**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 5, 2010**

**Call to Order**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 5, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:**

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| **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 532 10 Amend and Approve Agenda**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by deleting "Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition" and "Possible Action on Executive Session Items"; 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**

**Minutes**

**The minutes of September 28, 2010 were approved by consent.**

**Sussex County**

**Kevin Gilmore, Executive Director of Sussex County Habitat for Humanity, updated the Council on Habitat's current projects and future plans. Mr.**

**Habitat for Humanity**

**Gilmore stated that Habitat's mission is to build decent and affordable houses in partnership with low-income families in Sussex County. Habitat's plan is to serve 87 families over a four year period; 42 families through home ownership opportunities and 45 families through a new program known as A Brush with Kindness, a minor exterior home repair program.**

**Habitat (continued)**

**Mr. Gilmore reported that eleven individuals from AmeriCorps are starting their year of service to Habitat on this date and will begin working in Sussex County. Mr. Gilmore expressed thanks for the properties provided by the County which will allow Habitat to provide housing to the AmeriCorps volunteers.**

**Mr. Gilmore reported that, on October 16, Sussex County employees will be volunteering to help renovate a home in Laurel.**

**Windmill Zoning Regulations**

**The Council discussed windmill zoning regulations and the effect of the State legislation amending Title 29 of the Delaware Code by adding Section 8060. Rick Berl, Assistant County Attorney, reported that the recently enacted laws affect personal wind turbines (i.e. "windmills") and the role of the County in connection with the permitting process has changed. Effective July 1, 2010, the Board of Adjustment no longer had the ability to issue variances regarding windmills. As a result of the recent legislation, the County has been eliminated from any role in the process.**

**Mr. Berl reported that the new legislation prohibits a county, municipal government, or homeowners association from adopting ordinances contrary to the statute, and renders any restriction adopted after the date of the new statute as void and unenforceable. The legislation outlines several specific requirements with respect to setbacks, noise levels, and buffers.**

**Mr. Berl stated that the County can no longer take applications for windmills; the County does have the ability to allow windmills on parcels consisting of 5 acres or more; persons wishing to place a windmill on a 5 acre (or larger) parcel, can be issued a building permit and are instructed to follow State Law.**

**Paul Driscoll of Urban Research and Development Corporation (URDC), the County's Land Use Consultant, reported on how Sussex County now regulates windmills and URDC's recommendation on how to revise these regulations to comply with recent changes in Delaware State law.**

**Mr. Driscoll clarified that the discussion is in regards to windmills that are accessory uses to single family homes, not in regards to commercial applications.**

**Mr. Driscoll presented the following options:**

- **Eliminate the 5 acre minimum lot size.**

- **Eliminate the need for a special exception permit and allow windmills as accessory uses.**
- **Eliminate any requirement that the property must be a farm.**
- **Establish a maximum of one windmill per lot to ensure the windmill is an accessory use only. This would be consistent with the State law reference to windmills that are "for a residential single-family home".**
- **Incorporate the State standards into the County's zoning ordinance. This would include a maximum setback, maximum noise levels, a prohibition against advertising, a requirement for underground wiring, and a requirement for mandatory buffering around windmills near buildings on the National Register of Historic Places.**

**Windmill Zoning Regulations (continued)**

**Mr. Driscoll recommended that the County should keep its current 100' maximum on windmill heights. State standards do not reference a maximum height; therefore, the County's height restriction is not inconsistent with State law.**

**The Council directed Mr. Driscoll, in coordination with Lawrence Lank and Rick Berl, to write a conceptual ordinance (in memo form) for the Council's review. Thereafter, with a consensus of the Council, the conceptual ordinance can be written as a draft ordinance for the Council's consideration for introduction and public hearing.**

**Administrator's Report**

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

**1. <u>Wings & Wheels Festival – October 2, 2010</u>**

**We are pleased to report that the Wings & Wheels Festival held at the Sussex County Airport on October 2 and organized by the Georgetown Chamber of Commerce was a success. Approximately 7,000 people attended the event with World War I, World War II, and jet airplanes flying around the airport and on display, over 200 antique cars, and a special program with World War II veterans. We wish to sincerely thank the Georgetown Chamber of Commerce and the many volunteers who helped with this effort.**

**2. <u>Clean Hands Report</u>**

**Attached is a copy of the Clean Hands Report as of October 4, 2010. As noted, since the ordinance was enacted almost three years ago over $1 million has been collected as a result of requiring the current status for payment of taxes and County water and sewer bills prior to providing a permit or other County approval.**

**3. <u>Robert Wood</u>**

**We regret to announce that Mr. Robert Wood passed away on**

**August 29, 2010, in Arizona where he retired. Mr. Wood served as County Engineer from June 6, 1988, until July 16, 1996. Mr. Wood was well-liked and respected. We wish to express our condolences to Mr. Wood's friends and family.**

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

**Introduction of Proposed Ordinances Relating to Johnsons Corner SSD and Woodlands of Millsboro SSD**

**Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING THE ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR TRANSMISSION AND/OR TREATMENT FOR THE JOHNSON'S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT". The Proposed Ordinance will be advertised for Public Hearing.**

**Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2011 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE JOHNSON'S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT". The Proposed Ordinance will be advertised for Public Hearing.**

**CDBG and NSP Update**

**William Lecates, Brad Whaley, and Brandy Bennett of the Community Development and Housing Division updated the Council on the Community Development Block Grant (CDBG) and the Neighborhood Stabilization Program (NSP).**

**Oak Orchard SSD Expansion/ Ferry Cove Project**

**John Ashman, Director of Utility Planning, requested permission to prepare and post notices for an expansion of the Oak Orchard Sanitary Sewer District to include the Ferry Cove Project. Mr. Ashman noted that this request was previously presented to the Council on September 14th, at which time two options were offered for the district expansion. Mr. Ashman again explained the two options.**

**<u>Option No. 1</u> – Annexation which includes a large portion of the remaining area of Oak Orchard.**

**<u>Option No. 2</u> – Annexation of the area that would only encompass a contiguous panhandle path to serve Ferry Cove.**

**Mr. Cole requested that a notice of public hearing be sent to DelDOT and he stated that a DelDOT representative should attend the public hearing. It was noted previously that Ferry Cove is part of DelDOT's preferred alternative for the north-south realignment for Route 113 and that the Concept Plan shows the right-of-way, which takes up a large portion of the**

**eastern part of the Ferry Cove project.**

**Mr. Ashman reported that the Engineering Department is recommending the pan handle option (Option No. 2).**

**M 533 10 Post Notices/ OOSSD/ Ferry Cove**

**A Motion was made by Mr. Vincent, seconded by Mr. Wilson, that the Sussex County Engineering Department is authorized to prepare and post notices for the extension of the Oak Orchard Sanitary Sewer District boundary to include the subdivision known as Ferry Cove, encompassing additional properties, as presented as Option No. 2.**

**M 533 10 (continued)**

**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/ Long Neck SSD/ Parcel De-annexation for Proposed Baywood Villas**

**A Public Hearing was held on the proposed de-annexation from the Long Neck Sanitary Sewer District to remove certain lands of Baywood, LLC. The parcel to be removed is on the north side of Long Neck Road approximately 1,000 feet east of State of Delaware Route 24. The parcel is part of a project known as Baywood Garden Villas and is proposed to receive wastewater service from the Inland Bays Preservation Company's existing wastewater system within Baywoods.**

**The Council discussed the proposed de-annexation and during the discussion, President Phillips turned the gavel over to Vice President Vincent.**

**Public comments were heard.**

**Jason Palkewicz was present on behalf of Robert Tunnell of Baywood, LLC. He stated that if the request to de-annex is not approved, the result will be different rates and different services within the same development. Mr. Palkewicz stated that project proposes approximately 290 residential units and 10,000 square feet of commercial and that during the PLUS process they were told to de-annex by the County due to sewer capacity issues.**

**Michael Izzo, County Engineer, stated that, during the North Coastal Planning Area Study, correspondence was received from Mr. Tunnell requesting to be de-annexed from the District and that it wasn't a capacity issue, it was a cooperative effort.**

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

**M 534 10 Adopt Resolution**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Resolution No. R 025 10 entitled "REVISION OF THE BOUNDARIES OF THE LONG NECK SANITARY SEWER DISTRICT TO EXCLUDE A**

**No. R 025 10**

**PARCEL OF LAND ALONG THE NORTH SIDE OF COUNTY ROAD (CR) 22 (LONG NECK ROAD), EAST OF THE TOWN OF MILLSBORO, BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE".**

**Motion Adopted:** **3 Yeas, 2 Nays.**

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

**Vice President Vincent turned the gavel over to President Phillips.**

**Old Business/ C/U No. 1834**

**The Council discussed Conditional Use No. 1834 filed on behalf of Richard F. Lynam.**

**The Planning and Zoning Commission held a Public Hearing on this application on June 10, 2010 at which time action was deferred; on July 14, 2010, the Commission recommended that the application be approved with conditions.**

**The County Council held a Public Hearing on this application on June 29, 2010 at which time action was deferred.**

**M 535 10 Adopt Ordinance No. 2150**

**A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2150 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR SEASONAL STORAGE OF UMBRELLA STANDS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9,625 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1834) filed on behalf of Richard F. Lynam, with the following conditions:**

1. **The perimeter of the site shall be secured by an 8 foot high solid fence screening the storage area from view of neighboring properties and roadways. The fencing shall be set back from the boundaries of the property and a landscape buffer between the property boundary and the fence shall be established. A landscaping plan for the buffer area shall be included in the Final Site Plan. The fence shall be maintained in a damage free and graffiti free manner.**
2. **The storage area shall be secured at all times when it is not being accessed.**
3. **Only the Applicants or their employees shall be have access to the fenced storage area.**
4. **There shall be no signage on the site, other than a small sign that may be necessary to contain contact information in case of an emergency.**
5. **Any security lighting provided on the site shall be screened so that it**

