

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 15, 2013**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 15, 2013, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Vance Phillips</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>David N. Rutt</b>	<b>Assistant County Attorney</b>

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

**Call to  
Order**

Mr. Vincent called the meeting to order.

**M 477 13  
Amend  
and  
Approve  
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to amend the Agenda by deleting the item under Michael Izzo, County Engineer, "Letter of Credit – The Woods at Oyster Rock (Ext. of Scallop Court)"; and to approve the Agenda, as amended.

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

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

**Minutes**

The minutes of October 8, 2013 were approved by consent.

**Corre-  
spondence**

Under Reading of Correspondence, Mrs. Deaver referenced an article in the Bay Journal entitled "Calvert County holding the line on reducing new growth". (The article will be made a part of the record.)

Under Reading of Correspondence, Mr. Phillips announced that the County Council again won the trophy for the Scrapple Toss at the Apple Scrapple Festival in Bridgeville.

**Discussion/  
Draft  
Ordinance  
Relating  
to Bonding**

Mr. Lawson referenced the Council's discussion at the October 8th Council meeting on the bond program and requirements. He stated that, as presented to the Council, the County is considering decoupling the bond requirements that the County administers as it relates to the Sussex Conservation District; to do this would require an ordinance amendment. It is proposed that the change take place in January 2014.

**Discussion/  
Draft  
Ordinance  
Relating to  
Bonding  
(continued)**

The Council members discussed the draft ordinance. Mr. Phillips and Mr. Wilson expressed concern about the County giving up any leverage/taking power away as a result of the proposed decoupling of the bond requirements. Mr. Lawson stated that this will have to be considered and discussed.

A discussion also was held regarding stormwater management and the approval of those facilities. It was noted that questions can be addressed during the Public Hearing process, if the Draft Ordinance is introduced.

**Introduction  
of Proposed  
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 90 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SEDIMENT CONTROL AND STORMWATER MANAGEMENT” AND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN REGARD TO THE BONDING AND GUARANTIES REQUIRED FOR SURFACE DRAINAGE FACILITIES AND EROSION AND SEDIMENTATION CONTROL FACILITIES UNDER THE JURISDICTION OF THE SUSSEX CONSERVATION DISTRICT”. The Proposed Ordinance will be advertised for Public Hearing.

**Discussion/  
Draft  
Ordinance  
Relating to  
Bonding**

Mr. Lawson referenced the Council’s discussion at the October 8th Council meeting on the Draft Ordinance relating to the No Bond Program. The No Bond Program is set to automatically sunset at the end of 2013. The Draft Ordinance is for an extension of time for the No Bond Program until January 1, 2015.

**Introduction  
of Proposed  
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN ORDER TO EXTEND THE TIMEFRAME IN WHICH LANDOWNERS MAY PERFORM SITE WORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY”. The Proposed Ordinance will be advertised for Public Hearing.

**Adminis-  
trator’s  
Report**

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

1. Delaware Solid Waste Authority Reports

There were 39,713 pounds of recycled material received at the Recycle Delaware pods at the West Complex in Georgetown during the months of July, August, and September 2013. Attached are reports received for each month.

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

**Continued Discussion of Height Regulations in County Code**

Vince Robertson, Assistant County Attorney, referenced the discussion held at the Council meeting on October 8 regarding height regulations. He noted that two issues resulted from that discussion:

- ✓ what the County is trying to accomplish with the introduction of the draft ordinance – the County Code is not being changed to create a 60 foot height limit; it is already in the Code – the purpose of the Draft Ordinance is to clarify what it means
- ✓ whether or not the County should impose a moratorium while the draft ordinance is being considered; Legal Counsel looked into this; moratoriums are often contentious and lead to litigation and it is recommended that the draft ordinance be introduced and the Public Hearing process followed to amend the height requirements

A discussion was held regarding the Draft Ordinance, the County Code as it relates to height requirements, the height of Sea Colony’s structures; comparisons to the height of structures in Ocean City; the County’s jurisdiction over height regulations in municipalities; and the concept of building out versus building up. Mr. Robertson stated that these are discussions that can take place during the Public Hearing on the Draft Ordinance, if it is introduced.

