



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 10, 2009

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 10, 2009, at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
George B. Cole	Vice President
Joan R. Deaver	Councilwoman
Michael H. Vincent	Councilman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
James D. Griffin	County Attorney

Mr. Phillips called the meeting to order.

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

M 083 09 Amend and Approve Agenda

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to amend the Agenda by deleting "Property Acquisition" under Executive Session and by changing the order of the Public Hearings at 7:30 p.m. so that Change of Zone No. 1627 – P.G.S. Properties, LLC would be heard last; 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. Vincent, Yea;
Mr. Wilson, Yea

Request for Additional Information on Agendas

Mrs. Deaver requested that, in the future, additional information be included on the Council's Agenda, which is posted on the County's website. Mrs. Deaver referenced the Agenda item entitled "Public Hearings" and stated that the Agenda only provides an application number and the name of the applicant.

Mr. Phillips asked the County Administrator to consider this matter and report back to the Council at a later date.

Minutes	The minutes of February 3, 2009 were approved by consent.
Corre- spondence	Mr. Griffin read the following correspondence:
Corre- spondence (continued)	HUDSON HEALTH SERVICES, INC., SALISBURY, MARYLAND. RE: Letter in appreciation of the Council's recent grant. THE ARC OF DELAWARE, GEORGETOWN, DELAWARE. RE: Letter in appreciation of the Council's recent grant.
Voluntary Group Hospital Program Opt-Out Option	Mr. Baker reported on the Voluntary Group Hospital Program Opt-Out Option. The Option would be an Amendment to the County's Health Care Plan and would allow employees to opt out of group hospital insurance from the County on a voluntary basis. Mr. Baker stated that because the County does not require a contribution by employees for individual health coverage, the law requires that the County insure all full-time employees. Mr. Baker stated that, if the County requires a contribution of \$1.00 per year for single employee health coverage, then all full time employees are not required to be covered and they can elect not to carry group hospital insurance for themselves or their families. Mr. Baker advised that there are some employees who have group hospital coverage as part of their pensions from other employers. Mr. Baker stated that there are approximately eight employees who may elect not to have County group hospital coverage. If the eight employees opt out, there would be an approximate savings of \$5,958 in fixed costs annually plus \$115,359.00 in deposits to the self funded plan. Mr. Baker noted that the proposal will require a \$1.00 annual contribution by all County employees.
M 084 09 Approve Group Hospital Plan Amendment	A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council approves a Group Hospital Plan Amendment whereby (1) employees would contribute \$1.00 per year for group hospital coverage and (2) employees would be allowed to opt out of County group hospital coverage. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea
Public Notice Signs/ Zoning	Lawrence Lank, Director of Planning and Zoning, presented a proposal, at the request of the Council, to provide larger signs for posting on sites scheduled for public hearings. He explained that signs are posted for the purpose of advertisement for public hearings before the Commission and

Applications **the Council.**

Mr. Lank reported that staff currently places poster board signs, measuring 12 inches by 18 inches, on wooden stakes, on the sites scheduled for public hearings. This has been the County's practice for approximately twenty years.

**Public
Notice
Signs/
Zoning
Applications
(continued)**

Prior to the use of poster board signs, the County used signs similar to real estate signs, in metal frames and used the same basic size sticker for the specific information relating to the public hearing. These signs were vandalized, stolen, trashed, painted for other purposes, used for yard sales, etc. Over the ten years that these signs were used, the County lost the majority of the signs for the reasons stated.

Mr. Lank proposed that the size of the signs be increased to 16 inches by 20 inches or 18 inches by 24 inches, using corrugated fiberglass/plastic signs with wire stands similar to political signs and "bandit" signs.

Mr. Lank stated that he reviewed the cost of the public notice sign boards, backing boards, stakes and stickers used last year. He reported that, last year, the County paid out \$420.00 for wooden stakes, \$187.50 for stickers, and \$994.25 for sign boards and backing boards for a total cost of \$1,601.75.

Mr. Lank reported that an estimate has been received for 200 of the new signs and wire stands. The signs were estimated at \$4.75 each and the wire stands were estimated at \$2.75 each for a total of \$1,500.00. Using the price estimate received, the cost for posting would increase to \$3,202.50 from \$1,601.75.

