

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 17, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 17, 2015, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Robert B. Arlett	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

Call to Order

Mr. Vincent called the meeting to order.

M 104 15 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to amend the Agenda by deleting "Personnel" under "Executive Session" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of March 10, 2015 were approved by consent.

Corre- spondence

Mr. Moore read the following correspondence:

**IMMANUEL SHELTER, NASSAU, DELAWARE.
RE: Letter in appreciation of grant.**

Public Comments

Public Comments

Ira Hitchens complimented the Council on doing an excellent job.

Paul Reiger complimented the Council for putting the trash issue and the vendor issue on the agenda and he asked that the Council also discuss other Code issues that are outdated.

Susan Polikoff, Delaware Director for the American Diabetes Association, presented a request for funding to send Sussex County children to Camp

**Public
Comments
(continued)**

Freedom (a camp for children with diabetes). She noted that there are 150 children in Sussex County with diabetes and that statistics show that another 30 will be diagnosed this year. Ms. Polikoff left packets of information for the Council.

**M 105 15
Approve
Consent
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to approve the following items listed under the Consent Agenda:

**Wastewater Agreement No. 766-8
Sussex County Project No. 81-04
Senators – Phase 2C
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District**

**Wastewater Agreement No. 766-9
Sussex County Project No. 81-04
Senators – Phase 2D
West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District**

**Wastewater Agreement No. 1005
Sussex County Project No. 81-04
Americana Bayside –Knox Property
Bay View Estates Sanitary Sewer District**

Motion Adopted: 5 Yeas.

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

**Commercial
Vendors/
Food Trucks
Discussion**

Mr. Lawson presented for Council's discussion the topic of vendors and food trucks that operate on commercial property. In August 2014, the Council discussed this topic; feedback was taken from that meeting as well as additional feedback received to date for the purpose of putting together a presentation. Mr. Lawson noted that, with a consensus, the next step is the introduction of a proposed ordinance.

Vince Robertson, Assistant County Attorney, and Lawrence Lank, Director of Planning and Zoning, participated in the presentation and discussion.

Mr. Lawson noted that this discussion does not relate to the typical farm markets, produce stands, and road-side stands legally selling farm goods on AR-1 properties. It was also noted that there are rules that pertain to this type of sales on AR-1 property.

Mr. Lawson advised that, under current County Code, certain vendors such as food trucks, food carts, produce wagons, and merchandise kiosks are required to apply for a conditional use of land to legally operate on a commercially zoned property. In some instances, the same vendor is also required to apply for a variance. Mr. Lawson noted that the current

**Commercial
Vendors/
Food Trucks
Discussion
(continued)**

process is expensive, lengthy, and in some instances, over-burdensome and that the proposal is for a more streamlined process.

Mr. Lawson reported that, to improve the current system, the proposal is to amend County Code and provide a streamlined process for vendor-type activity that meets a very specific criteria. The proposal would allow a “counter review” and permit process by the Planning and Zoning Director. The proposal would eliminate the requirement of seeking a conditional use and in most cases, eliminate the need for a variance or special use exception.

The proposal does allow the Planning and Zoning Director to require the applicant to seek a special use exception through the Board of Adjustment if there are concerns regarding location, parking, neighboring properties, or good cause.

Mr. Lawson explained that an applicant with the following criteria would qualify under the proposal:

Property Zoning:	C-1 and CR-1 only
Activity:	Temporary and removable vending stand, including food trucks
Length of Time:	6 months or less
Amount:	1 stand per parcel
Size:	162 sq. feet or less (average size of a parking spot)
Permission:	Activity must be approved, in writing, by property owner
Plan:	Drawing showing stand location required
Kick-Out:	Director may require applicant to seek Board approval

The Council discussed the proposal. Discussion included the impact on required parking spaces, parking scheme, setbacks, size, inspections, fire hazards, examples of a kick-out, and proof of agency approvals, including the Health Department, Division of Revenue for business licenses, etc.

