

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 21, 2013**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 21, 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>Susan M. Webb</b>	<b>Finance Director</b>
<b>Gina Jennings</b>	<b>Finance Director Appointee</b>
<b>J. Everett Moore, Jr.</b>	<b>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 244 13  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend the Agenda by changing the order of the Agenda by moving Gina Jennings, Finance Director, - Financial Report for the Nine Months ending March 31, 2013” immediately after “Presentation of Construction Contribution Check” and by deleting “Job Applicants’ Qualifications” and “Personnel” under “Executive Session”; and to approve the Agenda, as amended.**

**Motion Adopted: 5 Yeas.**

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

**Attorney  
General’s  
Opinion  
on FOIA  
Complaint  
and Notice  
of Change  
in Agenda  
Preparation  
and  
Posting**

**Mr. Lawson reported on a recent opinion issued by the Attorney General’s Office on Sussex County Council’s agenda practices. He stated that, although the Attorney General’s Office did not find Sussex County in violation of FOIA, the Office did urge that the County amend its practices when it comes to the Agenda and the posting of the Agenda. Mr. Lawson stated that in the future, at the time when the Agenda is posted on a Tuesday prior to the next meeting date, if Executive Session items are known, the issues will be listed. Once the Agenda has been posted and it is determined that additional Executive Session items need to be included, the Agenda will be amended (between the Tuesday of the posting and the Monday prior to the meeting) on the website and on the bulletin board in the County Administrative Building to make the public aware of the changes.**

- Minutes**            **The minutes of April 30, 2013 were approved by consent.**
- Corre-  
spondence**        **Mr. Moore read the following correspondence:**
- THE JEFFERSON SCHOOL, GEORGETOWN, DELAWARE.**  
**RE: Letter in appreciation of the Council’s sponsorship of The Jefferson School’s 5K race to benefit the scholarship program.**
- INDIAN RIVER SENIOR CENTER, MILLSBORO, DELAWARE.**  
**RE: Letter in appreciation of a grant for an event held on May 8<sup>th</sup> in recognition of veterans.**
- WOODLAND FERRY ASSOCIATION, WOODLAND, DELAWARE.**  
**RE: Letter in appreciation of a grant for their upcoming festival.**
- Barking  
Dog  
Complaints/  
Previous  
Draft  
Ordinance**        **Mrs. Deaver announced that she receives emails and phone calls about barking dog complaints.**
- Mr. Phillips stated that, during the previous Council’s rule, he had brought forth the barking dog issue and a draft ordinance was briefly considered. There was no objection to ask staff to locate the draft ordinance and to bring it back to Council for reconsideration.**
- Check  
Presentation**     **Norma Prettyman, Treasurer of the Friends of the Greenwood Library Capital Campaign, presented a check in the amount of \$75,000 to the Council representing the Friend’s first portion of their construction contribution agreement with the County for the new Greenwood Library facility. Mrs. Prettyman noted that the Longwood Foundation has helped make this payment possible and that they are giving the Library a dollar for dollar match for everything the Friends earn from the end of March 2013 until September 2014. Mrs. Prettyman thanked the Council for its support of the Greenwood Library project.**
- Financial  
Report  
Ending  
3/31/13**            **Gina Jennings presented the Financial Report for the Nine Months ending March 31, 2013. She reported that revenues are up 5.71 percent, largely due to building related revenues; that Realty Transfer Tax is showing a 28 percent increase; and that expenditures are under budget by .17 percent.**
- Adminis-  
trator’s  
Report**            **Mr. Lawson read the following information in his Administrator’s Report:**
- 1.     Sussex County Airport Advisory Committee**
- The Sussex County Airport Advisory Committee will meet on Wednesday, May 22, 2013, at the Sussex County Emergency Operations Center at 6:00 p.m. Included with this report is a copy of the agenda for the meeting.**

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

2. **Sussex County Emergency Operations Center Call Statistics – April 2013**

Attached please find the call statistics for the Fire and Ambulance Callboard for April 2013. There were 14,641 total calls handled in the month of April. Of those 9-1-1 calls in April, 74 percent were made from wireless phones.

3. **Memorial Day Holiday**

County offices will be closed on Monday, May 27<sup>th</sup>, to observe the Memorial Day Holiday. Offices will reopen on Tuesday, May 28<sup>th</sup>, at 8:30 a.m. The County Council will not meet on May 28<sup>th</sup>. The next Council meeting will be held on Tuesday, June 4, 2013.

