

OPEN SPACE COUNCIL
December 15, 2010, 9:00 a.m.
Legislative Hall
Senate Hearing Room, Second Floor
Dover, Delaware

ATTENDANCE

Council Members:

Lynn W. Williams, Chairperson
Paul Boswell, Esq.
George Bunting, State Senator
Gerald Brady, State Representative
Nathan Hayward, III
Wayne Holden
John R. Schroeder

Advisory To:

Collin P. O'Mara, Secretary, DNREC

Staff

David Small, Deputy Secretary, DNREC
Jeff Stone, DEDO
Matthew Chesser, Parks & Recreation, DNREC
Shelley Tovell, Fish & Wildlife, DNREC
Austin Short, Deputy Secretary, DDA
Elena Stewart, Parks & Recreation, DNREC
Michael Valenti, State Forester, DDA
Ron Vickers, Parks & Recreation, DNREC
Erika Benner, Controller General's Office

Guests:

C. Scott Kidner
Victor Letonoff, Lewes City Council
Christine Thomas
Gail Van Gilder, Lewes Scenic Byway Committee

I Call to Order/Announcements

Mrs. Lynn Williams, Chairperson, called the regular Open Space Council meeting to order at 9:12 a.m. She welcomed Council members, visitors, and staff and asked for announcements.

II Minutes of the June 9, 2010 & September 15, 2010 Meetings

Mrs. Williams asked for approval of the June 9, 2010 and September 15, 2010 minutes. Minutes were approved as read.

III Financial Report

Mr. Vickers presented the financial report.

The Realty Transfer Tax funds total \$3,316,179.89. This includes carry over from FY 2010 and the recently received \$3,000,000 of FY 2011 funds. The last legislative session contained two changes that affected the Open Space Program funding. The Program now receives its funding on or before December 15 each year as opposed to receiving the funds on the last day of the fiscal year June 30. So the Program received \$2,550,000 of Realty Transfer Tax funds for FY 2011. The other change was that the Program received a one-time addition of \$450,000 of Realty Transfer Tax funds that normally would have gone to the principal of the Delaware Land and Water Conservation Trust Fund.

The Program is scheduled to receive \$731,967.40 in CELCP reimbursement for the Borthwick property. The Borthwick settlement is scheduled for later in December.

Therefore, the Realty Transfer Tax funds plus the CELCP reimbursement gives a total of \$4,048,147.29.

There were two previously approved projects (two conservation easements in the Yorklyn area) totaling \$1,380,000.00. This then leaves a balance available through December 14, 2011 of \$2,668,147.29.

The Financial report listed six settlements since last meeting.

James Branch SRA: TCF- Larrimore/Hitchens

Red Clay Creek SRA: NVF- HI Parcel

Milford Neck SRA: Fitzgerald

Inland Bays SRA: Bethany Woods

Sussex Stand Alone: Saletnig

Sussex Stand Alone: Hope Farms Investment

IV. Agency & Public Presentations

Mrs. Williams asked guests to introduce themselves and state their interest.

Ms. Christine Thomas, a Lewes resident, said this was the second Open Space Council meeting she has attended. She wants to learn more about the policies and procedures of the Open Space Council. She has a concern with the language in the last Bond Bill regarding open space in Lewes and land around the University of Delaware campus. She feels with more questions being asked it raises more issues, particularly regarding the dredge spoils site. She thanked the Council and was appreciative and grateful for the chance to speak at last the meeting.

Ms. Gail Van Gilder, a Lewes resident and Chair of the Scenic Byway Committee, was concerned about what may be happening along New Road, which borders along the Lewes open space property. One of the main reasons New Road is considered a scenic byway is the open viewshed and natural resources in this area. She is attending this meeting to get more information and make the Open Space Council aware that this is part of a scenic byway.

Mr. Victor Letonoff, member of the Lewes City Council, stated he was here to learn more about the Council and the issues surrounding the Lewes open space.

Mr. David Small stated he appreciated everyone's interest from Lewes regarding the open space issue. He explained that he recently attended a Lewes City Council meeting along with representatives from the University of Delaware and DelDOT to try to answer questions about what is going on in the area. The status is there is no decision about a potential land swap. As background the University expressed an interest in potentially acquiring from the Department lands that were formally targeted as a research and development site, located off New Road in Lewes. These are the same lands that the Department purchased from the University in 2002. Currently there is a lease with the City of Lewes on some of the upland acres for recreation and open space. The lease would run with any new owner and could not be amended unilaterally.

Mr. Small continued. This project is long away from reaching any decision points. At issue, at this time, is the ownership and long-term maintenance of a proposed road. The Department moved its boat ramp from land that was owned by the City of Lewes in the downtown area to land owned by the Department near Roosevelt Inlet. This allowed the City to redevelop the downtown area into its maritime park and marina.

