

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 18, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 18, 2024, at 10:00 a.m., in Council Chambers, with the following present:

| | |
|------------------------------|-----------------------------|
| Michael H. Vincent | President |
| John L. Rieley | Vice President |
| Cynthia C. Green | Councilwoman |
| Douglas B. Hudson | Councilman |
| Mark G. Schaeffer | Councilman |
| Todd F. Lawson | County Administrator |
| Gina A. Jennings | Finance Director |
| J. Everett Moore, Jr. | County Attorney |

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 324 24
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the agenda as presented.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of June 11, 2024, were approved by consent.

Correspondence

Mr. Moore reported that correspondence was received from Love Inc. thanking Council for their donation.

**Public
Comments**

Public comments were heard.

Mr. Donald Burdick spoke about the Inland Bay Wastewater Facility.

Ms. Diane Longo spoke about the condition of her water.

Mr. Tyrone Romano spoke about the Inland Bay Wastewater Facility.

Dr. Gerald Bell spoke about the Inland Bay Wastewater Facility.

**Adminis-
trator's
Report**

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

1. Delaware State Police Activity Report

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

The Delaware State police year-to-date activity report for May 2024 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 190 troopers assigned to Sussex County for the month of May.

2. Holiday Schedule

County offices will be closed on Wednesday, June 19th, in observance of Juneteenth. Offices will reopen on Thursday, June 20th.

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

Public Hearings were held on the FY 2025 budget.

**Public
Hearing/
Assessment
Rolls/Sewer
& Water
Districts**

A Public Hearing was held on the Assessment Rolls for Sewer and Water Districts. Mrs. Jennings reported that the Assessment Rolls reflect the County's records for equivalent dwelling units (EDUs) and billable front footage for each sewer and water district. These records have been made available in the billing office for public inspection and review. These records are subject to individual appeal via the Board of Assessment Review. Mrs. Jennings noted that this Public Hearing is on the list of properties and their applicable front footage and EDU's that will be billable by the rates established in the rate ordinance.

There were no public comments.

The Public Hearing and public record were closed.

**M 325 24
Adopt
Assessment
Rolls**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved that the Sussex County Council adopts the Assessment Rolls for the Sussex County Unified Sewer and Water Districts for the period July 1, 2024, through June 30, 2025.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Proposed
Ordinance/
Establish
Sewer &
Water Rates**

A Public Hearing was held on a Proposed Ordinance entitled "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 SANITARY SEWER DISTRICTS".

**Public Hearing/
Proposed Ordinance/
Establish Sewer &
Water Rates
(continued)**

Mrs. Jennings reviewed highlights of the sewer and water budget. (A comprehensive presentation was given at the May 21, 2024 Council meeting.)

Public comments were heard.

Ms. Diane Longo questioned if there would ever be water and sewer available for her development.

The Public Hearing and public record were closed.

**M 326 24
Adopt Ordinance
No. 3023**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3023 entitled “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 SANITARY SEWER DISTRICTS”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public Hearing/
Proposed Ordinance
Marriage Bureau
Fees**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 62, ARTICLE V, § 62-16 OF THE CODE OF SUSSEX COUNTY TO INCREASE THE FEES FOR RESIDENTS AND NON-RESIDENTS FOR OUT-OF-OFFICE MARRIAGE CEREMONIES AND RENEWAL OF MARRIAGE VOWS AND TO INSTITUTE FEES FOR MISCELLANEOUS SERVICES”.

Mrs. Jennings reviewed highlights of the Proposed Ordinance. (A comprehensive presentation was given at the May 21, 2024 Council meeting.)

There were no public comments.

The Public Hearing and public record were closed.

**M 327 24
Adopt Ordinance
No. 3024**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 3024 entitled “AN ORDINANCE TO AMEND CHAPTER 62, ARTICLE V, § 62-16 OF THE CODE OF SUSSEX COUNTY TO INCREASE THE FEES FOR RESIDENTS AND NON-RESIDENTS FOR OUT-OF-OFFICE MARRIAGE CEREMONIES AND RENEWAL OF MARRIAGE VOWS AND TO INSTITUTE FEES FOR MISCELLANEOUS SERVICES”.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Proposed
Ordinance/
Recorder of
Deeds Fees**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 62, ARTICLE VI., § 62-18A. OF THE CODE OF SUSSEX COUNTY TO MODIFY CURRENT FEES CHARGED BY THE RECORDER OF DEEDS AND TO ENUMERATE SUCH OTHER RECORDER OF DEEDS FEES ADOPTED IN THE BUDGET PROCESS AND SET FORTH IN THE DELAWARE CODE”.