**Introduction of Proposed Ordinance**

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY RELATING TO HEIGHT REGULATIONS”. The Proposed Ordinance will be advertised for Public Hearing.

**Consultant Selection for the North Coastal Planning Area**

Joe Wright, Assistant County Engineer, was in attendance to request approval to select a consultant to provide planning, design, and construction inspection/administration services for water and wastewater in the North Coastal Planning Area for a five (5) year period effective upon Council’s approval and successful negotiation of an agreement. Mr. Wright stated that the current firm providing services in the North Coastal area is Whitman Requardt & Associates and this selection process for a new firm is in no way reflective of the quality of the work provided or any other issue regarding their contract. Rather, this selection process is another in a continuing effort to update all consultant service contracts relative to their contract expiration dates.

Mr. Wright reported that the scope of services was approved by the County Administrator and a committee was appointed to evaluate the consultant applications. Initially, seven consultants responded to the request for proposals and three of those firms were shortlisted for formal presentations. Final selection was based on factors including overall presentation quality and content, experience on similar water and wastewater systems, experience coordinating with USDA and State Revolving Fund, quality of the project team, accessibility, construction inspection and management, and cost.

**Consultant Selection for the North Coastal Planning Area (continued)**

**Mr. Wright reported that the shortlisted firms were individually and collectively ranked, as follows: 1) Whitman Requardt & Associates, 2) Hazen & Sawyer, 3) George Miles & Buhr. Mr. Wright reported that Whitman Requardt & Associates has provided Sussex County continuous planning and engineering services since 1995.**

**Mr. Phillips stated that he raised concerns about this issue in an email to the County’s Legal Counsel; however, time did not allow for a review of the email and a response by Legal Counsel. For this reason, Mr. Phillips asked that the matter be tabled until it can be discussed in Executive Session since it does lend itself to pending/potential litigation. Mr. Rutt noted that the email raises concerns about the applicants and the selection process and that he has not had time to look into some of the issues raised in the email.**

**Mr. Cole stated that he is not familiar with the email and he questioned if the request for a deferral is justified. Mr. Rutt stated that, since he has not had time to look into the issues and to respond to the email, it is a reasonable request.**

**M 478 13  
Defer Action on Consultant Selection for the North Coastal Planning Area**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action on the Agenda item “Consultant Selection for the North Coastal Planning Area”.**

**Motion Adopted: 5 Yeas.**

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

**Legal Questions**

**Mr. Cole stated that when Council members have a legal concern, it is his understanding that the Council member should direct their concern first to the County Administrator and/or the Finance Director to limit legal costs. Mr. Vincent asked Mr. Lawson to consider this question and to report back to the Council.**

**Pine Street Parking Facility**

**Julie Cooper, Project Engineer, was in attendance to request that Substantial Completion be granted for the Pine Street Parking Facility project, which was completed on October 5, 2013. The Town of Georgetown has issued a Certificate of Occupancy for the project.**

**M 479 13  
Grant Substantial Completion/ Pine Street Parking Facility**

**A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant Substantial Completion effective October 5, 2013, to Thompson & Sons Contracting LLC of Milford, Delaware for Sussex County Project No. 12-24, Pine Street Parking Facility, and further, that Balancing Change Order No. 1 be approved in the credit amount of \$15,019.20, thereby decreasing the contract amount from \$117,585.00 to \$102,565.20 and that final payment be made with the terms and conditions of the contract documents.**

**M 479 13  
(continued)**

**Motion Adopted: 5 Yeas.**

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

**Legal  
Counsel**

**Vince Robertson, Assistant County Attorney, served as Legal Counsel to the County Council for the next Agenda item.**

**Old  
Business/  
C/U  
No. 1969**

**Under Old Business, the Council discussed and considered Conditional Use No. 1969 filed on behalf of Melvin L. Joseph Construction Co., Inc. The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2013 at which time action was deferred. On October 10, 2013, the Commission recommended that the application be approved with the following conditions:**