A number of years ago there was general agreement by members of the General Assembly, the Department and DelDOT that it would make sense to develop a road through the property purchased from the University that would go from New Road, behind the University campus and come out to Pilottown Road. This would be better than boat trailers and trucks using Savannah Road and all of Pilottown Road.

Mr. Small referred to a projected map and pointed out the different parts of the property including the wetlands, a dredge spoils site, the Lewes leased land, and a potential road connector alignment. He stated that discussions are still ongoing with the City of Lewes, the University, DelDOT, and the Department regarding the alignment, ownership, and maintenance. Everyone does agree that the road makes sense. There was \$2.1million appropriated from DelDOT for the design and construction of the road. Part of the issues has been to what standards this road should be designed. If DelDOT eventually owned this road, they would have a different standard than what the Department would have for a park road.

Mr. Small then referred to the dredge spoils area and noted that the University retained an easement on this area for dredge spoils. The Department does not use this area for anything other than as a contractor with the University for the dredging. The Department does not have any long-term interest in owning this area. Scott Douglass from the University stated at the recent Lewes City Council meeting that at this time it is not interested in pursuing a potential transfer of land for the Lewes leased land. However, there is still some interest in the dredge spoils area and other land around the campus. (This was pointed out on the projected map.)

The Department's focus is to resolve the ownership and management of the road first. And then coordinate with the University to get appraisals on land that the Department and University would be interested in transferring. The University owns land known as the Laird Tract at its north campus and it is adjacent to White Clay Creek State Park. The Department has a long standing interest in this property and it could be a potential parcel for a land swap.

Ms. Van Gilder asked how many acres does the University want.

Mr. Small responded that the Department would keep the wetlands and dedicate them as part of the Great Marsh Natural Area. The area adjacent to the University campus which includes the dredge spoils area is what the University is interested in and it is about 48 acres.

Ms. Thomas asked questions about a map she received from the Department that shows the potential road alignment through the property. The map had a note showing an area of existing road to be removed, graded, top soiled, and mulched. The question was why is the public paying to cover over a road and create a dead-end at the University property. A second question was about another note on the map that referenced removing a dredge spoils pipe. If this pipe was removed would the dredge spoils operation still work?

Mr. Small said there are two dredge spoil pipes and one needs to be removed because of the potential road construction.

Mr. Vickers also noted that the potential road alignment would require a stormwater/wetland area where one of the pipes is located and this would require its removal. The dredging operations staff are fine with one pipe. He also responded to Ms. Thomas' first question regarding the removal of a portion of the existing road. He said that the University wanted it removed and did not want a direct connection to any new road. For access to the campus one would need to enter from Pilottown Road.

Ms. Thomas asked who would pay for the removal of this part of the road.

Mr. Vickers said that the State probably would.

Ms. Thomas said she objected to the State paying for this on University land.

Mr. Vickers noted this was on park land, not on the University land.

Ms. Thomas said if the land exchange goes through, this would be private land and she would object to the State paying for this.

Ms. Thomas said she received a letter from the City of Lewes' town attorney saying the University enjoys immunity and if the University does get the 48 acres, then there is nothing that would keep them from doing whatever they wanted on that site. She strongly objects to the possibility of this happening.

Mr. Schroeder asked Ms. Thomas if she meant the University was exempt from land use and building codes.

Ms. Thomas responded they were.

Mr. Hayward stated he thought that wasn't quite right.

Ms. Thomas said she asked this question at a Lewes Council meeting and the solicitor cited a case involving the Newark campus and he said they were immune.

Mr. Hayward said he thought this problem was addressed several years ago. He said the University is not exempt from land use regulations. It could not come in and put up a 30 story tower on land zoned for single family residences. The question was always was there something else that could be done with the dredge spoils area. The University's development plans have changed dramatically over the last decade. He would suggest that before any transaction is finalized that the University lay out what it proposes for the land so that everyone knows what their interests are, and so that everyone can comment on the plan and work towards getting a deed restriction that is binding to the final plan. He said he understands why the public is concerned if the University wants to acquire the land with no restrictions or at least no articulated desires.

Mr. Hayward said he and Mr. Holden have spent a long time in this part of the state looking at properties that might work for a University campus. At this point he was not sure if there is a role for the Open Space Council. Since the property was acquired with open space funds it may be incumbent upon the Council to recommend to the General Assembly that the property be de-accessioned and turned over to the University. The Council does not have the authority to sell the

land. If open space money was invested in a parcel, it was to stay as open land, unless the General Assembly or the Governor decided differently. It would take a legislative act to change both the ownership and the use of this parcel.

Ms. Thomas noted that the recent epilogue language in the Bond Bill provides for this action.

Mr. Small stated that Ms. Thomas was correct in that the Bond Bill does allow for the Department and the University to swap land.

Mr. Hayward noted that it said allow not mandate.

Ms. Thomas returned to the issue of the University's immunity to zoning laws. She referenced a quote from a case that was the City of Newark vs. the University of Delaware that concluded the University was expressly granted immunity from City zoning laws.