Mrs. Jennings reviewed highlights of the Proposed Ordinance. (A comprehensive presentation was given at the May 21, 2024 Council meeting.)

There were no public comments.

The Public Hearing and public record were closed.

**M 328 24
Adopt
Ordinance
No. 3025**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to Adopt Ordinance No. 3025 entitled “AN ORDINANCE TO AMEND CHAPTER 62, ARTICLE VI., § 62-18A. OF THE CODE OF SUSSEX COUNTY TO MODIFY CURRENT FEES CHARGED BY THE RECORDER OF DEEDS AND TO ENUMERATE SUCH OTHER RECORDER OF DEEDS FEES ADOPTED IN THE BUDGET PROCESS AND SET FORTH IN THE DELAWARE CODE”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
FY25
Budget**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2025”.

Mrs. Jennings reviewed highlights of the \$265.8 million annual operating budget for Fiscal Year 2025. (A comprehensive presentation was given at the May 21, 2024 Council meeting.)

There were no public comments.

The Public Hearing and public record were closed.

**M 329 24
Adopt
Ordinance
No. 3026**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 3026 entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2025”.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

FY 2025 Insurance Recommendations Andrea Wall, Accounting Manager, discussed the renewal of the County's insurance package for FY 2025. The County's broker, Alliant, recommended that the County not market its property and liability package; all other lines were marketed.

This recommendation also includes the non-renewal of the Pipeline Floater coverage for the Ocean Outfall, and instead to a decision to self-insure this risk. This recommendation to non-renew this coverage is based on multiple factors:

- Discussions with the County Engineer, Hans Medlarz citing low overall risk for damage to the pipe, and contingency plans in place in the event of damage.
- Lack of available insurance carriers. Only one carrier was willing to quote the coverage last year, and the price continued to increase significantly. The FY 24 premium was a 45% increase over FY 23.
- Other neighboring entities do not purchase commercial insurance for their Ocean Outfalls.

Although a cost increase is being presented, it reflects increases to our insured values, current market conditions and not the insurability of Sussex County.

Angela Tennis, the County's insurance consultant, was also in attendance.

M 330 24 Approve FY 2025 Insurance Recommendations A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of Alliant Insurance Services, Inc. and Insurance Buyers Council, and the Sussex County Finance Department, that Sussex County Council authorizes the placement of insurance coverage, as presented, for the period of July 1, 2024 through June 30, 2025, at a cost not to exceed \$2,238,896.00.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Annual Comprehensive Land Plan Report Jamie Whitehouse, Planning & Zoning Director presented the annual update to the Office of State Planning and Coordination on the Comprehensive Plan. The Comprehensive Plan was completed by the County in 2018 and at the end of June each year, the staff prepares a report to the Governor's Advisory Council on Planning.

Mr. Whitehouse highlighted some new initiatives that were implemented in the last year that were included in the report for the time frame of July 1, 2023, through the end of June.

(The full report was included in the Council packet for this meeting.)

M 331 24 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that the**
Approve **Sussex County Council approves the submitted report to the Governor’s**
Annual **Advisory Council on Planning.**

Comprehen- **Motion Adopted: 5 Yeas**
sive Land
Plan Report

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Dissolution **John Ashman, Director of Utility Planning & Design Review presented a**
of **Resolution for the Dissolution of the Blackwater Village Area from the Sussex**
Blackwater **County Unified Sanitary Sewer District for Council’s consideration.**
Village

M 332 24 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt**
Adopt **Resolution No. R 011 24 entitled “A RESOLUTION FOR THE**
Resolution **DISSOLUTION OF THE BLACKWATER VILLAGE AREA OF THE**
No. R 011 24/ **SUSSEX COUNTY UNIFIED SANTIARY SEWER DISTRICT**
Blackwater **DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65 OF**
Village **THE DELAWARE CODE”.**

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Waterside **Patrick Brown, Project Engineer III presented election results and a**
Chapter 96 **Resolution to authorize the project for Waterside, Chapter 96 Sussex**
Improvem- **Community Improvements for Council’s consideration.**
ents

M 333 24 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt**
Adopt **Resolution No. R 012 24 entitled “A RESOLUTION AUTHORIZING THE**
Resolution **SUSSEX COUNTY ENGINEER TO PERFORM IMPROVEMENTS, AND**
No. R 012 24/ **THE SUSSEX COUNTY ENGINEER AND FINANCE DIRECTOR TO**
Waterside **DETERMINE A UNIFORM ASSESSMENT RATE FOR BILLING, UPON**
SUBSTANTIAL COMPLETION OF THE IMPROVEMENTS FOR THE
WATERSIDE CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT
PROJECT”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Grant

Requests

Mrs. Jennings presented grant requests for Council's consideration.

