



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 14, 2004**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, September 14, 2004, at 7:15 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Dale R. Dukes</b>	<b>President</b>
<b>Finley B. Jones, Jr.</b>	<b>Vice President</b>
<b>Lynn J. Rogers</b>	<b>Member</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

#### **M 534 04 Approve Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Agenda of September 14, 2004.

**Motion Adopted: 5 Yea.**

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

#### **M 535 04 Approve Minutes**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to approve the minutes of August 31, 2004.

**Motion Adopted: 5 Yea.**

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

#### **Corre- spondence**

Mr. Griffin read the following correspondence:

**WESTERN SUSSEX BOYS & GIRLS CLUB, GEORGETOWN,  
DELAWARE.**

**RE: Letter in appreciation of grant.**

**THE FAMILIES OF LAUREN MASSEY AND HALEY BARRALL,  
DELMAR, DELAWARE.**

**RE: Letter in appreciation of grant.**

**SCOTT COULBOURN, DEPARTMENT OF PARKS AND  
RECREATION, SEAFORD, DELAWARE.**

**RE: Letter in appreciation of grant.**

**First  
State  
Community  
Action  
Agency/  
Grant**

Mr. Stickels announced that the County Council appropriated \$25,000 in the Fiscal 2005 Budget for First State Community Action Agency through “Community Investments” to be used to pay for the installation of a new telephone system and to purchase new computers. A check in the amount of \$25,000 was presented to Bernice Edwards, Executive Director of First State Community Action Agency.

**Public  
Hearing  
(C/Z  
No. 1552)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 112.28 ACRES, MORE OR LESS” (Change of Zone No. 1552) filed on behalf of Nassau Grove, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on August 26, 2004, at which time they deferred action and left the record open until September 15, 2004 pending receipt of reports from DelDOT relating to the Traffic Impact Study.

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

(See the minutes of the Planning and Zoning Commission dated August 26, 2004, for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank distributed copies of the following information: an exhibit booklet, maps, site plan, and copies of correspondence received from agencies and individuals.

The Council found that Dan McGreevy, Frank Kea, and Richard Polk of Nassau Grove, LLC were present with James Fuqua, Attorney. Also present were Jeffrey Harman, Becker Morgan Group; Derrick Kennedy, Orth Rodgers & Associates; and Edward Launay, Environmental Resources, Inc.

Mr. Fuqua and Mr. Kea stated that Nassau Grove is a proposed Residential Planned Community located at the intersection of Minos Conoway Drive

Public  
Hearing  
(C/Z  
No. 1552)  
(continued)

and Route One; that the 112 acre site is bordered by Route One on the east, Minos Conoway Drive on the north, the Penn Central railroad on the south and Red Mill Farms single family neighborhood on the west; that the site is located in the Environmentally Sensitive Developing Area, which, according to the Sussex County Comprehensive Land Use Plan, is a growth area where mixed housing and residential planned communities are appropriate and encouraged; that the property was formerly utilized as an apple orchard and farm; that the site is currently used for farming; that 351 residential units are proposed including 189 single family detached dwellings, 92 duplex units, and 70 multi-family units; that a recreational facility is proposed; that the density equals 3.13 units per acre gross and 3.46 units per acre net; that the project will be an in-fill between projects; that the site is located in a sanitary sewer district and that sewer capacity is available for up to 4 EDUs per acre; that a Traffic Impact Study was prepared for DelDOT and that DelDOT expects to respond to the study by September 15, 2004; that the entrance to the project will be located on Minos Conoway Road; that based on information derived from studies and expert comments, the environmental impact of the project would be minimal; that the Department of Fish and Wildlife Service has advised that no proposed or federally listed endangered or threatened species are known to exist within the project impact area; that stormwater management facilities will meet or exceed all State and County requirements; that there is a small area of wetlands with a wooded buffer already existing on the site and that this area will be left undisturbed; that a Phase I Environmental Assessment has been performed on the site; that according to a Historic Resource Assessment, no historic resources have been found in the project area; that there are 46 acres of open space (which includes the yard area); that there are 12 acres of open space comprised of just the active recreation area and the area around the ponds; that the ponds total 10 acres of open space; that the project is designed around large ponds with a loop road system; that the recreational area will include tennis courts, a swimming pool and walking paths; that there are ten areas set aside for active recreation; that they propose a 30-foot wide landscaped perimeter buffer on two sides, a 60-foot setback from Route One with screening, and a 35 – 40 foot setback on Minos Conoway Road; that the project conforms to the ideas for creating more livable and prosperous communities outlined in the booklet entitled “Better Models for Development in Delaware”; that in order to make the multi-family units compatible with the area, they are proposing the setbacks previously mentioned the placement of the buildings so that the smallest side of the buildings will face Minos Conoway Road; and that they have received a letter from the Cape Henlopen School District stating that there will be little to no impact on the School District by the creation of this project.

