temporary porta-potties provided by a licensed waste hauler company.
7. Potable drinking water shall be provided by an existing on-site well. If a new well is needed, a permit will be obtained from DNREC prior to installation.
8. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated utilizing Best Management Practices to provide positive groundwater recharge.
9. The site shall have one non-illuminated on-premise sign of which the sign shall not exceed 32 square feet on any side or facing, identifying the uses permitted on the same premises. The sign shall contain no more than two sides or facings, back to back and shall conform to a minimum setback of 25 feet from the right-of-way line and a minimum setback of 15 feet from all adjacent property lines.
10. Parking lot and security lighting will be provided and will have downward illumination and shielded so that no illumination will encroach over any property line.
11. A landscaping plan will be provided as a part of the Final Site Plan.
12. No outside speakers, bells, ringers or live entertainment will be permitted.
13. No outside storage of pallets, crates or building materials will be permitted.
14. The number of employees shall not exceed two and the owner.
15. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
16. This approval is for the use in addition to the existing rental home on the property. In the event that the Applicant desires to convert the home into produce and food sales, or substantially change the approved Final Site Plan, a Public Hearing shall be required.

The County Council held a Public Hearing on this application on January 5, 2010 at which time action was deferred.

M 070 10

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to limit

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| Limit BBQ Activities (C/U No. 1803) Denied | barbeque activities to weekends (Saturday and Sunday) and holidays. Motion Denied: 3 Nays, 2 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Nay; Mr. Cole, Yea; Mr. Vincent, Nay; Mr. Phillips, Nay |
| M 071 10 Strike Condition No. 14 (C/U No. 1803) | A Motion was made by Mr. Cole, seconded by Mr. Wilson, to strike Condition No. 14 relating to the number of employees, as recommended by the Planning and Zoning Commission. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea |
| M 072 10 Adopt Ordinance No. 2099 (C/U No. 1803) | A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2099 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE SALE OF PRODUCE, BARBEQUE, SNOWBALLS, LAWN FURNITURE, FIREWOOD AND GIFTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS” (Conditional Use No. 1803) filed on behalf of Tim Elder, with the following conditions: 1. The hours of operation will be 9:00 a.m. to 7:00 p.m., 7 days per week, April 1 through October 31. 2. The uses will be limited to outdoor food sales and produce. No sales or displays shall be located in front of the exiting dwelling. 3. The existing dwelling will remain as a single family rental property. The backyard will remain screened with a 6-foot high privacy fence and at the discretion of DelDOT, the existing entrance will remain for the dwelling only. 4. All trash container areas and porta-potty areas shall be screened with a 6-foot high privacy fence and landscaping. 5. All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT and within the time periods required. 6. The use shall be served by temporary porta-potties provided by a licensed waste hauler company. 7. Potable drinking water shall be provided by an existing on-site well. If a new well is needed, a permit will be obtained from DNREC prior to installation. 8. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County |

| | |
|--|---|
| | <p>requirements and shall be operated utilizing Best Management Practices to provide positive groundwater recharge.</p> <p>9. The site shall have one non-illuminated on-premise sign of which the sign shall not exceed 32 square feet on any side or facing, identifying the uses permitted on the same premises. The sign shall contain no more than two sides or facings, back to back and shall conform to a minimum setback of 25 feet from the right-of-way line and a minimum setback of 15 feet from all adjacent property lines.</p> |
| <p>M 072 10 Adopt Ordinance No. 2099 (C/U No. 1803) (continued)</p> | <p>10. Parking lot and security lighting will be provided and will have downward illumination and shielded so that no illumination will encroach over any property line.</p> <p>11. A landscaping plan will be provided as a part of the Final Site Plan.</p> <p>12. No outside speakers, bells, ringers or live entertainment will be permitted.</p> <p>13. No outside storage of pallets, crates or building materials will be permitted.</p> <p>14. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.</p> <p>15. This approval is for the use in addition to the existing rental home on the property. In the event that the Applicant desires to convert the home into produce and food sales, or substantially change the approved Final Site Plan, a Public Hearing shall be required.</p> |
| | <p>Motion Adopted: 4 Yeas, 1 Nay.</p> <p>Vote by Roll Call: Mrs. Deaver, Nay; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</p> |
| <p>Additional Business</p> | <p>Under Additional Business, Eric Bodenweiser asked the Council to consider passing a Resolution against building casinos in Sussex County. He stated that this would have a tremendous effect on legislators in Dover. Mr. Bodenweiser read his Proposed Resolution into the record.</p> <p>Mr. Cole read a letter he received from Dr. Hattier regarding Millville Expansion District connection fees.</p> |
| <p>M 073 10 Recess/ Go Into Executive Session</p> | <p>At 11:51 a.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing land acquisition.</p> <p>Motion Adopted by Voice Vote.</p> |
| <p>Executive Session</p> | <p>At 11:52 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to land acquisition. The Executive Session concluded at 12:01 p.m.</p> |
| <p>M 074 10</p> | <p>At 12:02 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to</p> |

Reconvene **come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted by Voice Vote.