Mr. Hayward stated he thought the University by and large acted as a good neighbor. He also thought the issue of the road was decided several years ago when the old boat ramp was going to be moved and a new connector road was planned.

Mrs. Williams state that any acquisition with open space funds is supposed to be permanently maintained as open space, unless it is changed by the Legislature. The Legislature may decide what to do whether the Council makes a recommendation to the Legislature or not.

Ms. Van Gilder asked if the language in the Bond Bill gives the Council the right to swap the land or does it need a vote of the Legislature?

Mr. Boswell noted the Bond Bill language does not require any approval of the Open Space Council. However, any land or fund transfers do require the approval of the co-chairs of the Bond Bill, the Director of the Office of Management and Budget and the Controller General. He said it was unclear whether it is implicit that the Council must provide advice and consent.

Mr. Hayward stated the Council could make its feelings known by sending a strong letter to the people noted in the Bond Bill. It comes down to what the University plans to do with the land and if the community will accept those plans. If it will continue to be used as a dredge spoils site, then that should be alright. However, if the intent is to use it for dense development, then those members of the community that are used to seeing this area as open space will be agitated.

Mrs. Williams thought it was a good idea for the Department to make the University state what it is they would use the land for and consider placing a deed restriction on it.

Ms. Thomas stated that if the University intends to use the area just for dredge spoils, then why do they need to own the land? They already have an easement that allows for the dredge spoils activity.

Mr. Schroeder said he would have preferred that the Secretary and the University bring this before the Council so there was more transparency. By putting this in the Bond Bill without discussion shows a lack of transparency. Many times items are put in the Bond Bill without the legislators even aware of what is in it. His major concern is what really is the game plan?

Mrs. Williams asked if the Council would like her to convey its concerns directly to the Secretary.

Secretary O'Mara entered the room during the discussion and said he noted the Council's concerns.

Mr. Holden asked for clarification. He determined after reading the Bond Bill that it meant that without any further action this transaction could be consummated. The language and the approvals are entirely outside of what he believes to be the norm for the Open Space Council. The

fact that once land has been purchased with funds from Open Space, in theory, it should be kept in preservation. This is a circumvention of this process. Why was it done that way and what is the intent?

Mr. Small responded that the University requested the language and the Department offered draft language that provided checks and balances. The Department has a long standing relationship with this Council and would want to honor its opinion and work with the Council and make sure all interests are represented appropriately as we moved forward with the decision making.

Senator Bunting said that those of us who know how the Bond Bill works realize that generally if something is put in the epilogue of the Bond Bill it is a way of circumventing legislation and an open process. He was disappointed that the University used this methodology. It should have had more openness to it. He was briefly involved in early discussions regarding moving the old boat ramp down to Roosevelt Inlet and creating the canal park in Lewes. At that time the discussion was that a new connector road would be built and people would turn at Nassau, come down New Road and turn on the connector road. Now he is hearing there may be issues with the width of New Road and it is difficult to turn on to Pilottown Road.

Mr. Schroeder concurs with this since he was a state representative for the area at the time the property was purchased. He remembers the City had concerns regarding the closing of the existing facility and moving it to the end of Roosevelt inlet. Then-Mayor George Smith sent a letter to the Secretary endorsing the closure and the opening of the new facility along with a new connector road off New Road. A meeting took place between the University, DNREC and him and all concurred that a new road would happen imminently. And yet eight years later it is yet to happen.

Mr. Small wanted to clarify the Bond Bill language and stated that this is not simply conveying this property to the University. There would be an exchange of land and/or funds of equal value. From the Department's point of view, as it relates to open space, recreation, and habitat, it was felt that conveying part of the Lewes lands to the University in exchange for lands that adjoin White Clay Creek State Park, on balance, was in the best interest of open space in Delaware.

Mr. Holden stated the fact that the University erected a windmill for electric generation using the City of Lewes' zoning rules that allow for antennae that are erected up to a certain height in the City of Lewes is a little devious. It is a strange antenna. Yes, in some ways it is an asset to the City of Lewes, but it has opened up the door for any property owner in the City to put up one of these antennae. Now the City put a freeze on this. In his opinion this is a sleight of hand. What concerns him is not the exchange of land that would take place. He knows that the White Clay Creek property would never be developed. What does bother him is if the University would develop this property into a windmill farm. The University avoided the normal checks and balances and public hearing processes by using the epilogue language. He feels once someone uses a tact to avoid confronting an issue head on, such as erecting the windmill under an antennae statute, that it is difficult to trust them. He would like to see the Council, by resolution, make a request that the public process be brought into this before any land exchange takes place and that the acquisition in Lewes be vetted and deed restricted.