4. **Susie M. Webb Retirement**

This Friday, May 24<sup>th</sup> is Susie Webb's last day with the County as she enters the next stage of her life – retirement. A Proclamation will be read in her honor.

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

**Susan W.  
Webb  
Retirement  
Tribute**

The Council presented a Tribute to Susan M. Webb, Finance Director, on the occasion of her retirement from the County after 20 years of service (May 1, 1993 – May 24, 2013). The Council and Mr. Lawson extended their thanks and congratulations to Susan M. Webb.

**Fiscal  
Year 2014  
Budget**

Mr. Lawson, along with Susan Webb, Finance Director, Gina Jennings, Finance Director Appointee, and Kathy Roth, Budget Director and Cost Manager, presented the proposed \$117.7 million budget for Fiscal Year 2014 and the accompanying budget letter. Mr. Lawson stated that the budget represents a collaborative effort between the Budget Committee, Department Heads and staff.

Mr. Lawson reported that the FY 2014 Budget again presents a challenge of that revenues are expected to slowly recover and have increased at a modest level of 3 percent for the General Fund. However, revenues from the housing sector have increased 10 percent, which shows some positive movement for the local economy. The County's largest revenue source, Realty Transfer Tax, is budgeted at \$16 million, which is half of what it was in 2006. Mr. Lawson stated that, thanks in part to the Council's leadership and fiscal responsibility, along with conservative budgeting, the County will continue without raising taxes or increasing fees.

The County's budgeting principles remain as follows:

**Fiscal  
Year 2014  
Budget  
(continued)**

- **Prepare a balanced budget with minimal increases**
- **Maintain an operating reserve of approximately 25 percent**
- **Continue at the actuarial determined level of funding for pensions and pension benefits**
- **Operate without tax-supported debt**
- **Maintain AA+ strong bond rating**
- **Maintain funding for local libraries**
- **Use technology to streamline and automate business practices**
- **Enhance the County's virtual interface to improve customer service**
- **Provide a greater level of service to County residents**
- **Upgrade and maintain existing wastewater services**
- **Pay-as-you-go philosophy for the capital projects fund**
- **Continue to eliminate existing septic systems**
- **Continue the sewer assistance programs to help low-income residents**

**Mr. Lawson reported that the Budget Committee has made assumptions as the budget was prepared. The Committee assumes that the County will continue to receive 1.5 percent of Realty Transfer Tax on eligible properties in unincorporated areas. The Committee also assumes the County will continue to receive the 30 percent grant from the State of Delaware to fund the paramedic program.**

**Mr. Lawson presented 2014 Budget highlights:**

- **No change in County property tax rate (24<sup>th</sup> year)**
  - **Average County tax for a single-family home - \$107.74 or \$0.30 per day**
  - **Average County tax for a manufactured home - \$40.66 or \$0.11 per day**
- **Reduced staffing levels – 5.5 less positions**
- **General Fund is up \$3.7 million**
  - **\$1.8 million from FY 2013's anticipated surplus**
  - **One-time budget item for employee comp/holiday payout**
- **Decrease in sewer assessment charges due to bond refinancing and debt payoffs**
- **Continue to fund critical public safety grants**
  - **Fire and ambulance services - \$3.3 million**
  - **Local Law Enforcement - \$575,000**
  - **State Police - \$1.9 million for 44 additional State troopers**
- **Total library funding - \$4.5 million**
- **Aggressive governmental capital plan without general fund debt - \$9.9 million (55% for airport projects and 23% for library projects)**

**Fiscal  
Year 2014  
Budget  
(continued)**

**Mr. Lawson presented a breakdown of the \$117.7 million budget:**

<b>Expenditures</b>	<b>Fiscal 2014</b>	<b>Percentage Change Compared to Fiscal 2013</b>
<b>General Fund</b>	<b>\$50,136,848</b>	<b>8.1%</b>
<b>Capital Projects Governmental Fund</b>	<b>\$ 9,873,020</b>	<b>(25.5%)</b>
<b>Enterprise Funds (Sewer and Water)</b>	<b>\$33,616,598</b>	<b>(3.8%)</b>
<b>Capital Projects Enterprise Fund</b>	<b>\$17,911,000</b>	<b>(15.6%)</b>
<b>Fiduciary Funds</b>	<b>\$ 6,182,744</b>	<b>16.0%</b>