Mr. Lank noted that a Letter of No Contention will be required from DelDOT. Also required will be a Health Department approval and possibly an approval from the State Fire Marshal’s Office.

It was the consensus of the Council that any draft ordinance should reference the sale of food related items only.

**Adminis-
trator’s
Report**

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

1. Sussex County Airport Advisory Committee

**Administrator's
Report
(continued)**

The Sussex County Airport Advisory Committee is scheduled to meet Wednesday, March 25th, at the Sussex County Emergency Operations Center at 6:00 p.m. A copy of the agenda is attached.

2. Council Meeting Schedule

A reminder that Council will not meet on Tuesday, March 24th. The next regularly scheduled Council meeting will be held on March 31st at 10:00 a.m.

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

**Wilmington
Trust
Custodial
Agreement**

Mrs. Jennings presented a request for a change in the County's arrangement with Wilmington Trust from a Trust Agreement to a Custodial Agreement for the Sussex County Employee Pension Fund. In 1976, Sussex County signed an agreement with Wilmington Trust to be the Trustee of funds held with them for the pension plan; this agreement costs the County 7 basis points. In 2011, Sussex County signed a similar agreement with Wilmington Trust to be the Custodian of funds held with them for the OPEB plan. This agreement costs the County 4 basis points. Mrs. Jennings reported that, in an attempt to save money, she reviewed the differences between a trustee and a custodial agreement; a comparison was included in Council's packets for the meeting.

Mrs. Jennings recommended removing Wilmington Trust as a Trustee and designating Wilmington Trust as a Custodian. This will result in an estimated savings of \$10,000 annually.

**M 106 15
Adopt
R 004 15/
Wilmington
Trust
Custodial
Agreement**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Resolution No. R 004 15 entitled "RESOLUTION APPOINTING SUSSEX COUNTY COUNCIL TO ACT AS TRUSTEE OF THE TRUST ESTABLISHED AS PART OF THE SUSSEX COUNTY EMPLOYEE PENSION PLAN".

Motion Adopted: 5 Yeas.

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

**Old
Business/
CU 1994**

Under Old Business, the Council considered Conditional Use No. 1994 filed on behalf of Robert Wilkerson.

The Planning and Zoning Commission held a Public Hearing on this application on August 21, 2014 at which time action was deferred. On September 11, 2014, the Commission recommended that the application be approved, with conditions (A – O).

**Old
Business/
CU 1994
(continued)**

On October 14, 2014, the Sussex County Council held a Public Hearing on this application and found that the Applicant was not in attendance; the application was denied due to the lack of a record.

On December 2, 2014, the Sussex County Council discussed this application for the purpose of further consideration and was advised that there were extenuating circumstances involving the application; that the original public hearing was scheduled for October 21, 2014 but was rescheduled for October 14, 2014; that the date of the public hearing before the Council was not updated (on the notice posted on the Applicant's property) to show the rescheduled date; and that legal staff agreed that a Motion to rescind the vote was appropriate in this case. There was a Motion adopted to rescind the vote of denial of October 14, 2014. A new Public Hearing was scheduled and held on January 13, 2015 at which time action was deferred to allow time for Councilman Cole to listen to the audio of the Public Hearing so that he could participate in the vote on the application.

(For additional information, see the minutes of the meetings of the Planning and Zoning Commission dated August 21 and September 11, 2014 and the minutes of the meetings of the Sussex County Council dated October 14 and December 2, 2014 and January 13, 2015.)

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

Council members discussed the proposed ordinance.