- A. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- B. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- C. The only entrance to the pit shall be from Burbage Road. There shall not be any access via Powell Farm Road, and the portion of the site that fronts on Powell Farm Road shall be fenced or gated to prevent access.**
- D. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- E. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 12:00 Noon on Saturdays. No Sunday hours shall be permitted.**
- F. No materials shall be stored on any access roads or within any buffer areas.**
- G. The access road shall be on the eastern edge of the property, as shown on the site plan.**
- H. No fuel shall be stored on site.**
- I. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
- J. The borrow pit shall have 2:1 slopes and the slopes shall be seeded and planted to control erosion.**
- K. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.**
- L. As proffered by the Applicant, the existing non-conforming borrow pit, known as the “Gibson Pit” shall be reclaimed. The reclamation plan for the “Gibson Pit” shall be included with the reclamation plans for this Conditional Use.**
- M. The Applicant shall comply with all State and County erosion and**

**Old  
Business/  
C/U  
No. 1969  
(continued)**

- sediment control regulations.
- N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.**
  - O. Every 5 years after the start of excavation, the Office of Planning and Zoning shall inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify their compliance with all regulations.**
  - P. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.**
  - Q. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.**
  - R. The area of the old pit on the site that intrudes into the 50 foot buffer area shall be filled and landscaped to form part of the continuous buffer around the perimeter of the site.**
  - S. As proffered by the Applicant, the Conditional Use shall expire 40 years from the date the Ordinance is adopted, if and when, by the County Council.**
  - T. As proffered by the Applicant, after 20 years, the property owner shall complete at its expense an environmental resources and impact study, as that phrase is defined by DNREC or its successor agency. Upon confirmation by DNREC of the owner's compliance with the then-existing regulations, the permit shall continue for the remaining 20 year period that the Conditional Use is valid.**
  - U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**The County Council held a Public Hearing on this application on October 8, 2013 at which time action was deferred pending a recommendation from the Planning and Zoning Commission.**

**Lawrence Lank, Director of Planning and Zoning, reported that at the Public Hearing before the Council, one of the questions raised by Council was in regards to the existing small borrow area with a required 50 foot buffer. Mr. Lank noted that this was addressed in the conditions recommended by the Planning and Zoning Commission: Condition R - The area of the old pit on the site that intrudes into the 50 foot buffer area shall be filled and landscaped to form part of the continuous buffer around the perimeter of the site.**

**Mr. Cole noted that the Applicant agreed to a maximum 25 foot pit depth and he asked that Condition J, as recommended by the Planning and Zoning Commission, be amended to limit the depth of the borrow pit to 25 feet.**

**Old  
Business/  
C/U  
No. 1969  
(continued)**

Mrs. Deaver questioned the required 200 foot setback from any dwelling and she questioned if this includes manufactured/mobile homes. Mr. Lank responded that, in the Code, manufactured homes are not included in the definition of dwelling. Mr. Lank suggested that a setback of 200 feet from manufactured homes could be addressed in the conditions of approval. Mr. Lank suggested that Condition Q could be amended to read as follows: “The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling or residential manufactured home of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.”

**M 480 13  
Amend  
Condition  
to C/U  
No. 1969**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition J to read as follows: “The borrow pit shall not exceed a depth of 25 feet and shall have 2:1 slopes. The slopes shall be seeded and planted to control erosion.”

**Motion Adopted: 5 Yeas.**

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

**M 481 13  
Amend  
Condition  
to C/U  
No. 1969**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to amend Condition Q to read as follows: “The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling or residential manufactured home of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.”