Mr. Holden noted that the Great Marsh area is immediately adjacent to the Lewes lands and that over \$20 million of 501(c)3 funds or public funds were spent to preserve the Great Marsh. Even more funds were used at Prime Hook Wildlife Refuge which is adjacent to this area. The Lewes lands are a thumb that sticks out into the Great Marsh area. He resents that somebody might try to develop this property in any way. He believes the Council may not have any legal way to raise opposition or require anything. However, he believes a resolution should be introduced that the Council request that the process be vetted with full public disclosure.

Mr. Schroeder expressed concern over exchanging land in one area of the state for land in another part of the state. The only representation that people have is through this Council and their legislators. If a piece of land is deemed surplus by either the Department or this Council, then it would be more prudent to find another piece of land in that same region as opposed to going to some other place else in the state.

Representative Brady asked what regulatory reviews or process would this exchange of land go through if the Council is requesting that it be vetted publicly?

Mr. Letonoff responded that the City of Lewes Planning Commission recommends certain actions and then sends the recommendation to the City Council. The Council then adopts specific actions.

Mr. Holden stated that when public funds that come through the Open Space Program are used to acquire land, then that land is supposed to remain in a state of preservation or conservation. There are no exceptions, unless the legislature chooses to overrule this. He believed that the public's view of any overruling by the legislature would involve discussing the matter on the floor of the legislature and possibly a public hearing. The legislature did not honor that concept because it put language in the Bond Bill that circumvented that process. He wanted to thank the members of the community for coming today and raising these issues.

Mr. Hayward asked Mr. Small what does Scott Douglass from the University say when asked about the University's plans for the property.

Mr. Small said that at one point in time the University was looking to expand its operations and establish a southern campus. At that time the University was looking at the lands leased to Lewes as a possible site. Since then the University has taken on the former Chrysler plant in Newark. At the recent City Council meeting Mr. Douglass stated the University is no longer interested in the leased Lewes lands. However, it is still interested in the dredge spoils area. There has not been a specific conversation about what exactly that property will be used for by the University.

Mr. Hayward noted that he knows Scott Douglass fairly well and he is a former state budget director and secretary of finance. He is very intelligent and street smart. If the Secretary called him and let him know that this deal is not going anywhere until the University says why they would like to acquire the site and are willing to do the trade for something in the region, then Mr. Douglass would listen. Mr. Hayward would suggest to the University that if they know what they want to do with the land, they should let everyone know. If it is open space or recreation related that may be alright. If they want to develop the land, that may not work. If they don't know what they want to do, then it should be put in the deep freeze and leave it. Mr. Hayward noted that he and Mr. Holden worked a long time on another site in the Lewes area that is a possibility for a southern campus. It was discussed before Council a few years ago. He also said he was familiar with writing Bond Bill language and he wouldn't have done it this way. If the University had a plan, it should have brought it before this group first.

Mrs. Williams asked Mr. Holden whether he wished to make a suggestion for a resolution.

Secretary O'Mara stated he appreciated the conversation and he also shared many of the concerns discussed. He noted that the University's master plan has changed at least three times in the past 18 months, with the upcoming law school and the acquisition of the Chrysler plant. He said he would like to commit to making sure that any plans from the University that go beyond the dredge spoils area would come back to the Council. He felt the Bond Bill language was rushed at the last minute and should have had more process attached to it. In moving forward he wants these types of projects to come before the Council. If a land swap is to happen, then he wants recommendations as to what properties would be available. The University is limited in its land holdings. If it is a cash exchange instead of a land swap, then he wants some guidance from the Council. The Secretary said he has been on the leased Lewes land and has seen people using it

for recreation. He recognizes its value as open space and does not want to limit this opportunity for Lewes.

Mr. Hayward asked Mrs. Williams if she would consent to a general sense of the Council and draft a letter for review as to how to move forward with the concerns expressed by the Council.

Mrs. Williams agreed and said that there are points that need to be addresses such as a public process and limiting the use of the property.

Mr. Schroeder was concerned that there not be a delay in getting something out since with the Bond Bill language in place, something could happen right now. He suggested that a letter go to the Secretary and the co-chairs of the Bond Bill committee asking them to bring any proposed action before the Council. At this time the Council does not have the authority to stop any action, just request consideration.

Mr. Boswell commented that the letter should contain language that says any proposed use of the land must be consistent with the surrounding land use and consistent with the intention of when it was originally acquired. If you do anything, make sure it is appropriate.

Mr. Vickers asked for clarification as to a letter to the Secretary and/or any future resolution from the Council.

Mr. Schroeder stated that in the absence of getting a resolution from the Council that the Council needed to get on the record as quickly as possible with the Secretary and the co-chairs that the Council is concerned about how the University might utilize this property.

Mr. Hayward suggested an appropriately drafted letter should go to all four people mentioned in the Bond Bill language, as well as the Secretary. He offered his help in drafting the letter. In general it should state that there are general concerns from the Lewes community and among members of the Council about the potential for disposition of this property. The University has not explained what it wants to do with the property and if it intends to follow through with any plans that such plan come before the Council and be properly vetted through the Lewes authorities. The process should be transparent. If the University wants to do something that is objectionable, then the Council would have the opportunity to voice its objection.