No action was necessary on Executive Session items.

M 075 10 **At 12:03 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver,**
Recess **to recess until 1:30 p.m. Motion Adopted by Voice Vote.**
Luncheon **During the recess, the County Council attended a luncheon at The Brick**
 Restaurant and Tavern for the unveiling of the Sussex County Profile 2010.

M 076 10 **At 1:30 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to**
Reconvene **reconvene the Regular Session for a Joint Workshop with the Planning and**
 Zoning Commission. Motion Adopted by Voice Vote.

Joint **A Joint Workshop of the Sussex County Council and the Planning and**
Workshop/ **Zoning Commission was held.**
Land Use

Plan and **The following were in attendance:**
Ordinances

| | |
|------------------------------|---|
| Vance Phillips | President |
| Michael H. Vincent | Vice President |
| George B. Cole | Councilman |
| Joan R. Deaver | Councilwoman |
| Samuel R. Wilson, Jr. | Councilman |
| David Baker | County Administrator |
| Hal Godwin | Deputy Administrator |
| J. Everett Moore | County Attorney |
| Robert Wheatley | Chairman |
| I. G. Burton | Commissioner |
| Michael Johnson | Commissioner |
| Marty Ross | Commissioner |
| Rodney Smith | Commissioner |
| Lawrence Lank | Director of Planning and Zoning |
| Vincent Robertson | Assistant County Attorney |
| Paul Driscoll | Urban Research & Development Corp. |

Mr. Driscoll reported that the County Council adopted Sussex County's Comprehensive Plan Update in June 2008 and former Governor Minner certified it in October 2008.

The Comprehensive Plan states that Sussex County should consider whether or not additional ordinances are necessary to further regulate the following zoning-related topics:

- 1. Agricultural Zoning District**
- 2. Remove barriers to Manufactured Housing**
- 3. Definition of Superior Design for purposes of Cluster Subdivisions in the AR-1 Zoning District**

**Joint
Workshop/
Land Use
Plan and
Ordinances
(continued)**

- 4. Density bonus for Cluster Development**
- 5. Revised Community Design Standards**
- 6. Revised definition of Allowable Open Space with a specific method of calculating open space acreage**
- 7. Locally formulated TDR**
- 8. Green Stormwater Management**
- 9. Wildlife Habitat Protection**
- 10. Added Environmental Protection for the ES-1 Zoning District**
- 11. Revised Forested Buffers**
- 12. Requirement for Recreation Facilities and/or Trails in larger developments**
- 13. Wellhead Protection**
- 14. Public Sewer Providers in Designated County Sewer Service Areas**
- 15. Reauthorize and Revise Moderately Priced Housing Unit Program**
- 16. Agribusiness Zone**
- 17. Demolition of Historic Structures**
- 18. Traditional Neighborhood Development**
- 19. Development Standards Regarding Maximum Building Setbacks, Buffering and Landscaping and Green Site Design**
- 20. Strengthened Cluster Development Regulations**
- 21. Sign Controls**
- 22. Incentives to meet Center for Inland Bays buffer recommendations**
- 23. Incentives in developing areas for green communities, LEED certification and Energy Star Compliance**

Mr. Driscoll presented two potential ordinances:

- 1. Creation of an Agricultural Industrial District – the purpose of this draft ordinance is to provide appropriate opportunities for large agriculturally intensive industries to group together for the following reasons: (a) to make it more convenient for them to operate and (2) to mitigate any potential effects these types of uses may have on surrounding areas. Examples of permitted uses would be animal processing, animal sales yard, animal veterinary, commercial aquaculture, crop produce processing, farm machinery and farm vehicle sales and repair, etc. There would be special use exceptions which may be permitted by the Board of Adjustment, i.e. Bio-fuel production, storage and packaging. Additional regulations would include that this zoning shall be at least 5 acres in area; shall be no closer than 500 feet from any part of an existing principal residential structure; and a setback of 100 feet be required between any part of the District and a perennial waterway.**
- 2. Provide additional environmental protection in an ES-1 Zoning District – this draft ordinance would establish a maximum percentage of the total tract that can be covered by impervious surface and would raise the maximum height limit on residential structures if an applicant's project receives certification under the LEED program, which recognizes excellence in green design/green**

construction.