**The total budget in the amount of \$117,720.210 reflects a (2.8%) change compared to Fiscal 2013.**

**Mr. Lawson highlighted personnel goals and objectives:**

- **No COLA**
- **2 percent one-time bonus**
- **Merit increases**
- **Pension contribution – \$5 million**
- **No change in health insurance contributions and coverage**
- **Continue health insurance opt-out incentives**
- **Begin dental and vision insurance in early 2014**
- **Continue tuition reimbursements**
- **11 paid holidays with 2 floating holidays**
- **Pension plan changes for new hires (in 2014) – 3 percent contribution**
- **No more comp time accrual. Overtime will be paid and not banked.**
- **Comp time/holiday bank payout**
- **Spousal coordination and birthday rule**

**Mr. Lawson advised that, a few weeks ago, the Council was provided with information on the effects of the Affordable Care Act (aka Obamacare) on the County’s health insurance policy. When the Act takes effect, it will cost the County \$323,000 the first year after which that number will increase. Therefore, the Council has some options to consider: (1) raise County taxes, (2) increase or pass along that charge to employees (\$646.00 annually per employee), (3) decrease the benefits that employees receive, or (4) take “lives” off of the health plan with spousal coordination and the birthday rule. Mr. Lawson stated that the proposed budget recommends Option 4.**

**Fiscal  
Year 2014  
Budget  
(continued)**

**Mr. Lawson reported that the proposed budget includes 3 new positions in FY 2014; however, total employment will still be 5.5 employees less than Fiscal 2013. The County is down 55 employees over the past five years.**

**Gina Jennings reviewed the General Fund highlights and she noted that the total operating budget increased 8.1 percent (\$3.7 million). She stated that, in Fiscal 2014, the comp liability of the County will be paid down and the County will start putting money aside for a capital projects fund; this hasn't been done since 2008. Mrs. Jennings reported that there are no proposed tax or fee increases; that the taxable assessments increased 1.4 percent; that the intergovernmental grants increased 9.5 percent; and overall revenues have increased 2.5 percent (conservatively budgeted).**

**Mrs. Jennings reviewed the County's primary funding sources including Realty Transfer Tax (32%) and property taxes (29%). Mrs. Jennings reviewed the history of Realty Transfer Tax back to 2002; from 2010, it has been increasing. In 2014, the Budget Committee is projecting to bring in \$18 million in Realty Transfer Tax; however, only \$16 million is budgeted (cautiously optimistic) instead of the \$18 million expected. In 2013, \$13 million was budgeted.**

**Mrs. Jennings reviewed General Fund expenditures: Paramedic Program (26%); Grant-in-Aid (15%); Finance (9%); and Libraries (8%).**

**Mrs. Jennings reviewed how one County tax dollar is spent: Public safety (\$0.55); Libraries (\$0.14); Housing Rehabilitation & Other Community Support (\$0.04); Code Enforcement, Planning & Zoning, Permitting & Addressing (\$0.09); Special Services (\$0.08) (includes Economic Development, Airport, Engineering Administration and Public Works); and General Government (\$0.10) (includes County Council, Administration, Legal, Finance & Constitutional Offices).**

**Susan Webb reported that grants are the second largest category of the General Fund expenses (\$7.3 million); the amount was the same in the last year's budget. Mrs. Webb highlighted the grant-in-aid program: 79% for public safety; 8% for libraries; 2% for wastewater; 2% for Agriculture and Land; 8% for Community Grants, and 1% for Town Grants.**

**Mrs. Webb reported that public safety grants total \$21.9 million: \$13.1 million for Paramedics; \$3 million for Emergency Operations; and \$5.8 million for Public Safety Grants (Fire and Ambulance Service, Local Law Enforcement, and State Police).**

**Mrs. Webb presented the Community Development funding for Fiscal 2014: CDBG - \$1,052,000; Neighborhood Stabilization Program (NSP) - \$357,500; HUD HOME Program - \$300,000; Delaware State Housing Loan - \$121,800; County Council Emergency Grant Assistance - \$100,000; and Housing Preservation Grant (HPG) - \$25,000. She noted that the Community Development Department serves approximately 130 – 150**