Mr. Hayward moved that such a letter be written and sent to the appropriate parties.

Mr. Boswell noted that in the Land Protection Act under the powers and duties of the Council that the Council is to advise and consult regarding any change from permanently protected status and that this language should be in the letter showing intent to carry out such duties.

Mrs. Williams noted consensus among the Council to move forward with the letter.

Mr. Holden suggested that the City of Lewes send a similar communication to all the same parties that the City would like to be notified before anything is done with this property and would like to be at the table.

Mr. Letonoff said he would take this information back to the Mayor and Council for their consideration. He also wanted contact information for any follow-up.

Mr. Holden wanted to express another point that the Council is a step-child of government and government has a way of antagonizing its constituents and creating fears. That is exactly what the University has done in using this method to get this done. It doesn't pass the sniff test. Again, thanks to those that have come forward and highlighted these issues. The Council, working together with the City of Lewes, could raise the level of consciousness among those that are working on this transaction that people care about this piece of property and they care about the way the government might choose to transfer it or alter the use of it.

Ms. Thomas said that all the information is very helpful. However, she had a question about the wind turbine that was erected on the open space. There was an easement that was adjusted through DNREC. This never came before the Open Space Council. Who is liable for the turbine now since it is on open space and the University built it on property they do not own. She doesn't believe there should be any do overs. If the language of the Council says this should have come before the Council, why didn't it? What is the purpose of this Council if none of this was brought forward? It was because of citizens investigating this issue that it has come to light. There is something fundamentally wrong if the citizens are having to find out all of the information. It looks like DNREC and the University are partners in this. She is wondering about how the easement was changed without input and is this normal that it gets changed without anyone hearing about it. But as a citizen, she is looking at this as open space, yet there is an industrial wind turbine on the property. What kind of precedent is this setting for any other open space? If someone doesn't like an easement can they go to DNREC and change it? What is the protocol?

Mrs. Williams said the subject of the wind turbine came up a couple of meetings ago and at that time she said it stinks. She does not know how it got there.

Mr. Schroeder said he believes there are two ways the wind turbine would have gotten there. (1) The City of Lewes authorized it. It would've needed some type of approval to be built. (2) It had to have gone through DNREC. The Council should ask for an explanation from DNREC as to how things proceeded to the point of giving the University the authorization to build it.

Mrs. Williams directed this question to Mr. Small and asked for an answer at a later meeting.

Mrs. Thomas said that the wind turbine was equated with an electric tower. She asked at a meeting with the University and the City why it did not go through a variance hearing. Mayor Ford said it did not because it was equated with a radio transmission tower. She asked for clarification on this and received a letter from the city solicitor stated the University enjoyed immunity from the zoning regulations. She thanked the Council for its concern and she said she is still learning its protocol. She restated this is a complicated issue and it does not pass the sniff test.

State Resource Areas

Mrs. Williams wanted to discuss the lawsuit related to the State Resource Area maps. Landowners objected to the new 2006 SRA maps because they felt their land was being restricted without their having any say. From the Open Space Council's point of view, the staff was making the SRA maps from a scientific point of view. The Land Protection Act requires the Department to send the SRA maps to the counties for consideration in their comprehensive land use plans every five years. In their updates, the counties are to consider the SRA maps and incorporate them in the plans in a way that is satisfactory to them. It does not have to be regulations or restrictions but they do have to consider it.

Mrs. Williams said she went back and looked through the early Council minutes because the lawsuit said that the Council never voted on Standards and Criteria. In 1990 & 1991 the Council did hold public hearings and vote to approve Standards and Criteria. She had the meeting transcripts with her. What she would like to do is revote on those Standards and Criteria so that it effectively makes these SRA maps valid again. The staff said that that the lawsuit specifically voided the 2006 SRA maps. She said the Council can go back and at least get the Council legal and operating properly by re-voting on those Standards and Criteria. The Secretary agreed to attend this meeting in order to discuss this issue. Earlier she met with the Secretary, Mr. Vickers, Mr. Salkin, and Ms. Walling. She sent the Council the paper she prepared for her discussion with the Secretary.

Mr. Schroeder asked if Standards and Criteria were adopted in 1991, did the lawyer representing the State bring this up.

Mrs. Williams said she did not think that he did and that she was not sure we were well represented.

Mr. Vickers noted that the items voted on in 1991 were viewed as criteria for acquisition as opposed to Standards and Criteria for the development of maps. These are the rating sheets used over the years that give point values to properties considered for acquisition. It allows for comparison between properties. This is different from Standards and Criteria used for developing the maps for the State. There was that difference of opinion from a legal perspective. From the Council's perspective, you may view these as Standards and Criteria.