Comments made by several Council members included: (1) a recommendation for large areas/big projects, that larger signs be used and signs be placed on all roads if the site fronts on more than one road, (2) that the applicant should directly pay for the cost of the sign(s), (3) that the color of the signs should be something other than white and black, and (4) the County should have a policy to determine the number of signs required per project.

It was noted that, in addition to the public notice signs, all property owners within 200 feet of a proposed project site receive notices of the proposed project and public hearing dates. In addition, notice of public hearing notices are advertised in newspapers.

Mr. Lank was directed to come back to Council with a recommendation.

**Bill
Approval
List on
Website**

Mr. Baker reported that, in response to concerns brought forward by members of the County Council and in an effort to provide additional information to the public, the County will be placing its Bill Approval List on the County's website. The list will include date paid, payee, amount paid, and miscellaneous reference information. Reimbursements to

employees will not be included, in accordance with Federal HIPA Regulations. The listing will be available on the County's website, under Online Services/Finance Administration/Accounting.

List
(continued)

Mr. Cole suggested that Administration should discontinue mailing the Bill Approval List to the Councilmen since it will be available on the website. Mr. Baker suggested that the Bill Approval List can be emailed to the Council members weekly.

Subdivision
Appeal
Process/
Draft
Ordinance

Mr. Baker referenced Ordinance No. 1829 entitled "AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS" which outlines the County's appeal process. For subdivision appeals, the County requires the appellant to supply a verbatim transcript of the Public Hearing record before the Commission. A suggestion has been made to expand the requirement to include transcripts of not only the public hearing, but additional discussion of the Planning and Zoning Commission and the decision of the Commission (which may take place at later meetings).

Mr. Griffin reviewed the draft ordinance, which includes the following amendments:

- The term "hearing record" shall include the entire transcript of the actual hearing before the Commission, including any post-hearing discussions and the action taken by the Commission to approve or deny the preliminary plat.
- The Council may grant conditional or concept approval of a preliminary plat and send it back to the Commission for the purpose of allowing the Commission to require the applicant to provide such additional technical or other information as the Commission may need to grant preliminary approval to hold a hearing on an expedited basis after such information is submitted, and/or to allow the Commission to impose conditions that may be necessary in order to bring the plat and the information appearing thereon into compliance with the terms and conditions of the subdivision ordinance.
- Council may reverse a decision only upon a finding that the Commission made an error in its interpretation of the applicable sections of this Chapter; or the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and/or the applicable provisions of this Chapter and/or the hearing record before the Commission was insufficient to support the decision made by the Commission.
- In order for an applicant to appeal a condition imposed by the Commission, the applicant must first request in writing that the Commission reconsider a condition imposed by the Commission but

there shall be no appeal from the decision of the Commission on such request unless the Commission denies the applicant's request for reconsideration or unless the Commission grants reconsideration of a condition or the terms and conditions related to it, but the applicant is still aggrieved by the decision of the Commission.

Subdivision Appeal Process/ Draft Ordinance (continued)	It was the consensus of the Council that the draft ordinance be amended to allow 60 days for the filing of a transcript. It was noted that this can be reduced during the Public Hearing process.
	Council members were asked to provide any input to Mr. Griffin. The Draft Ordinance will be placed on a future Agenda for consideration and possible introduction.

Adminis- trator's Report	Mr. Baker read the following information in his Administrator's Report:
	1. <u>Governor Markell "Reality Check" Budget Presentations</u>

On February 16, 2009, at 6:30 p.m. and March 4, 2009, at 6:30 p.m., Governor Jack Markell will host a budget presentation in the County Council Chambers in the Sussex County Administration Building at 2 The Circle in Georgetown. Attached is a copy of the press release.

2. Sussex County Council Pension Committee

On February 12, 2009, at 9:00 a.m., the Sussex County Council Pension Committee will meet to discuss investments. Attached is a copy of the agenda. The meeting will occur in the Sussex County Council Chambers.

3. Delaware Department of Transportation – Capital Transportation Program Public Workshop

On February 18, 2009, from 4:00 to 7:00 p.m., the Delaware Department of Transportation will be holding a workshop at the DelDOT South District Administration Building, 23697 DuPont Boulevard, Georgetown. This workshop will provide a chance for the public to review project plans and provide input. Attached is a Public Notice regarding the workshop.

