

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 21, 2012**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 21, 2012, 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>David Rutt</b>	<b>Assistant County Attorney</b>

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 435 12  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to amend the Agenda by deleting “Job Applicants’ Qualifications”, “Personnel”, and “Land Acquisition” 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**

**Minutes**

**The minutes of August 14, 2012 were approved by consent.**

**Corre-  
spondence**

**Mr. Rutt read the following correspondence:**

**PATRICIA D. BEEBE, PRESIDENT AND CEO, FOOD BANK OF  
DELAWARE, NEWARK, DELAWARE.**

**RE: Letter in support of the Food Bank of Delaware’s hunger relief  
programs.**

**Delaware  
State  
Police  
Contract**

**Mr. Lawson, presented a proposal to reinstate the County’s contract with the Delaware State Police. He noted that, in Council packets, information was provided on the current contract that the County has with the Delaware State Police. Mr. Lawson stated that, during the State’s budget process this year, members of the General Assembly, led by Representative Ruth Briggs King, approved the reinstatement of the terms of the contract and the allocation of State funding for additional troopers in Sussex County. If the Council agrees**

**Delaware  
State  
Police  
Contract  
(continued)**

to reinstate the terms of the contract, four (4) troopers will be added to Sussex County's roster, totaling 44 additional troopers sponsored by the County. If the contract reinstatement is approved by the Council, the new troopers will begin training this Fall and will be on duty by Spring 2013. With this roster expansion, the County has also asked Delaware State Police to consider assigning an additional community liaison trooper to Sussex County.

Mr. Lawson reported that the County currently pays \$1.7 million for 40 troopers for \$42,843 per trooper. The State's request is for 4 additional troopers at the cost of \$49,082 per trooper, which decreases to \$44,016 by Year Three. The County's share of this contract only includes the troopers' salaries, benefits, outfitting and equipment costs. The Delaware State Police pays for all other operating costs.

Mr. Lawson compared what it costs New Castle County to have 44 troopers and he stated that the same coverage would cost Sussex County a total of \$124,497.00 per trooper. Since New Castle County's police department is already established, this amount does not include the start-up costs Sussex County would incur. In total, the annual budget of New Castle County's Police Department is approximately \$50 million.

Mr. Lawson stated that County Administration and the Finance Department highly recommend the reinstatement of the contract and the allocation of funding.

Colonel Robert Coupe was in attendance along with Delaware State Police staff representing Troops 4, 5 and 7. Colonel Coup stated that they are honored at the opportunity to resume this contract and increase the number of complimentary troopers in Sussex County. The Colonel expressed appreciation to Sussex County Council, State Legislators, and Sussex County residents for their support.

**M 436 12  
Restore  
Terms of  
MOU with  
Delaware  
State  
Police**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council elects to restore the terms of the Memorandum of Understanding between the Department of Safety and Homeland Security, Division of State Police representing the State of Delaware and Sussex County.

**Motion Adopted: 5 Yeas.**

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

**DelDOT  
2013-2018  
CTP  
Request  
(Draft)**

Mr. Lawson presented a Draft of the DelDOT 2013 - 2018 Capital Transportation Program Request which will be presented in final form to DelDOT at a Public Workshop scheduled on September 13th from 4:00 to 7:00 p.m. at the DelDOT South District Office in Georgetown. Mr. Lawson reported that, as in previous years, the County will submit a request to the Delaware Department of Transportation for their consideration as they

**DelDOT  
2013-2018  
CTP  
Request  
(Draft)  
(continued)**

**decide on funding for various projects.**

**Mr. Lawson reviewed the Draft Report and noted that this year's requests have very few changes compared to last year and the focus is on the same priorities contained in previous years. He noted that some changes have been made to the request, i.e. improve the large traffic corridors including the east-west routes which have become increasingly congested and accident prone in recent years as well as the local roads, which continue to have increased use and deterioration. With the recent announcement of the Phase I Runway Expansion, the County remains supportive of the Airport's expansion as well as the inevitable realignment of Park Avenue, Truck Route 9 which will create a true bypass around the Town of Georgetown. Also, included again (at Mr. Cole's urging), are suggestions for improvements to the DART bus stop locations and improvements for the safety of bicyclists on County roadways. A number of comments were received from the public which the County intends to submit for the record with the final version of the CTP .**

**Mr. Lawson stated that the final draft will be prepared and submitted to the Council for approval on September 11th. He noted that if Council members wish to amend the draft presented on this date, to please let staff know as soon as possible. Any additional comments will be discussed at the September 11th meeting, prior to the submission of the final report to DelDOT on September 13th.**