Mr. Schroeder said his concern was if the judge determined that what the Council voted on in 1991 was not what he was looking for in the way of Standards and Criteria that the Council would vote on this again and it would move forward and be thrown out of court again.

Mrs. Williams said she thought the judge was trying to address the concerns of people who were included in the new SRA maps who didn't want anything to happen to their property rights. There was a huge outcry. Then-Secretary Hughes and Representative Carey set up a taskforce with representation from the conservation groups and people with property rights interests to try to work this through. Now it's bogged down with how we define Standards and Criteria. In the meantime, the Department is moving ahead in a positive way to get all of the Divisions working together to gather all of the scientific information in the Department. She said we now have about 19% of the State protected and we are not going to get much further than 23%. The opportunities are getting rarer. What is happening now is the people go out in the field and find things that aren't in SRA maps that need to be protected. It may be a rare plant or animal that needs its habitat protected. So now DNREC is looking to create Conservation Opportunity Areas (COA) based on the information from all of the Divisions. Secretary O'Mara can address this further.

Secretary O'Mara thanked the Council again. He noted that the current economic conditions combined with court challenges create an opportunity to re-think how we approach land acquisitions and how we finance them. Unfortunately the days of the Carper Administration are behind us. We are hoping to get \$3 million next year. But the budget projections indicate it will probably be worse. This will be the kind of thing we will find challenging for us. Farmland preservation will be facing the same challenges. So what the Department is looking at is how to leverage all of the great information at DNREC. The Department has great scientists and engineers. However, the data need to be better integrated. And there are challenges with the SRA maps. People tend to react if their property is included on a map. He would rather work with the Council to figure out what is the best way to identify our targets for the next several years. The staff has done an incredible job in the past dealing with the best information that we have. But he would like to figure out a way to leverage the work that has been going on at the Nature Conservancy, Ducks Unlimited and all the other private partners and come up with a statewide acquisition strategy. We need to be more proactive and possibly learn some lessons from the farmland preservation program regarding reverse auctions. He wants to work more at leveraging private resources and federal resources. Part of the issue is our limited ability to match some of these opportunities. We need to modernize our approach to financing.

Secretary O'Mara continued discussing how Lee Ann Walling from the Office of the Secretary is putting together a team to look at all the data layers from the Department and make sure we have the best information from all program areas- habitat, parks, watershed, flood management, water quality, and others. This is an opportunity to tie these pieces together. There is an interest in this approach from heads of some of the leading non-profits and some of the foundations.

He added that before he moves further, he wanted to bring it to the Council to see if it is something that makes sense. He doesn't think there is sufficient alignment between some of our Divisions and some of the non-profits, even though they are working towards the same goals. If there is a way to leverage all this, maybe we would have a package that results in new financing models and other creative opportunities. He said he is a big proponent of open space and believes in counter-cyclical investment. Now is the best time to buy land because of low prices, but state resources are difficult to come by. Perhaps issuing bonds would work- acquire them now and pay them off in good economic times. He encouraged the Council to think more expansively than just SRA maps. What is the best way to do land conservation over the next five to ten years? How do we tie the pieces together in a resource-constrained universe?

He thought Mrs. Williams did a great job teeing up the issues. The State Resource Area concept feeds directly into the first phase of Conservation Opportunity Areas. The COAs are much more data rich, more strategic, and much less scary on the property rights issues because it would be a voluntary program. He wants to focus on more partnerships and look at not always purchasing an entire parcel of land- just the key portions.

He presented these ideas as his initial thoughts and said he would love to begin a more detailed conversation because there are opportunities to work on modernizing our approach to avoid the sort of Tea Party conflicts. He feels there is openness from the legislature to look at new models and the Governor is interested. The Governor has been a proponent for Open Space throughout his career and at the same time he is looking at a massive deficit next year with significant reductions in federal support. The resource constraints are significant so we need to figure out more creative ways to leverage more private money. Over the next several meetings he would like to participate in the discussion and work towards a better statewide, integrated strategy.

Senator Bunting said he thought this was an excellent idea. He remembered all of the studies on the Inland Bays in the 1970's. A lot of work was done, but it didn't seem to be integrated. He noted he was in the heart of Tea Party country and that people are very passionate about property rights. He feels there are people that may be able to contribute to the process even in tough economic times. He also knows that there are farmers out there that want to leave their land to their grandchildren. He likes the idea of better coordination, but it needs to take place soon.

Mr. Schroeder said he believes the Department could push this to another level. He mentioned his involvement with the Sussex County Land Trust and its work with The Nature Conservancy. He feels all the organizations know each other and try to see who can help with specific projects. But he also thought this could be better coordinated. The organizations all have the same goal of land preservation.

Secretary O'Mara said he did not want to imply that partnerships and leveraging was not taking place. He just believes there is the opportunity to take it to the next level and be more strategic on the planning side. He complimented the Council and staff on its work to date.

Mrs. Williams noted that to make the maps a voluntary system it may require changing the Land Protection Act. This would mean going to the legislature and it may open a Pandora's Box.