**Fiscal  
Year 2014  
Budget  
(continued)**

**Sussex County households in a year.**

**Mrs. Webb reviewed Capital Projects:**

- **\$5.4 Million for Airpark Projects – Runway 4-22 Extension, Stormwater Improvements, Lighting and Pavement Improvements**
- **\$2.2 Million for Libraries – Greenwood Library Expansion, Milton Library Improvements, South Coastal Library Improvements**
- **\$787,000 for County Buildings – Administration Building Improvements, Records Management Building, and IT Data Center**
- **\$625,000 for Engineering – Woodland Park and Land Acquisition**
- **\$799,000 for Other Projects – Enterprise Resource Planning (ERP) System, Parking Lot Improvements, and EMS Station**

**Mrs. Webb noted that the capital projects fund is its own separate budget as these funds are used for long term projects.**

**Kathy Roth reviewed the highlights for Enterprise (Sewer and Water) Funds:**

- **Service Charges – continue to work toward a uniform sewer rate**
- **Decrease in assessment rates due to bond refinancing and debt payoff**
- **1.5% increase in EDUs**
- **4% decrease in 2014 operating budget**
- **16% decrease in capital projects**
- **System connection charges – 2.273% increase for inflation**
- **Continue 100 foot cap (for front foot assessment)**
- **Rate Study**

**Mrs. Roth provided the following sewer expense summary:**

- **Administrative and General Expenses increased 10.0%, \$502,000 (6 sewer studies – 50% reimbursed by the State)**
- **Operations expenses increased 6.9%, \$668,000**
  - **Electrical Safety Consultant**
  - **Chemicals**
  - **3<sup>rd</sup> party wastewater treatment costs**
  - **Engineering for pumping system improvements**
- **Capital Expense decreased 18.2%, \$588,000**
  - **Pumping equipment - \$1,400,000**
  - **Transportation equipment - \$209,000**
  - **Final phase of ERP - \$236,000**
  - **Generators - \$119,000**
- **Debt service decreased 12.8%, \$2,049,000**

**Fiscal  
Year 2014  
Budget  
(continued)**

Mrs. Roth reviewed the assessment charges and annual charges for all sewer districts and noted that the charges for most of the districts have decreased (some remain the same and some were eliminated). Regarding the Dewey water fund, revenues increased 11.9 percent, or \$127,000; there was an increase in the cost to purchase water from the supplier (City of Rehoboth); the assessment charges in this district has been eliminated; and the average rate per user will be the same as last year.

Mrs. Roth reported that Enterprise Capital Projects will total \$17.9 million (estimated). The majority of these projects will be funded by State or Federal funds (grants or loans).

Mrs. Roth noted that the Budget Committee is recommending \$158 Million in 5-Year Capital Improvements Funding - \$34 Million in Non-Water & Sewer Capital Projects and \$124 Million in Water & Sewer Capital Projects.

Mrs. Roth reported that the budget and the accompanying budget presentation will be available on the County's website. Public Hearings on the budget will be held on June 18, 2013. The public can comment in person on that date, or submit comments through the County's website at [budget@sussexcountye.gov](mailto:budget@sussexcountye.gov).

Council members discussed the proposed budget, including the following topics: health care - spousal coordination and birthday rule; foreclosures; surplus; one-time bonus v. COLA; a more equitable disbursement of the one-time bonus; and excluding Councilmembers from the one-time bonus.

**Introduction  
of Proposed  
Budget  
Ordinances**

Mr. Phillips introduced the Proposed Ordinances entitled "AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2014" and "AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SEWER DISTRICTS". The Proposed Ordinances will be advertised for Public Hearing.

**Legislative  
Update**

Hal Godwin, Deputy County Administrator, presented the following legislative update:

House Bill No. 95 – "AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO CONSERVATION AND ENVIRONMENTAL LIENS".

Mr. Godwin stated that he was unable to get this Bill tabled; however, he did speak with members of the House and the Bill was removed from the Agenda and placed on the Ready List – they have not acted on the Bill. The purpose of this was to give Everett Moore time to examine the Bill. The Bill has also had an amendment offered since its introduction.