Mr. Driscoll referenced the 23 ordinances that are to be considered and he suggested that the Council use the following criteria to consider draft ordinances as they are presented:

**Joint
Workshop/
Land Use
Plan and
Ordinances
(continued)**

- 1. What existing pertinent regulations are already in place at the State and County levels?**
- 2. The goals of the Comprehensive Plan.**
- 3. What has changed/not changed since the Comprehensive Plan was adopted? What is the County government's current fiscal health and the economic conditions in Sussex County?**
- 4. The County's ability to effectively monitor and enforce any new zoning regulations Council might establish.**

Mrs. Deaver expressed concern about the number of projects that have been approved but not yet developed, and she stated that the County needs a sense of how many there are. Mr. Cole stated that sunseting ordinances would be a way to address projects that have been approved but are no longer viable.

Mr. Driscoll stated that the Council has enacted several new ordinances since 2008 to help implement the goals of the updated Plan:

- 1. Wellhead Protection (Ordinance No. 1979 adopted June 24, 2008).**
- 2. Forested Buffers and Development Standards regarding maximum building setbacks, buffering, and landscaping, and green site design (Ordinance No. 1984 adopted July 29, 2008)**
- 3. Revised Sign Ordinance (Ordinance No. 2008 adopted December 2, 2008)**
- 4. Open Space Definition (Ordinance No. 2022 adopted December 16, 2008)**
- 5. Superior Design Criteria, Strengthened Cluster Development Regulations, Density Bonus for Cluster Development, and Revised Community Design Standards (Ordinance No. 2024 adopted December 16, 2008)**
- 6. Public Sewer Providers in designated County sewer service areas (Ordinance No. 2023 adopted December 16, 2008)**
- 7. Moderately Priced Housing Unit Program (Ordinance No. 2016 adopted December 9, 2008). The County expanded this initiative to include rental units.**

Mr. Driscoll discussed various regulations that are proposed in the Comprehensive Plan:

- 1. Transfer of Development Rights (TDR) Program. Mr. Driscoll stated that TDR programs exist in New Castle and Kent counties. The State has recommended that the County consider a program that imitates these models. Mr. Driscoll noted that, while the County**

does not have a TDR program, it does have a form of TDR, i.e. the County's concept where developers contribute dollars for open space and in exchange, density bonuses are provided.

Mr. Cole clarified that the TDR programs in the other two counties are between two landowners and in Sussex County, it is between the County and a landowner.

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2. The State's Agricultural Zoning District and the incentives provided to preserve agricultural lands. Mr. Driscoll noted that the Comprehensive Plan suggests that the County may want to consider its own program; however, it seems that there isn't anything the County could add which would provide any additional incentives for landowners to go with a County program rather than the State's program. Additionally, the County has provided some of the funds for payment to landowners who participate in the State's program. Mr. Driscoll suggested one administrative change; that each time an additional property has its development rights preserved or it enters the State's 10-year program, that the Planning and Zoning Department maintain a map showing the properties in agricultural preservation.
3. Wildlife Habitat Protection. Federal and State regulations under the Clean Water Act require all applicants who propose to disturb at least one acre to secure a National Pollution Discharge Elimination System (NPDES) permit. The regulations require a data search to make sure that any development over one acre is not going to potentially affect a rare or endangered species that is on the Federal or State lists. In addition, for larger developments, through the State PLUS Review Process, a similar inventory of key wildlife habitats is performed. Therefore, with respect to identifying the potential danger to endangered species habitats, the County does not have any additional information that is not already covered at the State and Federal levels. For this reason, Mr. Driscoll concluded that this item is already covered. Mr. Driscoll noted that one thing which is recommended is that landscaping in a new development should consist of using native species; therefore, Mr. Driscoll suggested that the County continue to encourage the use of native species.
4. Green Stormwater Management. Mr. Driscoll stated that this is the responsibility of the Sussex Conservation District and it is overseen by DNREC. Therefore, Mr. Driscoll questioned what additional zoning regulations could the County add which are not already under consideration by the District or DNREC.
5. The removal of barriers to manufactured housing. Mr. Baker reported that the County has established a committee to look at manufactured housing issues. The first meeting is scheduled to be held in early February.