**Adminis-  
trator's  
Report**

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

**1. Greenwood Library**

**The Greenwood Library will be closed beginning Monday, August 27, to prepare for the move to their temporary location at the site known to locals as "Hilltop" at the intersection of Route 13 South and Route 16. The move will take place the week of September 2. County and State Information Technology staff will ready the network, servers, and PC's the week of September 16.**

**The Greenwood Library is scheduled to reopen at the "Hilltop" location on Monday, October 1. However, if there are no glitches in the listed plans, it could reopen the last week in September.**

**We want to thank the public for their patience during this transition.**

**2. Delaware State Police Activity Report**

**Per the attached Delaware State Police activity report for July, there were 4,984 total traffic arrests and 1,584 criminal arrests. Of the 1,584 criminal arrests, 693 were felony and 891 were misdemeanor criminal arrests. Of the total hours on duty spent, 44 percent were**

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

spent on criminal investigations.

**3. Project Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheet, Ferris Courtyard Subdivision reached Substantial Completion effective August 16, 2012.

**4. Holiday Schedule**

The Sussex County Council will not meet on August 28 or September 4 as a result of a summer holiday and in honor of the Labor Day holiday, respectively. The next regularly scheduled meeting of the Sussex County Council will occur on September 11, 2012.

County offices will be closed on Monday, September 3, for the Labor Day holiday.

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

**Pension  
and OPEB  
Fund  
Report  
and  
Recommen-  
dations**

Mrs. Webb reported that the Pension Fund Committee met on August 2, 2012. She noted that included in the Council packets for this meeting were performance reports as of June 30, 2012 for the Pension and the OPEB Plans as well as a report on an investment manager search.

Mrs. Webb reported that David Craik, Pension Administrator for the State of Delaware, was in attendance at the August 2nd meeting to provide an update on the State Pool, which is a large portion (over 30%) of the County's pension fund assets.

Mrs. Webb reported that the overall year-to-date return for the Pension Fund was 5.3 percent; that the fund continues to do very well, especially in down markets; that the State Pool had a strong performance; and that Vanguard Global was terminated which helped lower overall allocation to international stocks. The Total Plan Performance (page 10 of the report) shows that the County ranked in the top 8 percent of government pension plans for the past quarter. Mrs. Webb noted that no action was required on the Pension Fund at this time.

Mrs. Webb reported that the overall year-to-date return for the OPEB (Other Post Employment Benefit Fund) was 3.8 percent; Standard & Poor's was down 2.8 percent this quarter and the County's plan was down 2.5 percent; asset allocations were close to target; Allianz RCM Disciplined Equity was below benchmark (again); and Harding Loevner continues to do well. Mrs. Webb advised that, in reviewing the Allianz RCM Disciplined Equity, it continues to be below its benchmark and this has prompted the new investment manager search. Mrs. Webb explained that the OPEB Fund is a fund in which the County keeps health insurance benefits for the

**Pension  
and OPEB  
Fund  
Report  
and  
Recommen-  
dations  
(continued)**

**pensioners.**

**Mrs. Webb recommended changes to the OPEB Fund for the investment managers which will decrease the volatility and compliment the other OPEB investments. The County's pension consultants are recommending that the County liquidate all assets of the Vanguard Value Index, liquidate the assets of the Allianz RCM Disciplined Equity and redeem \$1.6 million from Ridgeworth Small Cap Value; with the proceeds of those sales, purchase \$5 million of Vanguard Russell 1,000 Index, \$1 million of Fanguard Dividend Growth, and \$1 million of BlackRock Equity Dividend. This action will give the OPEB Fund more diversification and reduce the County's fees by approximately \$25,000; it will also provide better protection on the downside, lower volatility, complement the existing mangers, and add enhancement to the allocation of investments.**

**Mrs. Webb reported that the Pension Committee discussed options presented by the Consultant and agreed to the Consultant's recommendations.**

**M 437 12  
Approve  
Pension  
Fund  
Trans-  
actions**

**A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council approves the following pension transactions, all of the current value as of date: liquidate all assets of Vanguard Value Index, liquidate all assets of Allianz RCM Disciplined Equity, redeem \$1.6 million from Ridgeworth Small Cap Value; with the proceeds of the above sales, purchase \$5 million of Vanguard Russell 1000 Index, \$1 million of Vanguard Dividend Growth, and \$1 million of BlackRock Equity Dividend.**