**Legislative  
Update  
(continued)**

**Mr. Moore stated that the Council expressed concern about this Bill when it came before the Council on May 7<sup>th</sup>; the concern was in regard to the power of DNREC. Mr. Moore stated that the amendment to the Bill does increase the time before a lien is placed – from 21 days to 30 days and he explained the proposed amendment. Mr. Moore stated that there was also some concern about the priority of the lien and he noted that the amendment clarifies that a lien would have priority only on liens that come after.**

**Mr. Godwin stated that he still needs the Council’s direction on this Bill.**

**House Bill No. 135 – “AN ACT TO AMEND TITLES 3 AND 29 OF THE DELAWARE CODE RELATING TO THE LICENSING OF VIDEO LOTTERY CASINOS AND HARNESS RACING DAYS”.**

**This Bill was introduced on May 9<sup>th</sup>; on May 15<sup>th</sup>, it was tabled in the House Gaming Committee.**

**House Bill No. 137 – “AN ACT TO AMEND TITLES 11 AND 29 OF THE DELAWARE CODE RELATING TO THE STATE EMPLOYEES’ PENSION PLAN, THE COUNTY AND MUNICIPAL EMPLOYEES’ PENSION PLAN, THE COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN, THE STATE JUDICIARY PENSION PLAN, THE STATE POLICE PENSION PLAN, AND PENSIONS”.**

**Mr. Godwin stated that this Bill may cause a change in how the County calculates pension.**

**Mrs. Jennings stated that, currently, if a County pensioner passes away, the surviving spouse gets 50% of the pension. The proposed Bill would change that percentage to up to 75% of the pension, consistent with what the State does.**

**It was noted that the employee would have to elect to have his or her pension computed under this legislation to help fund this benefit.**

**M 245 13  
Direct the  
Adminis-  
trator to  
Send a  
Letter to  
Legislators/  
Pension  
Benefits**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to direct the County Administrator to write a letter to the legislators advising that the County wants to offer its own benefit package.**

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

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

**(Mrs. Deaver stated that she wanted more time to look at the Bill prior to voting.)**

- Legislative Update (continued)** **Mr. Godwin reported on the Animal Welfare Task Force Report and stated that he forwarded a copy of the final report to each Council member. Mr. Godwin stated that he made sure the following statement was included in the report: “due to the cost of contracts, Sussex County supports returning dog control to the State”.**
- Airport Concrete Apron Project** **Bob Jones, Project Engineer, presented bid results for the Sussex County Airport Concrete Apron Repairs. The low bidder was Mitten Construction Company of Dover, Delaware, in the amount of \$69,750.00. The Engineer’s Estimate for the project was \$159,680.00.**
- M 246 13 Award Bid/ Airport Concrete Apron Project** **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project 12-28, Concrete Apron Repairs, Phase 1, be awarded to Mitten Construction Company of Dover, Delaware, at the bid amount of \$69,750.00.**
- 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 grant requests for the Council’s consideration.**
- M 247 13 Councilmanic Grant** **A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to give \$500.00 (\$125.00 each from Mr. Phillips’, Mr. Vincent’s, Mr. Cole’s, and Mr. Wilson’s Councilmanic Grant Accounts) to the Delaware Police Chiefs’ Council for seminar costs.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**
- M 248 13 Councilmanic Grant** **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 from Mr. Cole’s Councilmanic Grant Account to the Mid-Atlantic Symphony Orchestra for operating costs.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**
- M 249 13 Grant** **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Cole’s Councilmanic Grant Account to the Ocean View Historical Society for the Coastal Towns Museum Project.**

**M 249 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**

**M 250 13  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Cole’s Councilmanic Grant Account to the Rehoboth Art League to sponsor the annual gala which benefits their education, outreach and tuition assistance programs.**

**Motion Adopted: 5 Yeas.**

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

**Introduction  
of Proposed  
Ordinances**

**Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR USED CAR SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 37,500 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1964) filed on behalf of Salman P. Choudhary, t/a Master Tires. The Proposed Ordinance will be advertised for Public Hearing.**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 24 IMPOSED ON ORDINANCE NO. 2110 FOR CHANGE OF ZONE NO. 1694, THE APPLICATION OF CMF BAYSIDE, LLC, FOR “AMERICANA BAYSIDE” A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO ALLOW REVISED COMMERCIAL ENTRANCE LOCATION (LEFT-TURN) AS MAY BE APPROVED BY DELDOT” (Change of Zone No. 1731) filed on behalf of CMF Bayside, LLC. The Proposed Ordinance will be advertised for Public Hearing.**

**Additional  
Business**

**Under Additional Business, Barbara Vaughn of Lewes introduced a new Lewes City Council member, Dennis Reardon.**

**Under Additional Business, Frieda and Arthur Neal of Lewes talked about problems they have had with their new home that was built by Schell Brothers. They stated that they have received reports from professional experts and they distributed copies of the reports to the Council. Mr. and Mrs. Neal stated that there are approximately 50 major code and other violations – from an energy audit to termite treatment; that they have spent nearly \$13,000 of their own money on experts; and that they are physically sick due to construction problems, i.e. asthma attacks, trouble breathing, and headaches.**

