

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 9, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 9, 2012, 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
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Susan M. Webb	Finance Director
Everett Moore	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 516 12
Amend
and
Approve
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to amend the Agenda by deleting “Job Applicants’ Qualifications” and “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. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of September 25 and October 2, 2012 were approved by consent.

**The Way
Home
Program**

Barbara Del Mastro and Lee Dogoloff of The Way Home were in attendance along with one of their clients to present information on The Way Home’s program benefits and statistical information on the success of the program. The Way Home meets former prisoners at the prison gates and the office door to provide connections with the community, to meet needs, and to foster relationships that prevent a return to prison. Once released, The Way Home provides participants with critical supplies and assists them with securing safe and stable housing. Case management services include job search assistance, transportation to appointments, support groups, mentoring, and referrals to various social services.

Mrs. Webb reported that, in the past, The Way Home has been receiving a \$1,000 Human Service Grant. Human Service Grants for FY 2013 will be awarded in the near future.

**Public
Hearing/
Agreement/
Dagsboro
Volunteer
Fire
Department**

At 10:30 a.m., a Public Hearing was held to consider a Proposed Resolution entitled “RESOLUTION APPROVING AGREEMENT TO PROVIDE FIREFIGHTING SERVICES AND APPROVING ISSUANCE OF CERTAIN BONDS OR NOTES BY THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC.”

Mrs. Webb explained that the Dagsboro Volunteer Fire Department provides firefighting services to a specific area within Sussex County and the Fire Company and the County would like to formalize such arrangement by entering into the Agreement to provide firefighting services. The Fire Company proposes to issue up to \$3,374,000 of bonds or notes of the Fire Company to (1) pay a portion of the costs for the construction of a new one-story fire station to be located at the corner of Clayton Street and Railroad Avenue, Dagsboro (with primary access on Railroad Avenue) which will be up to 26,000 square feet and contain room for additional firefighting and emergency equipment and training; and (2) pay issuance costs associated therewith. It is the intent of the Fire Department that the interest on the Bonds qualify for exclusion from gross income of the owners thereof for federal income tax purposes pursuant to Internal Revenue Code. Pursuant to the Code, interest on the Bonds will not qualify for exclusion from gross income of the owners thereof for federal income tax purposes unless the issuance of the bonds is approved by the applicable elected representative of a governmental unit with which the Fire Department has entered into an agreement, after a public hearing to consider the issuance of the Bonds has been conducted, following reasonable public notice. Mrs. Webb advised that the Fire Department declares its intent to use tax-exempt bonds to finance the capital costs of the Project; the maximum principal amount of the tax-exempt bonds is expected to be \$3,374,000. These bonds shall be an obligation of the Fire Company and shall never be a debt of the County; the County shall not be liable for any payment on such bonds. The County’s approval of the issuance of the Fire Department bonds will have no fiscal impact on the County.

Representatives of the Ellendale Fire Company were in attendance and presented information on the project. They stated that the purpose of the Proposed Resolution is so that this qualifies for the tax-exempt benefit which enables the lender to grant a much lower loan rate to the Fire Company. They also stated that once the new Fire Department site is operational, the Department plans to sell the old site to pay down the debt.

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

**M 517 12
Adopt
R 016 12**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Resolution No. R 016 12 entitled “RESOLUTION APPROVING AGREEMENT TO PROVIDE FIREFIGHTING SERVICES AND APPROVING ISSUANCE OF CERTAIN BONDS OR NOTES BY THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC.”

Motion Adopted: 5 Years.

**M 517 12
(continued)**

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

**Draft
Ordinance
Relating to
Council
Meetings
on Legal
Holidays**

Mr. Lawson presented for discussion and possible introduction a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 1 OF THE CODE OF SUSSEX COUNTY RELATING TO SUSSEX COUNTY COUNCIL MEETINGS THAT FALL ON LEGAL HOLIDAYS”.

Mr. Lawson stated that it has come to his attention that the first Council meeting for 2013 would fall on January 1, 2013, which is the New Year’s Day holiday and that Delaware Code requires the Council to meet on the first Tuesday in January for organizational purposes, unless otherwise provided by County Ordinance. Mr. Lawson noted that, currently, the County does not have an ordinance that gives the County the discretion to meet on another Tuesday other than the first Tuesday in January. The draft ordinance would give the County that discretion and the authority to schedule meetings outside of any legal holiday that may fall on a Tuesday.