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- 6. Demolition of Historic Structures.** Mr. Driscoll stated that the Comprehensive Plan suggests what additional measures the County may take to delay demolition so that alternatives could be reviewed and information documented. Mr. Driscoll suggested that, instead of a regulation that would delay demolition, the County could comment on proposed demolitions through the County's development review process. As part of the process, County staff could check the Comprehensive Plan's listing of Sussex County properties on the National Register of Historic Places to determine if a proposed development involves the demolition of any such structures and if so, practical alternatives to demolition could be assessed and recommended by the County's Historic Planner.
- 7. Traditional Neighborhood Development** – a new development that incorporates the best design features of classic older-style neighborhoods: street trees, street lights, front porches, sidewalks, modest densities, and maximum building setbacks that discourage parking spaces being placed in front of homes. Mr. Driscoll suggested that, within Residential Planned Communities, that these options be regulated by RPC overlay regulations. He stated that if the County starts to mandate these things at the design level, tremendous expense could be added to every development, thereby eliminating affordable housing.
- 8. Requiring recreational facilities, i.e. playgrounds and/or trails in every large development.** Mr. Driscoll stated that this is addressed in the Superior Design Ordinance which affected cluster development. The Ordinance requires a pedestrian trail system which must be accessible to any adjacent trail system and to any adjacent public open space. Mr. Driscoll suggested that the County not require playgrounds as it should be a market decision and if required, it could eliminate affordable housing.

Mr. Cole expressed concern that the County should have minimum requirements for developments and he noted that, possibly, affordable housing communities need playgrounds more than upscale developments.

Discussion was open to the Council and the Commission.

Mr. Cole made a recommendation that the County consider establishing sub-zoning categories in the B-1 Zoning District for the purpose of limiting uses when a zoning change is approved, i.e. B-1/restaurant/fast food, B-1/medical offices, etc. Mr. Cole explained that when the County rezones a property to commercial, anything on the permitted use list can apply.

Mr. Cole also commented that the Council may wish to consider sunsetting a rezoning approval so that the rezoning would revert back if nothing has

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happened with the property after a certain period of time.

Mr. Vincent referenced commercial zoning and he stated that commercial zoning opens a big window on what can be done on a property.

Mr. Driscoll stated that, in other communities, there is a zoning difference between commercial uses, i.e. mom and pop stores, Home Depot-type stores, automobile dealerships, etc.; there is a C-1 District which is designed primarily for highway oriented uses and a C-2 District which is designed primarily for serving neighborhood convenience needs.

Mr. Moore stated that in response to discussions by Council regarding this matter, legal counsel has been looking at statutes and ordinances in other jurisdictions. A report will be presented to the Council at a future time.

Mr. Cole also made a recommendation that the County establish a separate zoning category for casinos and racinos.

Mr. Cole questioned whether the Land Use Plan is law, a reference tool, or a guide and he asked for one legal opinion on this matter from the County's legal counsel (which is made up of three attorneys from different legal firms). Mr. Cole noted that he would also like to get an opinion from a Chancery Court Judge.

Mr. Driscoll stated that the idea of a Comprehensive Plan is to provide (1) a guide for future development and preservation of the County and (2) to provide rationale for any new regulations. Further, zoning ordinances are supposed to provide the "teeth" to help implement the Comprehensive Plan.

Mrs. Deaver stated that people want predictability in the Land Use Plan.

Mr. Robertson stated that there are a myriad of cases that have dealt with the legality of Comprehensive Plans, both in the counties and the municipalities in the State of Delaware. He stated that, based on decisions by the Court of Chancery, it is clear that Comprehensive Plans have the force of law and it is equally clear that they cannot be so inflexible that they are rigid documents.

Mr. Vincent stated that Land Use Plans are reviewed every five years because there are changes that occur in what people need and want in the County.

Mrs. Deaver stated that there are many good ideas presented by Mr. Driscoll; however, she doesn't see the ordinances to put the ideas into action.

Mr. Driscoll stated that the ordinances suggested in the Comprehensive Plan must be considered by the Council to determine which ones are in the best interest of the County.

Mr. Cole stated that Governor Markell is trying to streamline some of the permitting processes and he questioned (1) if the County is aware of this and (2) how the County can coordinate with the State in this regard.

Mr. Baker reported that, several months ago, the County entered into a Memorandum of Understanding with the State, at their request, in regards to economic development whereby the County agreed to expedite applications that affect the economy.

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Mr. Wheatley stated that the Commission considers applications based on County ordinances and if the Council does not like the Land Use Plan and ordinances, they should change it. He stated that the Commission will abide by the Plan and ordinances that are passed on to them.

**M 077 10
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 3:05 p.m.

Respectfully submitted,

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