**Additional Business (continued)**      **Don Ayotte of Georgetown stated that in light of continued and recent allegations regarding Mr. Phillips, he asked that Mr. Phillips resign from his position on the Sussex County Council and he stated that the entire Sussex County Council should demand his resignation.**

**Dan Kramer of Bridgeville referenced a vote taken on the barking dog issue at the beginning of the meeting and he stated if the Council does not stop taking action on items not listed on the Agenda, that he would be filing a FOIA complaint.**

**M 251 13 Recess**      **At 11:36 a.m., a Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to recess and go into Executive Session.**

**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 11:37 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers to discuss issues relating to pending/potential litigation and land acquisition. The Executive Session concluded at 11:52 a.m.**

**M 252 13 Reconvene**      **At 11:54 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to come out of Executive Session and to reconvene the Regular Session.**

**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**

**Action**      **No action was required on Executive Session items.**

**M 253 13 Recess**      **At 11:55 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to recess until 1:30 p.m.**

**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**

**M 254 13 Reconvene**      **At 1:37 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to reconvene.**

**M 254 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**

**Public  
Hearing  
(C/U  
No. 1960)**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MODIFY THE BOUNDARIES OF EXISTING CONDITIONAL USE NO. 1699 (ORDINANCE NO. 1936) FOR A GO-KART TRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.24 ACRES, MORE OR LESS” (Conditional Use No. 1960) filed on behalf of Harry H. Isaacs, Jr./Farm Boys, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2013 at which time the Commission recommended approval for the following reasons:**

- 1) This is simply a correction of the boundaries, and does not modify the use that was previously approved by Sussex County.**
- 2) The use remains in the same location as it always was; this just relocates the boundaries to correctly reflect where the use actually is.**
- 3) This modification will not adversely affect neighboring properties, roadways or the community.**
- 4) The conditions imposed by Conditional Use No. 1699 and Ordinance No. 1936 shall remain in effect.**

**(See the minutes of the Planning and Zoning Commission dated April 25, 2013.)**

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

**The Council found that Harry H. Isaacs, Jr. was present and he stated that they received approval in 2007; that they recently discovered that the track was not contained within the original conditional use boundaries; that nothing has changed on the site; that their only intent is to correctly locate the go-kart track within the corrected boundaries; that they are asking permission to move the boundary approximately 50 feet so that the traffic will all be in the conditional use area; that there should be no adverse impact on neighboring properties; that family members maintain the acreage all around and near the site; and that the insurance company does not want to insure the go-kart traffic that is currently on the farm.**

**Mr. Lank clarified that the intent of the application is to create a boundary around the track site that is used for parking and traffic and to keep it away from the buildings that farm related.**

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

**M 255 13  
Adopt  
Ordinance  
No. 2305  
(C/U  
No. 1960)**

**A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2305 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MODIFY THE BOUNDARIES OF EXISTING CONDITIONAL USE NO. 1699 (ORDINANCE NO. 1936) FOR A GO-KART TRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.24 ACRES, MORE OR LESS” (Conditional Use No. 1960) filed on behalf of Harry H. Isaacs, Jr./Farm Boys, LLC, with the following condition:**

- 1) The conditions imposed by Conditional Use No. 1699 and Ordinance No. 1936 shall remain in effect.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/U  
No. 1961**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.997 ACRE, MORE OR LESS” (Conditional Use No. 1961) filed on behalf of Rendell Whibley and Ann Marie Whibley.**

**The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2013 at which time the Commission recommended that the application be approved with the following conditions:**

- 1) The use shall be limited to a landscaping business without any retail sales occurring on the site.**
- 2) No exterior storage shall be permitted on the site. All storage shall be inside of the pole building proposed by the Applicant or a similar structure.**
- 3) There shall not be any disturbance of the wetlands located on the site.**
- 4) Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- 5) One sign, lighted or unlighted, shall be permitted. It shall be no larger than 32 square feet per side.**
- 6) The hours of operation, as proposed by the Applicant, shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday, and 7:00 a.m. to**

**Public  
Hearing/  
C/U  
No. 1961  
(continued)**

**Noon on Saturdays.**

- 7) All equipment repairs shall occur indoors.**
- 8) The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**(See the minutes of the Planning and Zoning Commission dated April 25, 2013.)**