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 1 OF THE CODE OF SUSSEX COUNTY RELATING TO SUSSEX COUNTY COUNCIL MEETINGS THAT FALL ON LEGAL HOLIDAYS”.

The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Amendment
to the
2012
Schedule**

Mr. Lawson proposed an amendment to the Council’s 2012 meeting schedule. He stated that, due to a clerical error, the Council’s 2012 meeting schedule discussed at the October 25, 2011 meeting and adopted at the November 1, 2011 meeting, did not list November 6, 2012 (Election Day), as a date that the Council will not meet.

**M 518 12
Approve
Amendment
to the
2012
Schedule**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that the Sussex County Council approves the amendment of the 2012 Council Schedule to insert Tuesday, November 6, 2012 as a date that the Council will not meet.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator’s
Report**

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

- 1. Sussex County Emergency Operations Center Call Statistics – September**

**Adminis-
trator's
Report
(continued)**

Attached please find the call statistics for the Fire and Ambulance Callboard for September 2012. There were 15,291 total calls handled in the month of September. Of those 9-1-1 calls in September, 76 percent were made from wireless phones.

2. Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County

The Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County will hold a Strategic Planning Workshop on Monday, October 15, 2012, at 1:00 p.m. at the Sussex County West Administrative Complex. The workshop is being held to discuss various aspects of the Committee's Strategic Plan. Attached is a copy of the agenda.

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

**Economic
Develop-
ment
Incentives/
Proposed
Policy**

Mrs. Webb presented an additional concept for the County's Economic Development Fund Program, or specifically, funds being granted to qualifying businesses though the Economic Development Fund which currently exists. She stated that Administration feels that the current Economic Development package lacks options that are necessary to compete for new and existing businesses. Mrs. Webb noted that, in recent months, the County has been modifying its policy to make it more attractive and making it more accessible by placing it on the County's website.

Mrs. Webb reviewed a proposed policy entitled "Economic Development Fund – Grant":

Purpose

Certain funds appropriated to the Economic Development Fund may be granted as recommended by the Sussex County Economic Development Committee and authorized by the Sussex County Council for final approval.

This fund may be used for the following purposes:

- 1. Retention and expansion of an existing business.**
- 2. Recruitment of new business.**
- 3. Formation of a new business.**

Grant funds may be used for the following activities:

- 1. Renovation, construction or capital improvements.**
- 2. Purchasing equipment, buildings or land.**
- 3. Relocation expenses.**

**Economic
Develop-
ment
Incentives/
Proposed
Policy
(continued)**

Criteria

The amount of grant assistance provided through the Economic Development Fund will be based upon the following:

- 1. Consistent with our current Economic Development strategies.**
- 2. Number of jobs created or retained.**
- 3. Quality of jobs created or retained.**
- 4. Competitiveness of other offers from other locations under construction.**
- 5. Overall economic impact of the project as measured by job creation and retention, private investment leverage, and DEDO participation.**
- 6. Feasibility of the project as determined by the applicant's business plan and business history.**

Economic Development Committee – Grant

The Committee will be responsible for reviewing proposals and making recommendations to the Sussex County Council for final approval. The Committee shall be composed of the following members:

- 1. Sussex County Administrator**
- 2. Sussex County Finance Director**
- 3. Sussex County Economic Development Director**
- 4. Sussex County Attorney**

Mrs. Webb advised that economic development funds would be appropriated by a grant and would be recommended by an Economic Development Committee to the Sussex County Council for final approval.

The Council discussed the proposal and a suggestion was made to expand the Committee to include someone from the private sector. It was noted that the County could possibly advertise to see if anyone is interested in participating. Additional comments included: new businesses being considered should not be in competition with existing businesses and businesses that are unique and long-term should be considered. Concern was expressed about the impact of higher school taxes on businesses and that the County should look to a solution to that. A question was raised regarding how the County will fund the grants.

No action was taken on the proposal.