4. Sheriff's Office Telephone Scam

As per the attached press release, the Sussex County Sheriff's Office has been misrepresented by fraudulent callers. An unidentified caller has called local residents requesting payment in advance for documents to be served. The Sussex County Sheriff's Office does not require payment in advance for serving court papers or other legal documents. If anyone is aware of additional calls in this fashion,

please contact the Sheriff's Office at 855-7830 or Delaware State Police Troop 4 at 854-2879.

5. Pre-Disaster Mitigation (PDM) Grant

Adminis-
trator's
Report
(continued)

As per the attached letter from Mr. James E. Turner III, Director of the Delaware Emergency Management Agency, the Sussex County Council has been awarded a federal grant for 75 percent of the cost of preparing an update to the Sussex County Mitigation Plan. The County share of the cost is estimated to be \$7,700. The local share will be encumbered during this fiscal year from the Emergency Preparedness Administration Department. As noted in Mr. Turner's letter, by participating in updating this plan, the County "will continue to be eligible for both PDM and Hazard Mitigation Grant Program (HMGP) funding." These funds have been used in the past after flooding in the Long Neck and Oak Orchard and Seaford areas.

6. Legislative Update – Realty Transfer Tax

Attached is a draft of a bill, which has not been introduced at this point, which would decrease the share of realty transfer tax for counties and municipal governments from 1½ percent to one percent. The additional revenue to the State of Delaware would be used for funding school construction. The impact on the Sussex County Council would be a \$5 Million decrease in revenue this fiscal year. This is equivalent to a nine percent reduction in our current Fiscal 2009 General Fund Budget for revenues. This particular bill affects the counties, as well as municipal governments in the State. As in the past, staff will continue to object to reductions in the County's share of realty transfer tax revenue.

7. Sussex County Government Holiday – February 16, 2009

In honor of Presidents' Day, County offices will be closed on February 16, 2009. Offices will reopen on February 17, 2009, at 8:30 a.m.

(Attachments to the Administrator's Report are not made a part of these minutes.)

Discussion/
Realty
Transfer
Tax
Funding

Mr. Baker stated that, as part of the County's budget presentation, a list was prepared outlining items that are funded by Realty Transfer Tax which could be considered for funding cuts if there is a major change in the Realty Transfer Tax allocation by the State. Examples are: Airport Industrial Park Projects, Library Expansions, County Sewer Grants, Communications Building and Property Acquisition, State Police Grants, Local Law Enforcement Grants, Paramedic HAZMAT Program, Fire Service

Funding, Economic Development Director, Records Storage Renovations, Municipal Grants, Sussex Conservation District Grant, Open Space Purchases, Housing Assistance Programs, and University of Delaware Agricultural Extension Service Grants.

**Discussion/
Realty
Transfer
Tax
Funding
(continued)** **Mrs. Deaver stated that the County must remain vigilant in collecting taxes; that the County should look at expanding the airport for additional revenue; that the County should review existing airport leases; and that the County should look at the idea of a stormwater utility.**

Mr. Phillips stated that, in several weeks, the Finance Department will be presenting the 2009 Audit Report.

In response to questions raised by Mr. Cole, Mr. Baker stated that there is an opt-out provision in the State Police Agreements for both the State and the County.

**Grant
Policy** **Mrs. Webb reviewed the County's current grant policy.**

Mr. Phillips stated that, at the February 3rd Council meeting, questions were raised regarding grants to scout organizations and to churches. Mr. Griffin reported that scout organizations are valid 501C organizations and he stated that grants to churches are an issue of constitutional law. He noted that a grant to a church, even if it is for a community-wide or County-wide purpose, could be challenged in Court.

Requests **Mrs. Webb presented grant request for the Council's consideration.**

**M 085 09
Community
Grant** **A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$500.00 from Mr. Vincent's Community Grant Account to the City of Seaford for the Nanticoke Riverfest.**

Motion Adopted: 5 Yeas.

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

**M 086 09
Community
Grant** **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$5,000.00 from Mr. Cole's Community Grant Account to West Rehoboth Community Land Trust, Inc. for operating costs.**

Motion Adopted: 5 Yeas.

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

M 087 09
County
Council
Grant

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$950.00 from County Council Grants to the Indian River School District for the Minority Leadership Alliance.

Motion Adopted: 5 Yeas.

M 087 09
(continued)

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

Introduction
of Proposed
Ordinance

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 44.856 ACRES, MORE OR LESS” (Change of Zone No. 1684) filed on behalf of Diamond State Community Land Trust. The Proposed Ordinance will be advertised for Public Hearing.