**M 107 15
Adopt
Ordinance
No. 2389/
CU 1994**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2389 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOBILE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS" (Conditional Use No. 1994) filed on behalf of Robert Wilkerson, with the following conditions:

- A. The use shall be limited to the existing structure on the property. No additional structures will be permitted.**
- B. The use shall be operated solely by the applicant. As stated by the applicant, there shall not be any other employees associated with the business.**
- C. No outside repairs shall be permitted.**
- D. No junked, unlicensed or unregistered vehicles, trucks or trailers shall remain on the property for longer than six (6) months.**
- E. No more than ten (10) vehicles, trucks or trailers shall be located outside at any one time.**
- F. The use shall include porta-toilet facilities. The nature and location of these facilities shall be shown on the Final Site Plan and shall be screened from neighboring properties.**

**M 107 15
Adopt
Ordinance
No. 2389/
CU 1994
(continued)**

- G. There shall not be any outside storage of vehicle parts, equipment, scrap, or similar materials.**
- H. There shall not be any vehicle sales occurring on the site.**
- I. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.**
- J. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- K. One unlighted sign, not to exceed 32 square feet in size per side, shall be permitted.**
- L. The areas for outside vehicles shall be shown on the Final Site Plan and clearly marked on the site itself.**
- M. All oils, hazardous substances, fluids and similar substances shall be stored inside in accordance with all applicable laws and regulations and shall be disposed of the same way.**
- N. The hours of operation shall be between 8:30 am and 5:00 pm, Monday through Saturday.**
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 3 Yeas, 2 Nays.

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

**Grant
Requests**

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

**M 108 15
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$500.00 from Mrs. Deaver's Councilmanic Grant Account to Lewes in Bloom for the Children's Learning Garden.

Motion Adopted: 5 Yeas.

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

**M 109 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 from Mr. Cole's Councilmanic Grant Account to True Blue Jazz for operating costs and scholarship funding.

Motion Adopted: 5 Yeas.

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

**M 110 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to First State Community Action Agency for a fundraiser to benefit youth programming.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Zoning
Ordinances**

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PUBLIC SERVICE FACILITY (STATE POLICE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9.3 ACRES, MORE OR LESS” (Conditional Use No. 2015) filed on behalf of Delaware Division of Facilities Management. (Tax Map I.D. 334-12.00-16.06) (911 Address – None Found).

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELEMENTARY SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.4 ACRES, MORE OR LESS” (Conditional Use No. 2016) filed on behalf of Cape Henlopen School District. (Tax Map I.D. 334-12.00-45.01) (911 Address: None Found).

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 12.394 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1775) filed on behalf of Charles R. Auman, Jr. (Tax Map I.D. 330-5.00-7.04 and 8.00) (911 Address: None Found).

The Ordinances will be advertised for Public Hearing.

**Council
Members’
Comments**

Council Members’ Comments

Mrs. Deaver commented on Conditional Uses and how the County enforces them and she suggested that the Council look into how enforcement can be improved. Mrs. Deaver also commented on putting more classifications or defining other types of uses in commercial areas as well as adding a B-2 and B-3 zoning classification.

**Council
Members'
Comments
(continued)**

Mr. Wilson thanked Mr. Lawson for his presentation on vendors and food trucks.

Mr. Cole announced that, on March 18th, Mr. Arlett and he will be speaking on growth and infrastructure at the South Eastern Sussex County Democrat Club.

Mrs. Deaver stated that she will be attending a meeting of the Eastern Sussex Republican Women's Club.

Mr. Arlett reported on his participation at the Regional FEMA Meeting in Virginia and the discussion on the new Executive Order regarding flood zones. Mr. Arlett also reported on other events he attended: Sussex County Community Exchange relating to stormwater management, Community Education Foundation in Delmar.

Mrs. Deaver announced that the League of Women Voters of Sussex County will be holding Land Use Forums around the County on the Comprehensive Plan. The first forum has been scheduled for Wednesday, March 18th, at 7:00 p.m. in Sussex County Council Chambers.

**M 111 15
Go Into
Executive
Session**

At 11:37 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to recess and go into Executive Session.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 11:40 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation and land acquisition. The Executive Session concluded at 12:20 p.m.

**M 112 15
Reconvene
Regular
Session**

At 12:23 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

There was no action on Executive Session matters.

**M 113 15
Adjourn**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 12:23 p.m.

**M 113 15
(continued)**

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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