**M 334 24
True Blue
Jazz, Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$10,000 (\$2,000 from Countywide Youth Grant Account, \$2,000 from Mr. Schaeffer's Councilmanic Grant Account, \$1,000 from Mr. Vincent's Councilmanic Grant Account, \$2,000 from Mr. Hudson's Councilmanic Grant Account, \$2,000 from Mr. Rieley's Councilmanic Grant Account and \$1,000 from Mrs. Green's Councilmanic Grant Account) to True Blue Jazz, Inc. for their 12th annual True Blue Jazz festival.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 335 24
Milton
Police
Department**

A Motion was made by Mrs. Green, seconded by Mr. Rieley to give \$1,700 (\$1,500 from Mrs. Green's Councilmanic Grant Account and \$200 from Mr. Rieley's Councilmanic Grant Account) to Milton Police Department for their National Night Out.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 336 24
AIDS
Delaware**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer's Councilmanic Grant Account and \$500 from Mr. Hudson's Councilmanic Grant Account) to AIDS Delaware for their AIDS Walk Delaware program.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 337 24
Village
Improve-**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer's Councilmanic Grant Account and \$500 from Mr. Hudson's Councilmanic Grant Account) to Village Improvement Association, Inc. for their history book of the VIA 1909-2024.

**ment
Association,
Inc.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Proposed
Ordinance
Introductions**

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE AND EXCAVATION BUSINESS TO BE LOCATED ON A CERTAIN PARCELOF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.86 ACRES, MORE OR LESS” filed on behalf of Jason Torlish.

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GENERAL CONTRACTOR AND CONSTRUCTION BUSINESS WITH AN OFFICE, SHOWROOM, AND STORAGE INCLUDING VEHICLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.46 ACRE, MORE OR LESS” filed on behalf of Paulina Owedyk.

Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (42 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.86 ACRES, MORE OR LESS” filed on behalf of Roxanna Apartments, LLC.

Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.529 ACRES, MORE OR LESS” filed on behalf of Oscar H. Jr. & Thelma M. Warrington Trustees.

**CC Member
Comments**

There were no Council Member comments.

**M 338 24
Recess**

At 11:09 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess until 1:30 p.m.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

M 339 24 **At 1:30 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson**
Reconvene **to come out of recess for the appeal.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Appeal/
Lorriane
Brown
Subdivision** **The Council considered an Appeal on the Sussex County Planning & Zoning
Commission's decision to deny Subdivision Application No. 2023-09,
Lorriane Brown.**

**Mr. Moore read the guidelines and standards that the Council uses when
making any decision on appeals.**

**The Honorable Charles H. Toliver, IV, Retired Superior Court Judge
introduced himself.**

**Judge Toliver reported that this is the appeal of the decision of the Planning
& Zoning Commission decision for Application No. 2023-09, Lorriane
Brown. The appellant is Ms. Lorriane Brown, owner of the property who is
representing herself and the Sussex County Planning & Zoning Commission,
are the appellees represented by Mr. Robertson. The Sussex County Council
is being represented by Mr. Moore.**

**Judge Toliver reported that the hearing was scheduled in accordance with
the discussion during the prehearing conference held with the parties. He
added that both parties have submitted prehearing memorandums which are
part of the record.**

**Ms. Brown stated that she attended the first meeting on February 21, 2024
for her application. At that time, she did not realize that she could have
brought neighbors and other people to affirm the subdivision of her lot. She
was only told that she needed to be present for the hearing which is what she
did. To her surprise, she had three neighbors that spoke in opposition of her
application. At the end of the meeting, she asked if she needed to be in
attendance for the decision meeting. She was informed that there was nothing
that she needed to do, and she did not need to be present. Therefore, she kept
her medical appointment that was previously scheduled two months prior.
On March 20, 2024, the Planning & Zoning Commission decided on her
application. However, she was not present to defend her case; she is at a loss
as to why the subdivision of her property would cause such hardship to her
neighbors as long as she stays within her property lines. She added that she
is not sure how the road became such a big issue since her daughter and son-**

**Appeal/
Lorriane
Brown
Subdivision
(continued)**

in-law have been living with her since 2018. She plans to give them the lot to help them out and her husband prior to his passing wished to give her daughter the land. Ms. Brown stated that she is not sure what her daughter will do with the land; she may not do anything, or she may sell the land. She desires to keep it as a legacy for the family. Ms. Brown said that she does not see it as an increase of people using Victory Lane; the same number of people will continue to use the road. Ms. Brown stated that she is confused; setbacks were discussed, and it seems like the biggest issue is the road. She is looking to get her lot subdivided so that it can be put in the records and in her will. She would like her daughter to have her own like her son has his own. Ms. Brown stated that there is no impact to the road, the same number of people will be traveling on that road.