**Millville
SSD/
Contract
11-02/
Substantial
Completion**

Michael Izzo, County Engineer, presented a proposal to grant Substantial Completion to Contract No. 11-02, Millville Sanitary Sewer District, Northwest Expansion – Whites Neck Road. The Notice to Proceed was issued on September 6, 2011 and Substantial Completion was effective September 25, 2012. Mr. Izzo noted that a Final Balancing Change Order will be brought to the Council for approval in the near future.

M 519 12 Grant Substantial Completion/ Millville SSD/ Contract 11-02 **A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Engineering Consultants and the County Engineering Department, that the Sussex County Council grant Substantial Completion effective September 25, 2012 for Sussex County Contract No. 11-02, Millville Sanitary Sewer District, Northwest Expansion (White's Neck Road) to A.P. Croll & Son, Inc. and that final payment 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. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Grant Request **Mrs. Webb presented a grant request for the Council's consideration.**

M 520 12 Councilmanic Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$3,000.00 (\$1,000.00 each from Mrs. Deaver's, Mr. Phillips' and Mr. Wilson's Councilmanic Grant Accounts) to The Way Home for program expenses.**

Motion Adopted: 5 Yeas.

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

M 521 12 Recess and Go Into Executive Session **At 11:00 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to land acquisition and pending/potential litigation.**

Motion Adopted: 5 Yeas.

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

Executive Session **At 11:06 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 and pending/potential litigation. The Executive Session concluded at 11:25 a.m.**

M 522 12 Reconvene Regular Session **At 11:27 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 5 Yeas.

**M 522 12
(continued)** **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 523 12
Recess** **At 11:28 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,
to recess until 1:30 p.m.**

Motion Adopted: **5 Yeas.**

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

**M 524 12
Reconvene** **At 1:33 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips,
to reconvene the Regular Session.**

Motion Adopted: **4 Yeas, 1 Absent.**

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

**Assistant County Attorney David Rutt was present in the place of County
Attorney Everett Moore.**

Mr. Wilson was not present during the afternoon session.

**Public
Hearing/
C/Z
No. 1721** **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 GR-RPC GENERAL RESIDENTIAL DISTRICT –
RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL
OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX
COUNTY, CONTAINING 154.90 ACRES, MORE OR LESS” (Change of
Zone No. 1721) filed on behalf of Captain’s Way Development, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this
application on September 20, 2012 at which time action was deferred for
further consideration.**

**See the minutes of the Planning and Zoning Commission dated September
20, 2012.**

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

Mr. Lank distributed Exhibit Books submitted by the Applicant.

**Public
Hearing/
C/Z
No. 1721
(continued)**

The Council found that Preston Dyer and Scott Dailey of Captain's Way Development, LLC and Mark Davidson of Pennoni Associates, Inc. were present on behalf of the application. In their presentation, they stated that the application is for a GR-RPC for 154.9 acres – a 301 lot subdivision (Captain's Way); that the request includes 3 acres for a commercial use of convenience (within the 154.9 acres); that the property is already approved for 301 single family lots under the cluster ordinance with a minimum of 7,500 square foot lots; that the proposal will provide affordable work-force housing by converting an approved cluster subdivision into a manufactured housing community; that the property is located on Route 16, a major east-west corridor providing connection to the business centers in Sussex County; that the site has access to public transportation (DART); that the property is surrounded by a significant number of single and double-wide manufactured homes; that the approved record plan has an area for a DART bus pick up, a DART bus shelter, and a pull off area off of Route 16; that the application will incorporate the existing layout of 301 lots under the cluster subdivision approval; that the superior design elements required for the subdivision will be retained in the proposed project and therefore, it will have design ingenuity in the superior living environment (77 acres of open space – approximately 52% of the land area); that it is consistent with the Comprehensive Plan and all of the housing objectives in the Plan; that the project provides for home ownership of the individual mobile homes on a lot rent basis; that there will also be a proposal to allow individuals to lease the lot and the home as a package; that they propose a 26 acre buffer and they have contacted the Nature Conservancy and offered a conservation easement to them; that no answer has been received from the Nature Conservancy as of this date; that in order to meet the objectives of the Comprehensive Plan, the low to moderate income residents and tenants would not be in a position to bear the cost of the per acre disturbance and therefore, they have offered the conservation easement on the 26 acre buffer; that they do not propose any changes to the prior RPC application and all the plans have been approved by all the agencies; however, there will be one minor adjustment to the prior plan; that the minor adjustment is that they propose to relocate 5 lots within the subdivision to offer those areas the 100 foot buffer; that the manufactured housing community will contain a 100 foot wide buffer along the boundary to all adjoining properties; that this buffer serves as a separation to and protection for the adjoining lands in Ag Preservation and the Ponders Tract owned and managed by The Nature Conservancy; that the proposed density of the project is less than 2 units per acre; that no lots will be closer than 500 feet to Route 16; that DelDOT has approved the entrance design; that they propose a multi-modal path, sidewalks, and a bus shelter for school children; that there will be no lots located within any wetlands; that they propose 60 foot buffers from wetlands (branches); that no lots will have direct access to the State maintained roads; that water and sewer will be provided by Tidewater; that stormwater management has been approved by the Sussex Conservation District; that no fill will be brought onto the site; that sidewalks are proposed on one side of the street; that they are not asking for any bonus density; that homes in this project will be easier to