Additional
Business

Under Additional Business, Sandy Spence of Lewes stated that she supports Mrs. Deaver’s suggestion to provide additional information on the Agenda, which she believes will provide the public with the information needed to be responsive and to participate actively. Ms. Spence specifically referred to how Conditional Uses (C/Us) and Change of Zones (C/Zs) are listed for Public Hearings. Ms. Spence also commented on the description in C/Us and C/Zs and she questioned the reference to “Hundred”, i.e. Little Creek, Lewes Rehoboth, etc. She advised that, according to the State Department of History, the term “Hundred” denotes a political subdivision and she stated that she believes it to be an archaic method of dividing an area into administrative units. Ms. Spence asked the Council to consider changing the way agenda items are described.

Under Additional Business, Betty Deacon of Lewes stated that public hearing signs should be a minimum of 3 feet by 5 feet to a maximum of 4 feet by 8 feet; that the signs should be double staked so that they will stay in the ground; that there should be information on the sign regarding what is being proposed on the land or contact information for the County; and that the signs should be distinguishable. Ms. Deacon stated that the County should not be assuming the charges and that the Applicant should pay the cost. She noted that in other counties the Applicant is responsible for having the sign made and for posting the sign.

George Parish, Clerk of the Peace, stated that on the radio on this date, John Brady, Recorder of Deeds, indicated that legislators and other people are discussing the consolidation of the Row Offices and that Mr. Brady further stated that George Parish opposes this. Mr. Parish stated that he has submitted suggestions to the County Administrator as to how the Row Offices can be functional, operational and at a reduced cost to the

taxpayers. He stated that taxes do not need to be raised. Mr. Parish noted that, also on this date, Mr. Brady changed his political registration. Mr. Parish stated he has agreed to explore the information regarding the row offices; that he is working with his counterparts throughout the State; and that they plan to make a presentation to the appropriate legislators after a presentation to Sussex County. He stated that there is no basis whatsoever that legislation is being proposed at this time.

(continued)

M 088 09
Recess
Regular
Session/
Go Into
Executive
Session

At 7:36 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing matters relating to personnel and potential/pending litigation.

Motion Adopted: 5 Yeas.

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

Executive
Session

At 7:37 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing personnel and potential/pending litigation. The Executive Session concluded at 8:08 p.m.

M 089 09
Reconvene
Regular
Session

At 8:09 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

Subdivision
Appeal

The Council considered the Appeal filed on behalf of The Manors at Abbotts Pond (Subdivision No. 2007-4).

M 090 09
Send
Application
Back to
P & Z
Com-
mission/
The
Manors at
Abbotts
Pond

A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council directs that this matter (Subdivision No. 2007-4 - The Manors at Abbotts Pond) to be sent back to the Planning and Zoning Commission with the direction that the Commission notify the Applicant of any additional information or documents it is required to submit in order to allow the Commission to reconsider the Preliminary Plat and that following the submission of such additional information or documents, the Commission be required to hold a Public Hearing on an expedited basis and further, that the Council's decision on the Appeal is based on its finding that the decision of the Commission did not involve the proper interpretation and/or application of the Subdivision Ordinance.

Motion Adopted: 4 Yeas, 1 Nay.

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

Contract The Council considered the matter of the County Administrator's Employment Contract which expires on February 11, 2009.

M 091 09 A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council renews the County Administrator's Contract and extends it to June 30, 2010.

Renew Motion Adopted: 5 Yeas.

County

Admin-

istrator's

Contract

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

Public At 8:15 p.m., a Public Hearing was held on the Proposed Ordinance entitled

Hearing "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN

(C/U AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MULTI-

No. 1765) FAMILY DWELLING STRUCTURE (3 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 38,054 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1765) filed on behalf of Rick and Judi Folmsbee.

The Planning and Zoning Commission held a Public Hearing on this application on January 22, 2009 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 22, 2009.)

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

Mr. Lank summarized comments received from the County Engineering Department: that the site is located in the North Coastal Planning Area; that an individual on-site septic system is proposed; that conformity to the North Coastal Planning Area or undertaking an amendment will be required; that the proposed project is not in an area where Sussex County currently plans to provide sewer service; and that a concept plan is not required.