Judge Toliver stated when the prehearing meeting was held, there were a few things that Mr. Robertson wanted to put on the record regarding the transcript. Mr. Robertson replied that the transcript for the February 21, 2024, meeting did not include the discussion at the end of that meeting. It was his thought that he made that presentation during the conference, and it was decided it was noted but it was moving forward which he is fine with. In addition, in Ms. Brown's supplemental submission, there were things that were cited that were not in the record during the Planning & Zoning Commission hearing. He requested that the information that was submitted in writing or today that is outside of what was presented during the Planning & Zoning Commission meeting not be considered. Judge Toliver also discussed the point that Mr. Robertson brought up about the transcript not being certified. Mr. Robertson replied that the transcript was incomplete and was not certified. He noted that it was hard to tell who was speaking on the transcript. Judge Toliver stated that the transcript must be certified by a court reporter, it was decided to proceed with the hearing.

Vince Robertson representing the Sussex County Planning & Zoning Commission came forward to present. Mr. Robertson stated that Ms. Brown stated she was not present to defend herself during the vote, at that point the record has been closed. Therefore, Ms. Brown would not have been able to defend herself any more than the opposition or anyone from the public being able to speak. Mr. Robertson stated that it sounds like Ms. Brown was led to believe that the standards are waived or loosen or that a sufficient record was not necessary. Ms. Brown had a surveyor that should have discussed the process with her as they know the process for subdivisions. Mr. Robertson stated that this is a subdivision like any other. He added that it was stated during the hearing that this lot and Ms. Brown's lot can be sold to someone else. The Commission has to look it at as a lot and be sure that everything is followed correctly. If the Commission's decision was based on the record or lack of a record, then it must affirm the Commission's decision. Mr. Robertson stated that it largely comes down to Victory Lane which is about 250 feet from Shawney Road to this proposed new lot. The issue is that there is nothing in the record to confirm who owns the road. Ms. Brown stated that no one owns it, there was no easement document provided that states the

**Appeal/
Lorriane
Brown
Subdivision
(continued)**

rights of the other 11 properties who have access to the road. There was no documentation in the record that state who maintains the road. In the record, Ms. Brown stated that the person that used to maintain the road passed away. In addition, there was no indication how a new lot owner would join in any maintenance obligation if any existed. Ms. Brown is able to use the road but there was no other documentation of any easement rights. There are standards in our subdivision code that address subdivisions. The big one that everyone discusses is 99C which were also not addressed. Mr. Robertson stated that 99C-11 discusses the provision of safe, vehicular movement to adjacent ways. In addition, 99-17 & 18 regarding road access and street layout apply to every subdivision. Also, 99-9C 13 & 16 discuss the effects on farmland which there was testimony in the record and 16 deals with the capability with area land uses. The Commission was sympathetic to Ms. Brown's situation, but they do not have the jurisdiction over the 11 or so other properties that use Victory Lane. The Commission cannot determine ownership of that road and cannot impose maintenance obligation upon other people or have the jurisdiction to bind other people with conditions of the subdivision when they were not a part of the application. In addition, the Commission cannot ignore Code requirements or the need of a record to support subdivisions. In this case, there were too many off site issues with no documentation to support. The property is next to a farm that is actively being farmed which was discussed during the hearing. This creates under 99-6 G2, the agricultural use setbacks which is 50-feet from any structure. In addition, there is also the perimeter buffer requirements. Neither one of these was shown on the survey. There was a request for the waiver of the perimeter buffer that came in to PZ staff. But given the opposition that was received, it would have been hard to waive given the fact that there was a farm next door. During the hearing, one of the neighbors stated that Victory Lane is not defined on the ground, so it is unclear where it is located, and it has been improperly expanded. With the creation of an additional lot, it would create more issues. In addition, there was testimony that Victory Lane currently has erosion and runoff issues that impact adjacent properties. There was also testimony that Victory Lane is unable to handle the current traffic including the farm traffic that exists. In addition, there was more testimony about nobody maintaining the lane. There was a concern about if the lot was unbuildable due to the vegetative buffer and the ag setbacks and the front and rear yard setbacks. Based on the testimony, there was not a record in support of the application, there were too many unanswered questions and the opposition, the Commission had no choice but to deny the application. For all of the reasons, the Commission's decision to deny should be affirmed. Mr. Robertson added that all of the neighbors need to sort out Victory Lane rights and obligations.