**Motion Adopted: 5 Yeas.**

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

**Economic  
Develop-  
ment  
Department  
Update**

**Julie Wheatley, Director of Economic Development, presented an activity and business development update. She talked about jobs and housing, healthcare, quality of life, new business, business expansion, and financial assistance. She advised that a representative from HUD reported that, between April 2011 and 2012, 1,225 net new jobs were created in Sussex. These jobs were mainly in hospitality and healthcare. According to Trend MLS/Sussex County Association of Realtors (SCOAR), existing home sales are up 50.3 percent over June 2011 and year over year sales price is up 13.5 percent. On the health care side, there is a great collaboration between Beebe, BayHealth, and Nanticoke hospitals; they targeted to address disparities in health care across the county and also health education; they want to positively impact health behaviors, i.e. diabetes. In regard to Quality of Life, Sussex County was listed as No. 1 in water quality (beaches) in the nation by the Natural Resources Defense Council. Sussex County has been named by AARP, Wall Street Journal and the Where to Retire magazine as one of the places to retire**

**Economic  
Develop-  
ment  
Department  
Update  
(continued)**

**Mrs. Wheatley reported on new business in Sussex County: Binkley & Hurst, agricultural equipment retail and service center, The PeteStore, a Peterbilt Truck Dealership, and Tech World Industries – NasalCleanse Pharmaceuticals Corporate Offices. Business expansions in Sussex County are: Sea Watch International (new line of soups), Craig Technologies (60,000 SF expansion), and Cooper Bearings (Rail Suspension Systems).**

**Mrs. Wheatley reported on the financial assistance on the federal level: (1) the Small Business Administration recently put a representative in Sussex County and there have been 36 loans totaling over \$13 million, (2) the United States Army Corps of Engineers approved a \$1.8 million grant for the Nanticoke River Dredge Project; and FAA and DEDO grants (90-95 percent of the funding) for the Sussex County Airport runway extension.**

**Mrs. Wheatley reported on the recent improvements for economic development in Sussex County. There has been a new web design with County information on economic development and a new web portal to access the economic development options. There are two elements to the package: incentives and loans. The incentive package was announced on November 23, 2011; the County's goal is to provide incentives for businesses based on new employment. The amount of the incentive is based primarily on additional county revenues generated by the expansion of a business. The incentive amount is limited to a maximum of \$800 per new full time job and the company must provide a minimum of 10 new jobs to qualify. The incentives are: maximum of \$800 per new job created; minimum 10 full time jobs created; assistance offered such as graduated property tax abatement, possible school tax abatement, fee reduction, and expedited County reviews. The loan package is available to assist businesses with low-interest rate loans for the development of economically beneficial programs and in particular new job creation. The maximum amount to be loaned to any business or municipality would be \$250,000 per project. Assistance offered for the loan package is: favorable interest rate, expedited review, and up to \$250,000 per project. Mrs. Wheatley reviewed the application process for the loan package: (1) go to Economic Development website, (2) submit pre-application form, (3) Committee review and recommendation to County Council, and (4) County Council approval. Mrs. Wheatley explained that preliminary application can be submitted online and the full application for loans and incentives are available on the County's website. It is the County's goal that the new website will create jobs and stimulate economic development through new business recruitment, job retention, and business growth. It is the County's hope that the new website and web portal will get existing products out to the public, businesses, target markets, etc.**

**It was suggested that the County sponsor job fairs once or twice a year.**

**Wastewater  
Agreement**

**Mrs. Webb presented a wastewater agreement for the Council's consideration.**

**M 438 12**  
**Approve**  
**Wastewater**  
**Agreement/**  
**Swann**  
**Cove**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 896, that the Sussex County Council, execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Swann Cove West LLC, for wastewater facilities to be constructed in Swann Cove, located in the Fenwick Island Sanitary Sewer District.**

**Motion Adopted: 5 Yeas.**

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

**Greenwood**  
**Library**  
**Project/**  
**Moving**  
**Services**  
**Proposal**

**Julie Cooper, Project Engineer, reported that the Greenwood Library Project has been bid and that the Engineering Department has recently put out a RFP for moving services for the purpose of moving the library to a temporary location during construction of the new building. Four proposals were received; the low bidder was Bates Moving & Storage Co., Inc. in the amount of \$28,662.00.**