Rick Folmsbee was present on behalf of his application. He stated that the dwelling has existed since 1984 and it now contains three living units; that the apartments were built 17 years ago and have been occupied primarily by family members; that a friend told them that they needed a Conditional Use for a multi-family dwelling use; that the dwelling contains approximately 3,300 square feet of living space; that there are three kitchens; that there is only one electrical service; that they received a

modified septic system approval from DNREC for five bedrooms; that they do not propose more than five bedrooms; that the detached garage building is not a residential unit; that they have no objection to a limitation that the units remain for family use only; and that they are currently living in the dwelling.

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

**M 092 09 A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action
Defer on Conditional Use No. 1765 filed on behalf of Rick and Judi Folmsbee.**

**Action on
C/U
No. 1765**

Motion Adopted: 5 Years.

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

**Public
Hearing
(C/U
No. 1767)**

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 BOAT REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.2003 ACRES, MORE OR LESS” (Conditional Use No. 1767) filed on behalf of Advanced Fiberglass Tech.

The Planning and Zoning Commission held a Public Hearing on this application on January 22, 2009 at which time they recommended that the application be approved with the following conditions:

- a. The site plan is subject to all appropriate agency approvals.**
- b. The hours of operation will be from 9:00 a.m. to 6:00 p.m. Monday through Saturday.**
- c. There shall be no more than 15 boats on the site at any given time. A chain-link or solid fencing, not to exceed 7 feet in height, will be installed for the storage of all boats being repaired.**
- d. Aside from boats owned by the Applicant, there shall not be any boats stored on the property other than those boats that are being worked on as part of the Applicant’s business.**
- e. No more than 2 boats at a time are to be offered for sale.**
- f. Security lighting on the site shall use lights that are directed away from any neighboring properties.**
- g. A non-lighted sign, no greater than 32 square feet on each side may be permitted.**
- h. There shall be no more than two employees.**
- i. The Final Site Plan shall be subject to approval by the Planning and Zoning Commission. The Final Site Plan shall designate the fenced area designated for outside boat storage. Landscaping shall be shown on the Final Site Plan.**

(See the minutes of the meeting of the Planning and Zoning Commission dated January 22, 2009.)

Public Hearing

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

**Public
Hearing
(C/U
No. 1767)
(continued)**

Mr. Lank summarized comments received from the County Engineering Department: that the site is located in the North Coastal Planning Area; that an individual onsite septic system is proposed; that the project is not capable of being annexed into a County-operated Sewer District; that conforming to the North Coastal Planning Study or undertaking an amendment will be required; that the proposed project is not in an area where Sussex County currently plans to provide sewer service; and that a concept plan is not required.

John Reardon was present on behalf of his application. He stated that he purchased the site in 2004 and started the business in 2005; that he and his wife live in the adjacent dwelling located to the west of the site; that he has no employees; that he received a notice that he needed a Conditional Use to operate the business and immediately applied; that the majority of his work is performed indoors or, when necessary, off-site; that his neighbors have no objection to the use; that he would not object to a limitation of no more than 10 or 12 boats being stored; that he has no objection to the conditions recommended by the Commission; that he runs a very small operation; that boats are stored for repair work only, not for sale; and that he has no intent to sell boats retail.

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

M 093 09
Amend
Condition
(C/U
No. 1767)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition No. “c” recommended by the Planning and Zoning Commission to read as follows: “There shall be no more than 10 boats on the site at any given time. A chain-link or solid fencing, not to exceed 7 feet in height, will be installed for the storage of all boats being repaired.”

**MOTION
FAILED**

Motion Failed: 3 Days, 2 Years.

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

M 094 09
Amend
Condition
(C/U
No. 1767)

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to amend Condition No. “c” recommended by the Planning and Zoning Commission to read as follows: “There shall be no more than 12 boats on the site at any given time. A chain-link or solid fencing, not to exceed 7 feet in height, will be installed for the storage of all boats being repaired.”

Motion Adopted: 5 Yeas.

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

M 095 09 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to strike
Strike Condition “e” recommended by the Planning and Zoning Commission that
Condition states that “No more than 2 boats at a time are to be offered for sale.”
(C/U
No. 1767) **Motion Adopted:** 3 Yeas, 2 Nays.

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

M 096 09 A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to add an
Add additional Condition to those recommended by the Planning and Zoning
Additional Commission, as follows: “There shall be no sale of boats other than a sale
Condition for the purpose of satisfying an unpaid debt for work performed on the boat
(C/U by the Applicant.”
No. 1767) **Motion Adopted:** 3 Yeas, 2 Nays.