**Motion Adopted: 5 Yeas.**

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

**M 482 13  
Adopt  
Ordinance  
No. 2324**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2324 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXCAVATION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2 ACRES, MORE OR LESS” (Conditional Use No. 1969) filed on behalf of Melvin L. Joseph Construction Co., Inc., with the following conditions:

- A. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- B. Water or a water truck shall be available to control dust from road**

**M 482 13  
Adopt  
Ordinance  
No. 2324  
(continued)**

- traffic when conditions require.
- C. The only entrance to the pit shall be from Burbage Road. There shall not be any access via Powell Farm Road, and the portion of the site that fronts on Powell Farm Road shall be fenced or gated to prevent access.**
  - D. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
  - E. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 12:00 Noon on Saturdays. No Sunday hours shall be permitted.**
  - F. No materials shall be stored on any access roads or within any buffer areas.**
  - G. The access road shall be on the eastern edge of the property, as shown on the site plan.**
  - H. No fuel shall be stored on site.**
  - I. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
  - J. The borrow pit shall not exceed a depth of 25 feet and shall have 2:1 slopes. The slopes shall be seeded and planted to control erosion.**
  - K. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.**
  - L. As proffered by the Applicant, the existing non-conforming borrow pit, known as the “Gibson Pit” shall be reclaimed. The reclamation plan for the “Gibson Pit” shall be included with the reclamation plans for this Conditional Use.**
  - M. The Applicant shall comply with all State and County erosion and sediment control regulations.**
  - N. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.**
  - O. Every 5 years after the start of excavation, the Office of Planning and Zoning shall inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify their compliance with all regulations.**
  - P. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.**
  - Q. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling or residential manufactured home of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.**

**M 482 13  
Adopt  
Ordinance  
No. 2324  
(continued)**

- R. The area of the old pit on the site that intrudes into the 50 foot buffer area shall be filled and landscaped to form part of the continuous buffer around the perimeter of the site.**
- S. As proffered by the Applicant, the Conditional Use shall expire 40 years from the date the Ordinance is adopted, if and when, by the County Council.**
- T. As proffered by the Applicant, after 20 years, the property owner shall complete at its expense an environmental resources and impact study, as that phrase is defined by DNREC or its successor agency. Upon confirmation by DNREC of the owner’s compliance with the then-existing regulations, the permit shall continue for the remaining 20 year period that the Conditional Use is valid.**
- U. 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. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**Grant  
Requests**

**Mrs. Jennings presented a grant request for the Council’s consideration.**

**M 483 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$350.00 (\$250.00 from Mr. Cole’s Councilmanic Grant Account and \$100.00 from Mr. Phillips’ Councilmanic Grant Account) to the Town of Millville for the “Millville Great Pumpkin Festival”.**

**Additional  
Business**

**Under Additional Business, Carole Somers, a resident of Lewes and representative of the League of Women Voters of Sussex County, commented on how the County runs the sewer districts very effectively and she stated that she is impressed with how the County and the County Engineer respond to sewer service requests. Ms. Somers advised that the League congratulates the County on their proposal to expand the County’s wastewater territory map; on their move to improve planning for sewer services; and for their promotion of efficient growth.**

**M 484 13  
Go Into  
Executive  
Session**

**At 11:15 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session to discuss issues relating to land acquisition.**

**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 11:17 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 11:22 a.m.**

**M 485 13 Reconvene Regular Session**            **At 11:23 a.m., a Motion was made by Mr. Cole, 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. Phillips, Yea; Mr. Wilson, Yea;  
                                      Mr. Vincent, Yea**

**E/S Action**                    **There was no action on Executive Session items.**

**M 486 13 Recess**                    **At 11:23 a.m., a Motion was made Mr. Cole, seconded by Mrs. Deaver, to recess; the Council will reconvene at the Stockley Center in Georgetown to attend the Sussex Outdoors Summit Luncheon.**

**Summit/ Luncheon**            **The Council reconvened at the Stockley Center in Georgetown for the Sussex Outdoors Summit Luncheon.**

**M 487 13 Adjourn**                **At 2:05 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to adjourn.**

**Motion Adopted:        5 Yeas.**

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

**Respectfully submitted,**

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