**M 439 12**  
**Award**  
**Bid/**  
**Greenwood**  
**Library**  
**Moving**  
**Services**  
**Project**

**A Motion was by Mr. Phillips, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that the bid for Sussex County Project 07-05, Greenwood Library Moving Services, be awarded to Bates Moving & Storage Co., Inc. of Salisbury, Maryland, at the bid amount of \$28,662.00.**

**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. Webb presented grant requests for the Council's consideration.**

**M 440 12**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Cole's Councilmanic Grant Account to the Rehoboth Summer Children's Theatre for program expenses.**

**Motion Adopted: 5 Yeas.**

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

**M 441 12**  
**Council-**  
**manic**  
**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 Rehoboth Cooperative Preschool for operating expenses/field trip expenses.**

- M 441 12**  
**(continued)**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**
- Additional Business**
- Under Additional Business, Dan Kramer referenced a discussion at the August 14th Council meeting regarding houses that need repairs and he commented that people should help their neighbors.**
- M 442 12**  
**Go Into**  
**Executive**  
**Session**
- At 11:00 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Cole, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to Pending/Potential Litigation.**
- 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 11:04 a.m., an Executive Session of the Sussex County Council was held in the Council Chambers for the purpose of discussing issues relating to pending/potential litigation. The Executive Session concluded at 11:44 a.m.**
- M 443 12**  
**Reconvene**  
**Regular**  
**Session**
- At 11:47 a.m., a Motion was made by Mr. Wilson, 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. Wilson, Yea;  
Mr. Vincent, Yea**
- M 444 12**  
**Recess**
- At 11:48 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess until 1:30 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**
- M 445 12**  
**Reconvene**
- At 1:35 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to reconvene the Regular Session.**
- Motion Adopted: 5 Yeas.**



**M 445 12  
(continued)**

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

**Public  
Hearing/  
C/U  
No. 1933**

**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 TOWING SERVICE AND LANDSCAPING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.374 ACRES, MORE OR LESS” (Conditional Use No. 1933) filed on behalf of Mark A. Giblin.**

**Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 26, 2012 at which time action was deferred. On August 9, 2012, the Commission recommended that the application be approved with the following conditions:**

- 1. The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties.**
- 2. No more than 18 vehicles shall be permitted on the property besides the Applicant’s own vehicles.**
- 3. No permanently disabled or abandoned vehicles shall be allowed to remain on the property.**
- 4. There shall be one lighted sign which shall not exceed 32 square feet in size to identify the towing service and the impound lot. The sign shall include a phone number to call for information about vehicles impounded and for other information about the service.**
- 5. No vehicles shall be displayed for sale.**
- 6. All security lighting shall be downward screened so that it does not shine on neighboring or adjacent properties.**
- 7. The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles, vehicles that are being serviced, and towing equipment.**
- 8. The area set aside for the landscaping business, including equipment storage and any bins for materials such as topsoil, mulch, etc. shall clearly be depicted on the Final Site Plan.**
- 9. The service business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturdays, with no Sunday hours.**
- 10. The Final Site Plan shall include a landscaping plan for the area surrounding the impound yard screening it from neighboring or adjacent properties.**
- 11. 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 July 26 and August 9, 2012.**

<b>Public Hearing/ C/U No. 1933 (continued)</b>	<b>Mr. Abbott reported that, following the Commission’s Public Hearing, a letter was received from the Sussex Conservation District regarding soil types.</b>
	<b>Mr. Abbott read a summary of the Commission’s Public Hearing.</b>
	<b>Mr. Abbott reported that, on August 1, 2012, an email was received from John Gilman, owner of the Roxana Athletic Club, in support of the application. The email was read into the record.</b>
	<b>Mr. Abbott reported that, on August 9, 2012, a letter was received from James Mershon, owner of Jim’s Bait &amp; Tackle, in opposition to the application. The letter was read into the record.</b>
	<b>It was determined that the Application was not in attendance. For this reason, the Council proceeded with the next Public Hearing with the understanding that the Public Hearing on Conditional Use No. 1933 would be continued at the end of the meeting.</b>
<b>M 446 12 Defer Action on C/U No. 1933</b>	<b>A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action on Conditional Use No. 1933 to see if the Applicant can be located.</b>
	<b>Motion Adopted: 5 Yeas.</b>
	<b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</b>
<b>Public Hearing/ C/U No. 1935</b>	<b>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 WORKSHOP FOR A FAMILY ELECTRICAL BUSINESS AND A BUTCHER SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.347 ACRES, MORE OR LESS” (Conditional Use No. 1935) filed on behalf of John Herholdt.</b>
	<b>Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 26, 2012 at which time the Commission recommended that the application be approved with the following conditions:</b>
	<b>1. The butcher shop shall be seasonal, from September 1 through March 1. 2. No retail sales shall occur from the butcher shop. 3. There shall not be any outside storage of electrical equipment and all work shall occur inside. 4. One lighted sign, not to exceed 32 square feet in size, shall be permitted.</b>