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

M 097 09 A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt
Adopt Ordinance No. 2030 entitled “AN ORDINANCE TO GRANT A
Ordinance CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
No. 2030 RESIDENTIAL DISTRICT FOR A BOAT REPAIR SHOP TO BE
(C/U LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
No. 1767) INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.2003
ACRES, MORE OR LESS” (Conditional Use No. 1767) filed on behalf of
Advance Fiberglass Tech., with the following conditions, as amended:

- a. The site plan is subject to all appropriate agency approvals.
- b. The hours of operation will be from 9:00 a.m. to 6:00 p.m. Monday through Saturday.
- c. There shall be no more than 12 boats on the site at any given time. A chain-link or solid fencing, not to exceed 7 feet in height, will be installed for the storage of all boats being repaired.
- d. Aside from boats owned by the Applicant, there shall not be any boats stored on the property other than those boats that are being worked on as part of the Applicant’s business.
- e. There shall be no sale of boats other than a sale for the purpose of satisfying an unpaid debt for work performed on the boat by the Applicant.

**M 097 09
Adopt
Ordinance
No. 2030
(C/U
No. 1767)
(continued)**

- f. Security lighting on the site shall use lights that are directed away from any neighboring properties.**
- g. A non-lighted sign, no greater than 32 square feet on each side may be permitted.**
- h. There shall be no more than two employees.**
- i. The Final Site Plan shall be subject to approval by the Planning and Zoning Commission. The Final Site Plan shall designate the fenced area designated for outside boat storage. Landscaping shall be shown on the Final Site Plan.**

Motion Adopted: 3 Yeas, 2 Nays.

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

**Public
Hearing/
C/Z
No. 1628**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5,000 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1628) filed on behalf of Richard J. Poppleton.

The Planning and Zoning Commission held a Public Hearing on this application on January 22, 2009 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 22, 2009.)

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

Mr. Lank distributed a packet of information provided by the Applicant which included photographs, a letter explaining the application, and five letters of no objection from nearby property owners.

Mr. Lank summarized comments received from the County Engineering Department: that the system design assumption for this site, since it is in a County Sewer District, is 1 EDU per parcel; that the site is located within the West Rehoboth Expansion Area; that wastewater capacity may not be available; that the sewer planning study for the parcel is 1 EDU reflecting residential parcels in a residential subdivision; that the Department opposes this rezoning because of the potential for increased wastewater flow from commercial uses; that the proposed commercial zoning and uses located on residential land is not previously identified for commercial use by Sussex County Planning and Zoning; that the proposed use does not conform to

the Comprehensive Land Use Plan; that a lateral upgrade at the owners expense could be required; that conformity to the West Rehoboth Expansion Area Planning Study would be required; and that a concept plan is not required.

**Public
Hearing/
C/Z
No. 1628
(continued)**

Richard Poppleton was present on behalf of his application. He stated that in June 2006, he unsuccessfully tried to change the zoning of his property on Central Avenue in West Rehoboth; that he now proposes a construction business on the property; that the site is surrounded by C-1 zoning; that the site is not suitable for residential; that the site was zoned C-1 until 1997; that rezoning the site to C-1 again would make it consistent with the zoning of other properties in the area.

Mrs. Deaver asked Mr. Poppleton if the letters of no objection were submitted by adjoining property owners and he responded that they were not.

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

**M 098 09
Adopt
Ordinance
No. 2031
(C/Z
No. 1628)**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to Adopt Ordinance No. 2031 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5,000 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1628) filed on behalf of Richard J. Poppleton.

Motion Adopted: 4 Yeas, 1 Nay.

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

Mr. Griffin left the meeting.

**Public
Hearing/
C/Z
No. 1627**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.77 ACRES, MORE OR LESS” (Change of Zone No. 1627) filed on behalf of P.G.S. Properties, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on January 22, 2009 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission

dated January 22, 2009.)

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

Mr. Lank distributed Exhibit Books that were provided by the Applicant.