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

**Exhibit Booklets, which were provided by the Applicant, were distributed.**

**The Council found that Kendell Whibley was present with Steve McCabe, Professional Engineer with Pennoni Associates, Inc. Mr. McCabe stated that they are in agreement with the conditions proposed by the Planning and Zoning Commission; that the application is consistent with the Land Use Plan and is in accordance with the uses in the area; that the information included in the report of the Planning and Zoning Commission is correct and the information provided in the Exhibit Booklet is self-explanatory; that the proposed use is for a pole barn for the Applicant's landscaping business and a parking lot for employees; that shown on the site plan is a future building with a septic system; that they have an approved site evaluation for an on-site septic system; however, current plans consist only of a pole building and a porta-toilet on the site.**

**Mr. Lank reported that comments received from the Engineering Department state that the area will be served with sewer service in the future and that when the County does provide the service, connection will be mandatory.**

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

**M 256 13  
Adopt  
Ordinance  
No. 2306  
(C/U  
No. 1961)**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2306 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.997 ACRE, MORE OR LESS" (Conditional Use No. 1961) filed on behalf of Rendell Whibley and Ann Marie Whibley, with the following conditions:**

- 1) The use shall be limited to a landscaping business without any retail sales occurring on the site.**
- 2) No exterior storage shall be permitted on the site. All storage shall be inside of the pole building proposed by the Applicant or a similar structure.**
- 3) There shall not be any disturbance of the wetlands located on the site.**

**M 256 13  
Adopt  
Ordinance  
No. 2306  
(C/U  
No. 1961)  
(continued)**

- 4) Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- 5) One sign, lighted or unlighted, shall be permitted. It shall be no larger than 32 square feet per side.
- 6) The hours of operation, as proposed by the Applicant, shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday, and 7:00 a.m. to Noon on Saturdays.
- 7) All equipment repairs shall occur indoors.
- 8) The Final Site Plan shall be subject to the review and approval of the Sussex County 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**

**Public  
Hearing/  
C/U  
No. 1962**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPOSTING FACILITY AS AN EXTENSION TO CONDITIONAL USE NO. 1314 AND CONDITIONAL USE NO. 1691 (A MICRO-NUTRIENT PLANT WITH RELATED TRUCK ENTRANCE AND RAIL SPUR FOR THE PROCESSING AND HANDLING OF POULTRY LITTER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS” (Conditional Use No. 1962) filed on behalf of Chesapeake AgriSoil, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2013 at which time the Commission deferred action for further consideration.**

**(See the minutes of the Planning and Zoning Commission dated April 25, 2013.)**

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

**Exhibit Books, which were provided by the Applicant, were distributed to the Council.**

**The Council found that Shannon Carmean-Burton, Attorney, was present on behalf of the application along with Ken Christenbury, Professional Engineer with Axiom Engineering, LLC; Whitney Hall, Professional Engineer; Wayne Hudson of Perdue Agri-Recycle, LLC, and Charlie Gifford of Chesapeake AgriSoil, LLC. They stated in their presentations that the proposed use will occupy approximately 20 acres of the 228.88 acre site; that the 20 acre portion is contained within Tax Map I.D. 1-32-11.00**



Public  
Hearing/  
C/U  
No. 1962  
(continued)