Mr. Hayward said that when the Council was first organized and looked at the SRA issue it went through a fairly deliberative process. Maps were developed and the standards for the point value system were adopted and we went on with our business. There wasn't a huge uprising from the property owners whose land might have been included in the original SRA maps. In 2006 we ended up with a map that scared people because it was very ambitious. It even was cut back some. He suggested that the Council readopt the same Standards and Criteria that were used to come up with the ratings sheets 20 years ago and continue on with our work. Targets of

opportunity always present themselves. Sometimes they are within the SRA areas, sometimes they are outside. As long as we have a willing seller and a willing buyer and we've used deliberateness and transparency then we move ahead. He agreed with Mr. Schroeder that there is always the opportunity for better coordination among the land conservation organizations.

Mr. Hayward continued by saying that when the Council first adopted standards in 1991 that were used through 2005, they were advisory, and attempted to give the Council and staff some yardstick against which to measure opportunity. The SRA maps did not have the force of law with the counties. We tried to figure out a way to make something that was advisory more permanent. The law said the counties must use the SRA maps in their land use planning processes. They at least had to acknowledge them.

Mrs. Williams said that's the part of the legislation that needs to be voluntary since the counties are not using the SRA maps as required.

Mr. Hayward stated that the Land Use Planning Act was changed in 2003 and this made the counties pay attention to state comments. He suggested that if the Council went back and reauthorized what it did in 1991, then this may be a problem from the landowners' perspective- which one is in and which one is out the SRA map. In the process of trying to restate its claims, the Council may shoot itself in the foot.

Mrs. Williams said she wants the Council to be out of limbo on this issue.

Mr. Vickers said the Council and Department were not directed to do anything specific from the Chancery Court ruling on the 2006 maps. The ruling just said the maps were nullities. The Department's position is that now we go back to the 1991 maps, even though they were created in a different time technologically and there are some issues with areas. When the law and the program were put together in the late 1980's-early 1990's time period, New Castle County had land use regulations already in place. Since then, they have strengthened them and are actually protecting more land through their regulations than what was proposed in the 2006 maps. Kent County has come a long way since 1990 and through their regulations are very close to what was proposed for protection in the 2006 maps. Sussex County's land use regulations have improved some. He believed one major reason for the Land Protection Act was to address the shortcomings in each county's land use regulations. Since 1990, the counties have moved forward in their protection efforts. The question is if that part of the law which requires the Department to send SRA maps to the counties for incorporation in their land use plans and for the counties to develop environmental performance standards and regulations still necessary. The question for the Department at this time is does it move forward and try to redraft the SRA maps in today's climate or does it go forward with Conservation Opportunity Areas which would bring disciplines together and coordinate internally and externally with conservation partners in a way that may not be perceived as a threat by the general public.

Mrs. Williams said the basic protection tool has been a willing buyer and a willing seller. The other tool was some type of regulation at the county coming out of the SRA maps. That is not working and that is what would be given up.

Mr. Hayward said he feels that things have been working well for 20 years. It has worked in times of good money and bad money. He complimented the staff for being creative and alert to leverage resources. He reminded Council that the Chancery Court ruling did not say the Land Protection Act was null and void. It said an attempt to define new territory wasn't done satisfactorily. He suggested just continuing to look for willing sellers and willing partners. The agencies, private enterprises and the 501 world would continue to figure out ways to make land protection happen with scarce money. He would counsel to just stay the course.

Mr. Holden said he is not totally comfortable with this. He said that some folks in the 501(c)3 world ran the numbers to try to figure out how much money is available on an annual basis for land preservation. He noted that he cannot speak for the boards of these organizations, but the estimate was \$100 million a year available from the foundations. These organizations love to partner with other foundations, federal and state governments, and other conservation groups. He noted how the Sussex County Land Trust was a key player for a land deal involving the Nature Conservancy. He believes there could be more coordination on this type of activity. As an example he mentioned two loan packages available through the Wilmington Trust Company. One was for \$50 million that sold for 40 cents on the dollar. The other was for \$70 million in Sussex County that did not sell. One of the properties in the Sussex package was adjacent to land recently protected by the Nature Conservancy. In some cases banks may be willing to sell select properties if they do not get offers on their larger loan packages. They are looking for some type of revenue.

Mr. Holden continued by saying he believes there should be parameters set legislatively- either through the Land Protection Act or through the counties- to provide for land protection. He believes New Castle County has done a decent job with its regulations. Kent County has made several steps forward. He feels Sussex County is still the wild, Wild West and you don't know what will happen. He also commented that it was unfortunate that the Secretary had to write an opinion approving a septic system setup for a private company in Sussex that the Secretary didn't think should be done. However, there was no way legally for him to say no. There needs to be a better governmental framework to allow the Department to exercise prudent judgment. It is similar to the song lyric "We've paved paradise and put up a parking lot."