Ms. Brown stated that she reviewed 99-9C and she did not see how her doing a subdivision of her lot impacted or was not in line. She added that the lot is big enough to have the setbacks and easement. The person that was doing her survey work retired before all of this took place and she believed that they sent the wrong document to the County. She added that she looked into a

**Appeal/
Lorriane
Brown
Subdivision
(continued)**

buffer what one was and how she could get one on her lot. She is not sure how 99-9C affects this small lot because the lot is pretty big. As far as the easement, she is not sure what happened, but she can get back to the surveyor to get that added to the final drawing. With the lane, she is willing to help out and pitch in any way that she can. She added that the same number of people will be traveling the lane. She requested that matter be remanded back to the Planning & Zoning Commission. Ms. Brown explained that there are several people that state that they own the road. She added that if her application is not strong enough, she would like to have it remanded back to the Planning & Zoning Commission. Ms. Brown discussed the 50-foot buffer which can create weeds and vegetation that she does not wish to have on her property. Mr. Robertson stated that it was an agricultural setback that he discussed, and it does not have to be vegetation. However, there does have to be a 30-foot vegetative buffer which existing vegetation can be used for all four sides.

Mr. Schaeffer questioned if the applicant could reapply at the proper time and bring it back to the Planning & Zoning Commission. Judge Toliver stated that Mr. Moore could discuss that option during the Council's deliberations. Mr. Schaeffer stated that he wanted the applicant to understand her options.

Judge Toliver stated that Mr. Robertson has repeatedly made the argument that the record is insufficient for this subdivision. The law requires that certain things be met and explained.

Mr. Rieley questioned if the County map indicated who owned the land. Judge Toliver replied that the owner of the land is not in question; the road or if there is an easement or how that is titled is probably what is being asked. Mr. Rieley replied that adverse possession has been discussed and he wondered how long the applicant has used that lane. Judge Toliver stated that it gets to be complicated as a matter of fact because there are 11 parcels along this road. Judge Toliver explained adverse possession. Mr. Moore explained that it has to be looked at what was discussed during the Planning & Zoning Commission meeting. There was no discussion or anything in the record about ownership, possession, or descriptive rights. Therefore, regardless of what the County maps show, the Council needs to look at what was presented at that time. The only issue for a remand at this stage would be if the Planning Commission did not apply the law correctly or if the facts did not support their position in any way.

Mr. Robertson stated that the Commission must act on what is provided; it is unknown if there is an easement. Also, there was not anything provided that stated who owns Victory Lane.

During the Commission hearing, there was a discussion about the lot and redesigning the subdivision so that she could put the building in a different place. Mr. Robertson stated that the Commission did not act on that because it was not in front of them. Ms. Brown moved forward with the appeal

**Appeal/
Lorriane
Brown
Subdivision
(continued)**

process. The ownership and maintenance of Victory Lane still exists which needs to be worked out with the property owners. Mr. Robertson added that a remand would still be based on the record provided. Judge Toliver stated that Mr. Moore will advise Council what the options are; Mr. Robertson has argued that there is not sufficient information in the record.

Ms. Brown stated that it seems like everything is based on the road. As she stated earlier, there is not going to be an increase in the number of people using the lane. There is not going to be a different impact on the lane. Her parcel has access to Victory Lane which is documented. Judge Toliver stated that the issue is that the record is not clear enough to make any other decision. She added that if the lane is such a big issue, why was it not such a big issue when other people subdivided. She is unsure how her land affects her neighbor's farm.

**M 340 24
Close
Appeal
Hearing**

At 2:30 p.m., A Motion was made Mr. Schaeffer, seconded by Mr. Hudson that be it moved that the appeal hearing before Sussex County Council on Sussex County Planning & Zoning Commission to deny be closed.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea;**

**M 341 24
Go Into
Executive
Session**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to recess the Regular Session and go into Executive Session to discuss matter relating to pending & potential litigation.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Executive
Session**

At 2:36 p.m. an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to pending & potential litigation. The Executive Session concluded at 2:50 p.m.

**M 341 24
Reconvene**

At 2:52 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session back into Regular Session.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 342 24
E/S Action/
Defer Action**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to defer action until next week's meeting for action.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 343 24
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at
2:53 p.m.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}