**does not shine on neighboring properties or roadways.**

6. **The site shall be used for the Applicant's beach rental business and seasonal storage of umbrella stands only. There shall not be any storage of boats, vehicles, or other equipment not related to the Applicant's business on the site.**
7. **The Final Site Plan, including the landscape plans for the perimeter buffer, shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Motion Adopted:** **3 Yeas, 1 Nay, 1 Abstention.**

**M 535 10 (continued)**

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

**Old Business/ C/U No. 1802**

**The Council considered Conditional Use No. 1802 filed on behalf of Mary P. Kelly.**

**The Planning and Zoning Commission held a Public Hearing on this application on December 10, 2009 at which time action was deferred. On January 14, 2010, the Commission recommended that the application be approved with conditions.**

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

**M 536 10 Adopt Ordinance No. 2151**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2151 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.45 ACRES, MORE OR LESS" (Conditional Use No. 1802) filed on behalf of Mary P. Kelly, with the following conditions:**

1. **There shall be no more than six (6) multi-family dwelling units.**
2. **All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.**
3. **The project shall be served by a public central water system providing adequate drinking water and fire protection by applicable regulations.**
4. **Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and the project shall utilize Best Management Practices to construct and maintain these features.**
5. **The project shall be served by the South Bethany Sanitary Sewer District.**
6. **The interior street design shall be in accordance with or exceed**

**Sussex County street design requirements.**

7. **The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.**
8. **Construction, site work, grading and deliveries of construction materials, landscaping materials, and/or fill on, off, or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.**
9. **Landscape and lawn maintenance shall be the responsibility of a Condominium Association; Best Management Practices shall be utilized to minimize any environmental impact.**

**M 536 10 (continued)**

10. **One lighted sign shall be permitted, not to exceed 32 square feet per side.**
11. **Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
12. **The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**Motion Adopted:** **5 Yeas.**

**Vote by Roll Call:** **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 537 10 Community Grant** **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give $4,653.00 from Mr. Cole's Community Grant Account to the West Rehoboth Coalition for community trash removal; the grant is to be allocated in three installments as follows: $1,551 to cover the last quarter of 2010, $1,551 to cover the first quarter of 2011, and $1,551 to cover the second quarter of 2011; all installments are to be approved by the County Administrator and the Finance Director.**

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

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

**M 538 10 Community Grant** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give $1,100.00 ($550.00 each from Mrs. Deaver's and Mr. Cole's Community Grant Accounts) to the Beebe Medical Foundation for the 23rd Annual Beebe Ball to benefit the childhood obesity prevention program.**

**Motion Adopted:** **5 Yeas.**

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

**Mr. Phillips, Yea**

**Introduction of Proposed 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 STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.1621 ACRES, MORE OR LESS" (Conditional Use No. 1874) filed on behalf of Ed Hileman Drywall, Inc.**

**Introduction of Proposed Ordinances (continued)**

**Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.73 ACRES, MORE OR LESS" (Conditional Use No. 1875) filed on behalf of Frederick J. Taylor, Jr.**

**Mrs. Deaver introduce the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE REPAIR, WELDING AND FABRICATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.52 ACRES, MORE OR LESS" (Conditional Use No. 1876) filed on behalf of Douglas R. Morgan.**

**Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR-RPC GENERAL RESIDENTIAL DISTRICT–RESIDENTIAL PLANNED COMMUNITY FOR AN ELEVATED WATER STORAGE TANK/PUBLIC UTILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 24,177 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1877) filed on behalf of Tidewater Utilities , Inc.**

**The Proposed Ordinances will be advertised for Public Hearing.**

**Additional Business**

**Under Additional Business, Alan Little, Jim Sheldon, and Glen Townley of Clearbrooke Estates in Seaford reported on problems that the homeowners experience in Clearbrooke Estates. They stated that Dale Wheatley has a Homeowners Association in Clearbrooke and the Association should have been turned over to the homeowners two to three years ago. They stated that Mr. Wheatley has changed the provisions of the Homeowners Association on his own without bringing it to the homeowners and any change in the covenants should be approved by 60 percent of the homeowners. They stated that Mr. Wheatley collects $300.00 annually from each household and they never receive an accounting of the money. They also stated that Mr. Wheatley still owns 60 lots; that he is farming those**

**lots; and that the lots are part of a development and not a farm. They also referenced drainage problems in the subdivision.**

**Lawrence Lank, Director of Planning and Zoning, reported that this is a civil matter between the parties and that the County has no jurisdiction over the matter.**

**Mr. Lank stated that he would pull the Clearbrooke Estates file after which he could meet with the homeowners to provide them with any information that they need.**

**M 539 10 Recess/ Tour of Records Storage Center**

**At 12:42 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to recess and to reconvene at the Records Storage Center for the purpose of touring the facility. Motion Adopted by Voice Vote.**

**At 12:50 p.m., the Council reconvened the meeting at the Records Storage Center for the purpose of touring the facility.**

**Adjourn**

**The Council adjourned the meeting at the Records Storage Center at 1:50 p.m.**

**Respectfully submitted,**

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