Parcel 41,00; that the site is immediately adjacent to the plant; that the existing wooded buffers will remain; that the site is being cleared to eliminate young seedlings and tree growth; that no clearing will occur beyond the railroad spur; that the original conditions for the micro-nutrient plant, as amended in 2006, will remain with the exception of the use of this facility; that DelDOT voiced no objections; that DNREC approvals are required and will be obtained; that they will be handling 110,000 tons of material; that this use is an alternative to land application; that the EPA supports the use of animal waste composting; that lab testing of stock prior to process and the final product will be performed; that the use is a natural process; that the only additive is air; that the process starts in an enclosed building where the mixing process starts; that the material is then hauled outdoors onto the site and then covered with Gore material; that the material remains covered for approximately four (4) weeks (1<sup>st</sup> Phase); then the covers are removed for two (2) weeks (2<sup>nd</sup> Phase) which establishes the compost product; then air is blown into the system for six (6) to eight (8) weeks improving the soil compost to a high quality (3<sup>rd</sup> Phase); that the 1<sup>st</sup> Phase will have 15 cover systems, the 2<sup>nd</sup> Phase will have 8 cover systems, and the 3<sup>rd</sup> Phase will have 19 cover systems; that the final product is then removed, placed in trucks, and hauled away; that the Gore System covers odors and does not allow rain water to get into the system; that the water runoff on-site is recycled; that aeration trenches are proposed under each cover system; that the technology is well proven; that there are many projects throughout the United States and Worldwide that use this technology; that the final product is very light in weight and will improve soil quality; that Perdue Agri-Recycle, LLC supports the proposed facility since processed water from the Plant would be utilized in this process rather than having to haul the processed water off-site for land application; that according to DelDOT there will not be any traffic impact; that there is a substantial distance from the site of the proposed facility to the nearest dwelling on other property; that they have met with the Sussex Conservation District and have been advised that permits and approvals will be required; that Best Management Practices will be utilized; that the proposed project is very environmentally responsible; that water will be recycled on-site; that the micro-nutrient plant does not process dead birds; that the finished product will be hauled away by truck to farm fields, landscapers, and possibly some large providers of bagged mulch/compost products; that the operation will be carried on during one daytime shift from 7:00 a.m. to 5:00 p.m. weekdays only; that water can be provided to control any dust; that the intended 20 acre area for the facility includes the stormwater management pond; that they may utilize dead birds in a catastrophic emergency situation; that they anticipate 12 full-time employees, and assume approximately eight (8) secondary related service jobs; that they will most likely be using independent haulers; that the purpose of the AR-1 includes references to provide for a full range of agricultural activities and to protect agricultural lands and protect established agricultural operations and activities; that the permitted conditional uses in the AR-1 District include agricultural related activities; that the use is of a public or semi-public character in that it provides an

**Public  
Hearing/  
C/U  
No. 1962  
(continued)**

**innovative but environmentally sound method of disposing of poultry waste in a commercially reasonable manner and will decrease the amount of pollution and odor from poultry waste previously applied directly to the soils as a fertilizer; that the proposed use will provide community wide benefits and the ability to recycle a by-product of the poultry industry utilizing the latest Gore technology; that due to the need for enhancing the ability of the poultry industry to protect the local environment, the proposed conditional use is an appropriate zoning method for permitting the use; thus, the proposed conditional use complies with the Zoning Code; that the Applicant submits that this project is consistent with the provisions of the Comprehensive Plan which identifies the property in a Low Density Area; that the Plan provides that all land designated in the Low Density Area are currently zoned AR-1; that the Plan provides that the primary uses envisioned in Low Density Areas are agricultural activities and single family detached homes; that industrial uses that support or depend on agriculture should be permitted; that the Gore system proposed to be utilized uses positive aeration and a specially designed cover to create an enclosed system that optimizes the recycling process, controls odors and micro-organisms, separates leachate from storm water and creates a consistent product unaffected by outside environmental conditions; that the use is designed to benefit the family farm and agricultural industry, especially poultry growers, in the County; that the application meets the purpose and goal of the Plan and is for the purpose of promoting the health, safety, moral, convenience, order and prosperity and welfare of the present and future inhabitants of the County; and that Tab 15 of the Exhibit Booklet contains suggested reasons and suggested conditions of approval for consideration.**

**Public comments were heard.**

**Doug Parham was in attendance representing the Inland Bays Foundation and he stated that the Foundation strongly supports the approval of the application for the implementation of their state-of-the-art composting facility. He stated that recent correspondence from Ed Kee, Delaware Secretary of Agriculture, mirrors their thoughts. He stated that Delaware, like all of Delmarva has significant excess amounts of chicken litter that needs to be disposed of; that the State passed a law a few years ago prohibiting anyone from placing yard waste in public landfills; that the composting initiative is an excellent potential solution for the disposal of yard waste and reduction of litter applied to our fields – 40,000 tons annually; that the proposal will create new revenue for farmers, new green jobs, and will reduce nutrient pollution entering the Bays; and that it is low risk and at no cost to the taxpayer.**

**William Mitten and Larry Rice (property owners close to the site of the application) both stated that they were previously in opposition to the application; however, after speaking with representatives of the application about the process and with the additional information provided, they are now in support of the application as their concerns have been addressed.**

**Public  
Hearing  
(continued)**

**There were no comments in opposition to the application.**

**The Public Hearing and Public Record were closed.**

**M 257 13  
Defer  
Action on  
C/U  
No. 1962**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Conditional Use No. 1962 filed on behalf of Chesapeake AgriSoil, LLC.**

**Motion Adopted: 5 Yeas.**

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

**M 258 13  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 3:21 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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