Mr. Holden said he was not sure how to move forward with SRA maps. Three years ago he suggested that outside counsel be used to help get the SRA maps through the process. The attorney general's office would have to approve such a move. At this time he suggested using the Parkowski law firm to help look at the legislation and see what can be done. He noted that Parkowski has been successful in writing much environmental legislation from solid waste to farmland and forestland preservation. This type of assistance may be necessary to make the legislation workable.

Mrs. Williams said that maybe that would give the Council the assurance that what we have is workable and that the Council is not in limbo.

Mr. Holden made a motion that the Council ask the Secretary to engage outside counsel to work through the regulations and give guidance on how the Council can accomplish the desired end and not get challenged in court and have it thrown out.

Secretary O'Mara said that there was a lot of concern about the process surrounding the 2006 SRA maps. His question was is this a fixable situation? He believes the 1991 maps are insufficient. We have better heritage and climate data now. Do we need a different approach? Does the SRA umbrella still make sense? Even if we bring in a law firm to help with the situation, it still may be too toxic.

Mr. Hayward said that we should not re-poison the well and he respects many of Mr. Holden's points. If we had a 100 opportunities for every dollar that we had to invest, then we'd have a very difficult situation of sorting out which of those 100 opportunities we really are pursuing. But we have limited opportunities, yet still more opportunities than money to invest. Every decision becomes a combination of scientific data, gut feeling, and political consideration. How willing is the seller and at what price? Where can we do the most good with the least dollars? The program has worked this way for 20 years and he thinks it can continue this way. It is always good to have better information. He agreed with what Mr. Holden was saying about cleaning up the legislation. However, at a time when money is really tight and this issue is still raw it might not go down well

to ask the Attorney General and the Governor to hire outside counsel. Notwithstanding he would support Mr. Holden's motion with his reservations expressed.

Mr. Holden noted that his motion only makes a recommendation to the Secretary and since the Secretary was present for the discussion and understands the Council's point, then he would withdraw the motion. He did extend the idea of hiring outside counsel to help with any reorganization attempts in the Department. Hiring the attorney that knows where the flaws are within the Department should be used to improve the Department. This would be a large task, but it is achievable. If the current rules don't work, write new rules. We shouldn't be constrained by what one perceives to be constraints.

Secretary O'Mara asked if the Council feels that we have sufficient feelers across the state to know who would be willing to sell. We don't have an auction process like farmland preservation where you rank the properties, take bids and look for the best return on your investment. The open space process is much more qualitative considering the richness of habitat and species concerns. He said he is trying to figure out different ways to make sure we are looking at the entire playing field. He acknowledged Mr. Hayward's points about not doing something that could have an adverse reaction. His concerns are that there may be opportunities that we might not be aware of because they are not in the traditional network that we are used to dealing with.

Mr. Vickers added that in addition to other things previously mentioned when evaluating what properties are purchased during these difficult budget times, the program considers the managing agencies' priorities. It's the folks on the ground, in the parks, in the forest, & fish & wildlife areas that would have to deal with property. We look at connectivity and inholdings. He noted that there was a recent discussion with some folks from the Delaware Nature Society about reconstituting the quarterly conservation groups meetings.

Mr. Chesser said the staff is staying on top of the opportunities presented to us. We are not out engaging many landowners because of the current funding situation. One area that could be increased is going out and getting rights of first refusal on properties. This would have people come to the Department or the private conservation organizations when they are ready to sell. By doing this we might not miss important opportunities. In the past there were properties that were flipped or sold so quickly that we either did not know about it or did not have the opportunity to talk with the landowner. This happened at the NVF project with two key parcels sold before anyone contacted the State, even though the State was neighboring landowner. By having agreements in place we could direct them to the best contact when they are ready to sell.

Mrs. Williams said she appreciated the discussion and was sure that the Council was aware of the areas of concern for acquisition. She then moved into executive session.

VI Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 11:09 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:39 a.m.

VII Project Recommendations

Based on discussion in Executive Session, Council members present agreed that the following projects should move forward.

Division of Fish & Wildlife:

Nanticoke River – Wright: 142 acres involving four parcels; working with the Conservation Fund to purchase property using State Wildlife Grants and federal Section 6 Endangered Species funds. Fish & Wildlife requests Open Space funds to purchase one parcel including interest and settlement costs.

Motion: Moved by Mr. Nathan Hayward to approve \$50,000.00 from FY2011 funds to pay for interest costs, and settlement costs, for the 3 southernmost Wright properties. Motion Carried.

VI Next Meeting and Adjournment

The 2011 Council meetings will be held on the 2nd Floor Senate Hearing Room, at Legislative Hall, Dover, DE from 9:00 a.m. to 12:00 p.m.

- March 16, 2011
- June 15, 2011
- September 7, 2011
- December 7, 2011

Mrs. Williams asked for a motion to adjourn. The meeting adjourned at 11:43 a.m.