Mr. Fuqua reported that, for this project, DelDOT required a Traffic Impact Study to be performed to analyze the roadway network in the vicinity of the site. Orth Rodgers & Associates, Inc., a specialist in traffic engineering and planning, performed a Traffic Impact Study in accordance with a scoping letter provided by DelDOT. Three intersections were

**studied in the report: 1) Minos Conoway Road / State Route 1; 2) Minos Conoway Road / Site Entrance; and 3) Minos Conoway Road / State Route 9. Three different traffic scenarios in two different years were studied taking into account other proposed developments in the immediate vicinity. The results of that study revealed that only minor improvements are recommended to maintain acceptable levels of service. Those improvements are:**

**Public  
Hearing  
(C/Z  
No. 1552)  
(continued)**

- **Re-stripe westbound Route 9 approach to include an 11' wide through lane and a 10' wide right turn lane.**
- **Provide an additional turn lane on the southbound approach of Minos Conoway Road so that separate right and left turn lanes are present.**
- **If specified by DelDOT, a traffic signal could be installed. It should be noted that poor levels of service on the side street movements does not necessarily warrant a traffic signal.**

**The developer has agreed to perform all of these improvements if required by DelDOT. Review of the Traffic Impact Study by DelDOT should be completed in mid-September of 2004.**

**Mr. Fuqua stated that he takes issue with the letter submitted by the Citizens Coalition and that there are inaccuracies in the letter, as follows:**

- **Vehicles entering onto Route One from County Road 265 have to go south.**

**Mr. Fuqua stated that a crossover does exist there.**

- **The site plan comes nowhere close to embracing any of the standards illustrated in the "Better Models for Development in Delaware".**

**This was addressed by Mr. Fuqua and Mr. Kea during the Public Hearing. Mr. Fuqua stated that they have read the book and that Mr. Kea has illustrated how they have incorporated the concepts into the design of the project.**

- **This site is not in the County's Development District and is in the Environmentally Sensitive zone according to the County's own map "Future Land Use" in the County's Comprehensive Land Use Plan.**

**Mr. Fuqua stated that this property is in a development zone – it is in the Environmentally Sensitive Developing Area, an area designated for development but recognizes that environmental sensitivity needs to be designed in the projects.**

**Mr. Fuqua stated that the applicant recognizes their responsibility to address road improvements as determined necessary by DelDOT and understand that they will be incorporated into any conditions of approval.**

**Mr. Fuqua submitted proposed conditions and findings of fact.**

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(continued)

Mr. Rogers expressed concern regarding any lead content in the soil from chemicals/fungicides that were sprayed on the area during the time it was operated as an orchard. Mr. Kea responded that this issue has been addressed in the environmental assessment of the site and that the metal contents in the ground could be dealt with by deep plowing and tilling for several years, which would volatilize the materials. It was noted that the site has already been deep plowed one time. Mr. Kea stated that the applicant would follow all of DNREC's regulations.

There were no public comments in support of the application.

Jane Nicholson presented a petition in opposition to the project. The petition contained the signatures of over 175 residents in surrounding developments. A cover letter accompanied the petition and Ms. Nicholson read the letter in its entirety. The letter and the petitions were made a part of the record.

The Council found that Jane Nicholson of Mill Pond Acres, Bob Carnahan of Mill Pond Acres, Joe O'Neill of Edgewater Estates, Jerry Liguori of Mill Pond Acres, Nicholas Fiori of Mill Pond Acres, Mabel Granke and Michael Tyler of the Citizens Coalition, and Wes Perkins of Mill Pond Acres were present and spoke in opposition to the application. They expressed concern that the proposed development would have a negative impact on the safety, health and welfare of the residents in the surrounding communities. They expressed concerns about the proposed density of 3.4 homes per acre; that the proposed development would be out of character with adjacent communities; traffic; traffic accidents; the safety of the residents and children; the need for a traffic signal at Minos Conoway Road and Route One and Route 9; that Minos Conoway Road is a two-lane residential road and is inadequate to service the number of vehicles (approximately 600) which can be expected as a result of the proposed development; that there are no existing sidewalks or shoulders on Minos Conoway Road; possible impacts on the school district; sewer capacity; water quantity and quality; that pollution is a serious concern for surrounding private wells, Red Mill Pond and the Federal wetlands due to ground water run-off and absorption; that the potential fungicide run-off would have a negative impact on the aquifer; that the potential of pollution should be studied further; phasing; maintenance of the ponds; disturbance of the wetlands; setbacks from wetlands; the entrance location; multi-family use in a single family residential area; the location of a future parkway; the impact on the roads; concerns about Tidewater Utilities' ability to provide service and pressure for the water system; that there is only one entrance and exit to the proposed development which is inadequate and would delay the response time for emergency vehicles; that sewer allocations need to be reevaluated and updated to determine the true EDU capacity based on existing developments and developments in the pipeline; that a significant addendum was made to the original Traffic Impact Study; that action should be deferred until the receipt and review of DelDOT's comments;

**Public  
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(continued)**

that the public should be given the opportunity to review DelDOT's comments; that the proposed project should not be permitted in the Environmentally Sensitive Developing Area; that the proposed project is a cookie-cutter development; that in August of 2003, the State Route One Land and Transportation Study was issued; that the Study shows a road tentatively going through the project site; that this application should not have been brought to public hearing until the problem was resolved; that the proposed project does not come close to following the concepts contained in the "Better Models for Development in Delaware"; and that when developers seek additional densities, they should be required to offer (Sussex County) resident-occupied (affordable) housing.