**Public
Hearing/
C/Z
No. 1721
(continued)**

purchase than traditional homes; that the project will be a leased land community, which is strongly recommended in the Comprehensive Plan; that the project would meet 45% of median income; that the average cost per square foot of a manufactured home is less than half of a site-built home; that the County has a strong market for these units, considering the problem many local workforce members have affording local home prices; and that they propose a phasing plan with approximately 40 homes per phase.

Mr. Dailey reviewed financing options through an FHA purchase and a MHC purchase.

Mr. Dyer presented proposed Findings of Fact.

Public comments were heard.

There were no public comments in support of the application.

John Herbert, a resident of Orchard Road, was present and spoke in opposition to the project. He stated that Route 16 is a major thoroughfare; that the gas station in the area is a Conditional Use; that the area is not predominantly mobile homes; that there is a not a need for this type of development in the area; that New Market Village was created prior to zoning and there are currently 39 vacant lots in that park; that the area is an agriculture – conservation area; that he is concerned about what will be permitted in the commercial area of the project; that the project is out of character with the area; that the 26 acre buffer is not preservation of land and the Applicant will expect the Nature Conservancy to maintain it; that the project will not create jobs in Sussex County; that DART is not direct public transportation; that emergency response vehicles will have difficulty accessing the rear of the site; and that the proposed entrance is at a low spot of the road and not the safest place for an entrance.

In response to questions raised by the Council regarding the commercial portion of the property, Mr. Dyer stated that possible uses would be the sale of manufactured homes, storage, or a convenience store.

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

**M 525 12
Defer
Action on
C/Z
No. 1721**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Change of Zone No. 1721 filed on behalf of Captain's Way Development, LLC and to leave the record open for the Applicant to submit a list of potential uses for the commercial area of the proposed project.

Motion Adopted: 3 Yeas, 2 Absent.

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

M 525 12 (Mr. Phillips was present during the Public Hearing but was not present
(continued) during the vote as he left the room for a brief period of time.)

**Public Hearing/
C/U
No. 1945** A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 14,964 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1945) filed on behalf of Alfonso Matos.

The Planning and Zoning Commission held a Public Hearing on this application on September 20, 2012 at which time action was deferred for further consideration.

See the minutes of the Planning and Zoning Commission dated September 20, 2012.

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

The Council found that Alfonso and Miguel Matos were present on behalf of the application and they stated that they are proposing a small storage facility for boxes of canned food, electronics, and clothing that will be shipped to the Dominican Republic; that all storage will be inside in sealed containers; that there will be no retail sales conducted on the site; that the items will be delivered by trucks; that there are two entrances to the site, one from Route 20 and one from Cassell Lane; that they are aware that they must contact DelDOT for entrance approval; that this type of use is prominent in New York City; that they have owned the property for nine years; that the existing buildings will be remodeled and there will be an addition connecting the front and rear buildings; and that there will be no operations on Sundays.

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

M 526 12 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action
Defer on Conditional Use No. 1945 and to leave the record open for submission of
Action proposed conditions by the Applicant.
on C/U

No. 1945 Motion Adopted: 4 Yeas, 1 Absent.

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

M 527 12 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at
Adjourn 3:27 p.m.

**M 527 12
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

Respectfully submitted,

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