Public
Hearing/
C/Z
No. 1627
(continued)

Mr. Lank summarized an additional letter addressed to Vance Phillips from the Town of Dagsboro which was received on February 3, 2009. The letter states that the subject site is contiguous to the Town and lies within the Town's growth area, as designated by the Town's State-mandated Comprehensive Land Use Plan; that P.G.S previously requested annexation from the Town; that the State recommended that the Town not annex the property due to the lack of the County's sewer capacity and to await the completion of the County's Dagsboro-Frankford Sanitary Sewer District Study; that it is their understanding that the Study is near completion; that in March 2008, P.G.S. withdrew their request from the Town; that the people of Dagsboro request that this body recognize its sovereignty and request that the P.G.S. Properties continue its request for annexation and subsequent development through the Town of Dagsboro.

Preston Dyer of P.G.S. Properties, LLC was present with Mark Davidson of Design Consultants Group, L.L.C. They stated that 7.63 acres of the parcel are zoned C-1 General Commercial; that the property is adjacent to the 500-foot commercial corridor and therefore, appropriate for rezoning to CR-1 as an extension of the existing commercially zoned corridor; that the property is located at the intersection of Route 113 and Nine Foot Road; that they are proposing to rezone 10.77 acres to CR-1 to bring the property into conformity with commercial zoning; that they originally were proposing to develop the site as a larger neighborhood shopping center; that the current market would not support another shopping center in the immediate area; that they are now proposing to develop the property into four pad sites, containing 2.59 acres, 3.76 acres, 1.41 acres, and 10.2 acres; that the property is located in the Developing District according to the Comprehensive Land Use Plan and in an Investment Level 2 Area according to State Strategies; that they have met with County Engineering about sewer infrastructure; that they propose a private water system on-site which will be operated by Artesian; that there are no wetlands on the site and the site is not located with a Flood Plain; that a Traffic Impact Study was done for a much larger project, which consisted of 41 acres; that of the 41 acres, the back portion (22 acres) has now been conveyed to High Tide Church; that the 22 acres is not the subject of this Public Hearing; that they will have to revise their Traffic Impact Study to accommodate the decrease in traffic; that the area is surrounded by commercial and business activities; that if the rezoning is granted, there will be a total of 18.4 acres of commercial property between the CR-1 and the C-1 zoning; that the site is appropriate for rezoning since it is an expansion of the existing commercial zoning on the same parcel; that they did originally submit for annexation into the Town of Dagsboro in March 2003; that they were told that

**Public
Hearing/
C/Z
No. 1627
(continued)**

annexation was not appropriate until sewer was available; that they withdrew the application for annexation in March 2008, purchased the property, and applied for rezoning with the County; that at some point they may still consider annexation to the Town; that currently they want to move forward based upon the reduction and the scale of the project and the current economic environment; that the site is not contiguous to the Town because it is separated by a property with a different zoning; that annexation would result in additional taxes and other requirements; that they are willing to make necessary infrastructure improvements required by the County for sewer service; and that they have worked with DelDOT on their design as it relates to the U.S. 113 Corridor Study.

Public comments were heard.

Kyle Gulbranson of URS was present on behalf of the Town of Dagsboro. He stated that they are not in opposition to the application moving forward; that the site is located in the primary annexation area for the Town; that if this site is not annexed, it would be difficult for the Town to annex additional properties west of Route 113; that the Town has enacted impact fees since this project was first initiated with the Town; that the Town has a Memorandum of Understanding with the County, which states that the Town and County would work together on projects located in growth areas; that the Town and the County should follow their Land Use Plans; and that the Town wants a dialog with the Applicant and the County.

Mr. Baker advised that the Town, the County and the Applicant have scheduled a meeting for February 18th.

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

**M 099 09
Defer
Action on
C/Z
No. 1627**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to defer action on Change of Zone No. 1627 filed on behalf of P.G.S. Properties, LLC.

Motion Adopted: 5 Yeas.

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

**Additional
E.S.
Matter**

Mr. Phillips asked for approval to go back into Executive Session for the purpose of discussing an additional matter under Pending/Potential Litigation.

**M 100 09
Recess
Regular
Session**

At 9:49 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to recess the Regular Session and to go back into Executive Session for the purpose of discussing Pending/Potential Litigation.

Motion Adopted: 5 Yeas.

**and
Go Into
Executive
Session**

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

**Executive
Session**

At 9:50 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing Pending/Potential Litigation. The Executive Session concluded at 9:57 p.m.

**M 101 09
Reconvene
Regular
Session**

At 9:58 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

**M 102 09
Adjourn**

At 9:58 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to adjourn. Motion Adopted by Voice Vote.

Respectfully submitted,

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