**The Public Hearing was closed.**

**M 536 04  
Defer  
Action and  
Leave the  
Record  
Open  
(C/Z  
No. 1552)**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to defer action on Change of Zone No. 1552, an application filed on behalf of Nassau Grove, LLC, and to leave the record open for additional information.

**Motion Adopted: 5 Yea.**

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

Mr. Stickels stated that the County Council members would be notified when all information has been received (i.e. DelDOT's comments on the Traffic Impact Study and current wastewater calculations).

**Request  
for Appeal/  
Country  
Grove  
Subdivision**

Mr. Stickels reported that he has received a letter from Carlton Moore, owner and developer of Country Grove, LLC, regarding the Planning and Zoning Commission's decision to deny a request for a time extension on Subdivision No. 962. The developer is asking the County Council to consider an appeal on the matter.

Mr. Griffin informed the Council that he would like to research whether this type of request (denial of an extension of time relating to a subdivision) is a matter that can be appealed.

The Council decided to wait for a legal opinion from Mr. Griffin and no action was taken.

**Adminis-  
trator's  
Report**

Mr. Stickels submitted the following Administrator's Report:

**1. Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities Meeting**

The Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities will meet on Monday, September 20, 2004, at 10:00 a.m. The meeting will take place at the Sussex County

West Administrative Complex, North DuPont Highway, Georgetown, Delaware. Included with this report is a copy of the agenda. The media as well as the general public is welcome to attend.

Adminis-  
trator's  
Report  
(continued)

2. **Beneficial Acceptance – Savannah/Miken, Agreement No. 337**

The County Engineering Department gave Beneficial Acceptance to Savannah/Miken, Project No. 81-04, Agreement No. 337, on Tuesday, August 31, 2004. This project is located on Route 26 at the entrance to Savannah Landing in the Bethany Beach Sanitary Sewer District, consisting of four single-family dwellings. A fact sheet on the project is included with this report.

3. **Indian River Inlet Bridge**

A groundbreaking ceremony will take place for the new Indian River Inlet Bridge on October 16, 2004, at 4:00 p.m. During the ceremony the Delaware Department of Transportation will present plans for new amenities at the enhanced Delaware Seashore State Park. The general public is invited to attend this ceremony.

4. **South Coastal Regional Wastewater Facility**

The Sussex County Engineering Department opened bids on Wednesday, September 8, 2004, for the upgrade of the South Coastal Regional Wastewater Facility. The following bids were received:

C. O. Falter Syracuse, NY	\$15,201,101
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Bearing Construction Sudlersville, MD	\$18,200,000
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The Engineer's Estimate for this project was \$13,100,000. The Engineering Department will review the bids and make a recommendation to the County Council within 30 days.

Requests

Mr. Stickels presented grant requests for the Council's consideration.

M 537 04  
Council-  
manic  
Grant

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give \$250.00 from Mr. Rogers' Councilmanic Account to the Friends of Prime Hook, NWR for educational programs for visitors.

Motion Adopted: 5 Yea.

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

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

**M 538 04**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$400.00**  
**Council-**      **(\$200.00 each from Mr. Dukes' and Mr. Phillips' Councilmanic Accounts)**  
**manic**      **to the Laurel Lions Club for the Lions Low Vision and Research Center at**  
**Grant**      **John Hopkins Wilmer Eye Institute.**  
**M 538 04**      **Motion Adopted:      5 Yea.**  
**(continued)**

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

**M 539 04**      **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$750.00**  
**Council-**      **(\$150.00 from each Councilmanic Account) to the Delaware Police Chiefs'**  
**manic**      **Council, Inc. for conference travel expenses to permit Martin Johnson,**  
**Grant**      **Local Police Coordinator, to attend a meeting of the Committee of**  
                 **Executive Directors held in conjunction with the International Association**  
                 **of Chiefs of Police Annual Conference in California.**

**Motion Adopted:      5 Yea.**

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

**M 540 04**      **A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$750.00**  
**Youth**      **from Mr. Jones' Youth Activity Grant Account to Woodbridge Pop Warner**  
**Activity**      **for operating expenses.**  
**Grant**

**Motion Adopted:      5 Yea.**

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

**Additional**      **Dan Kramer addressed the Council and told them that he asked Secretary**  
**Business**      **Nathan Hayward of DelDOT why they don't deny permits in an effort to**  
                 **control development. Secretary Hayward responded that they couldn't**  
                 **since it would be unconstitutional.**

**Request**      **Mr. Cole requested an update on the upgrade of the South Coastal Regional**  
**for Update**      **Wastewater Facility referred to in the Administrator's Report. Mr. Stickels**  
                 **responded that an update would be provided within the next thirty days.**

**M 541 04**      **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to adjourn at**  
**Adjourn**      **9:40 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**



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