**Public  
Hearing/  
C/U  
No. 1935  
(continued)**

5. The hours of operation for the electrical business shall be Monday through Friday from 7:00 a.m. to 6:00 p.m.
6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

See the minutes of the Planning and Zoning Commission dated July 26, 2012.

Mr. Abbott reported that, following the Commission's Public Hearing, a letter was received from the Sussex Conservation District regarding soil types.

Mr. Abbott read a summary of the Commission's Public Hearing.

John Herholdt was present on behalf of his application and he stated that he proposes (1) a storage area for generators and other items by himself and Satterfield Electric and (2) a seasonal butcher shop (deer butchering only). He stated that there would be no retail sales.

There were no public comments. The Public Hearing and public record were closed.

**M 447 12  
Adopt  
Ordinance  
No. 2274  
(C/U  
No. 1935)**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2274 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WORKSHOP FOR A FAMILY ELECTRICAL BUSINESS AND A BUTCHER SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.347 ACRES, MORE OR LESS" (Conditional Use No. 1935) filed on behalf of John Herholdt, with the following conditions:

1. The butcher shop shall be seasonal, from September 1 through March 1.
2. No retail sales shall occur from the butcher shop.
3. There shall not be any outside storage of electrical equipment and all work shall occur inside.
4. One lighted sign, not to exceed 32 square feet in size, shall be permitted.
5. The hours of operation for the electrical business shall be Monday through Friday from 7:00 a.m. to 6:00 p.m.
6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/U  
No. 1936)**

**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 FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRES, MORE OR LESS” (Conditional Use No. 1936) filed on behalf of Chester Townsend.**

**Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 26, 2012 at which time the Commission deferred action; on August 9, 2012, the Commission deferred action again.**

**See the minutes of the Planning and Zoning Commission dated July 26 and August 9, 2012.**

**Mr. Abbott read a summary of the Commission’s Public Hearing.**

**Mr. Abbott reported that, following the Commission’s Public Hearing, a letter was received from the Sussex Conservation District regarding soil types.**

**Mr. Abbott reported that, following the Commission’s Public Hearing, a copy of a letter from DelDOT to the Applicant was received, stating that Tax Parcel No. 1-34-11.00-3.00 is being accessed without a valid entrance permit for the current use; that there is a business being run on the property; and that the property owners have not obtained a commercial entrance permit from DelDOT. The Department is giving the applicant 20 days from the date of receipt of the letter to submit a schedule to correct the violation. Failure to correct the violation within the time specified or to comply with DelDOT’s request shall cause the Department to seek compliance in accordance with the remedies permitted by Delaware Code, including closing the entrance.**

**Public comments were heard.**

**Shirley Townsend was present on behalf of the application and she stated that Chester Townsend is her husband; that they run the Fish Killers Lobster Shack in Dagsboro; that this will be their fourth summer season that they have conducted business in the area; that they operate a clean, safe business; that they were previously unaware of the problem with DelDOT and that they received the letter from DelDOT on this date; that she has contacted DelDOT and they are starting the process of obtaining an entrance permit; and that they do not need a Traffic Impact Study.**

**Mr. Cole questioned if the signage on the site is in compliance with County regulations and Mrs. Townsend was advised to contact the County Planning and Zoning Department.**

**Public  
Hearing/  
C/U  
No. 1936  
(continued)**

**It was noted that parking requirements will fall under site plan review.**

**There were no public comments in support of or in opposition to the application.**

**Mr. Abbott advised that, if the trailer currently on the site is used for the on-premise business, approval from the Board of Adjustment will be required.**

**The Public Hearing and the public record were closed.**

**M 448 12  
Defer  
Action on  
C/U  
No. 1936**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Conditional Use No. 1936 filed on behalf of Chester Townsend.**

**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. 1941**

**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 SOLAR ELECTRIC GENERATION FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 40 ACRES, MORE OR LESS” (Conditional Use No. 1941) filed on behalf of Delaware Electric Cooperative.**

**Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 9, 2012 at which time the Commission recommended that the application be approved with the following conditions:**

- 1. No storage facilities shall be constructed on the site.**
- 2. Lighting on the facility will consist only of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- 3. One unlighted sign not to exceed 32 square feet in size, shall be permitted.**
- 4. The site shall be secured by fencing. A locked 38 foot wide gate will permit access to the site from East Trap Pond Road, with a Knox Box to accommodate emergency access by the local fire company.**
- 5. If the solar electric generation facility is non-operational for a period of 12 months, the Delaware Electric Cooperative, Inc. or assigns must return the site to its original state within a 12 month period.**
- 6. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

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(continued)**

**See the minutes of the Planning and Zoning Commission dated August 9, 2012.**

**Mr. Abbott read a summary of the Commission's Public Hearing.**

**Mr. Abbott distributed Exhibit Booklets submitted by the Applicant. He noted that he has been advised by the Applicant that there was an error on Page 35 of the Exhibit Booklet.**

**The Council found that Terry Jaywork, Attorney for the Delaware Electric Cooperative; Mark Neilson, Vice President of Staff Services at Delaware Electric Cooperative; Walt Hoey, Professional Engineer with Century Engineering; and Randall Handy, a certified real estate appraiser with Handy Realty; were present on behalf of the application.**

**Mr. Jaywork stated that the proposal is for a 40 acre parcel of a 163 acre tract that is currently owned by Heritage Lands LLC; that the property is located on both sides of E. Trap Pond Road; that the Heritage Farm tract straddles both sides of the road; that the proposed use is for the 40 acres on the east side; that the 40 acres that they propose to develop will be surrounding by open tilled farmlands and a small stretch of woods; that the Cooperative proposes to build a solar farm on the site; that the Renewable Energy Portfolio Standards Act (Title 26) requires the Cooperative to meet 25% of their overall demand with green infrastructure by the year 2025 and 3.5 percent must be coming from solar resources; that the schedule has a graduated compliance schedule so that each year electric suppliers have to move toward attaining the 2025 goal; that the proposed facility is one of the Cooperative's first steps to comply with the statute; that when the facility is fully built out, it will generate 7 megawatts of electricity (providing service to approximately 870 residential homes); that the proposal will result in environmental and economic benefits; that the solar panels are proposed to be manufactured in Newark and should create a minimum of 40 temporary full-time jobs; that the proposed use will have less impact on the surrounding properties than typical agricultural activities; that the solar farm will not require any chemical uses – no fertilizers or pesticides; that there will be no animal or plant waste; that the use should not create any dust, odors or noises once completed; that the Cooperative held a public meeting at the CHEER Center in Georgetown to get public comments from area residents; that the Cooperative sent out notices to all of the properties surrounding the entire 163 acre Heritage Farms tract; that only four area residents attended; and that once installed, the use is a totally passive operation.**

**Mr. Jaywork presented an Exhibit containing the mailing list of the people who were invited to the public meeting, a copy of the letter of invitation, and the sign-in sheet containing the signatures of the people that did attend. Additionally, he submitted a map of the area depicting properties owned by area residents that were invited and attended the public meeting. Mr. Jaywork reported that the few residents that did attend, after hearing and**

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reviewing the information presented, did not have any opposition to the project.

It was noted that the Exhibit Booklet and the information submitted by Mr. Jaywork were made a part of the record.

Mr. Nielson, Project Manager, reviewed the Exhibit Booklet and he outlined the site selection process: the site has to be in close proximity to their substation and Pepper Substation is located .5 mile away and the site must be cleared and available for purchase; that the Cooperative entered into a contract with the property owner. He stated that the project will be developed in two phases; that the first phase is 4 megawatts (approximately 16,000 solar panels); that the site will have a single entrance (30 feet wide) approved by DelDOT; that the site will be surrounded by an eight foot chain link fence with a barbed wire top; that the roads and turning radius have been approved by the Fire Marshal; that there will be some small transformers on the site (4 in Phase 1) and that they will not create any noise; that the first phase would be completed in 3 to 4 months; that the second phase will consist of the remainder of the property (3 megawatts – 12,000 solar panels); that the second phase should be completed in 5 years; that their building plans are subject to mandates of the Legislature (RPS requirements and requirements for solar) and whether requirements are decreased or increased; that there will not be any run-off into the tax ditch; that inspection/maintenance will take place approximately once a month; and that there will be no pollution, no dust, no noise, no emissions, and no dust.

Mr. Nielson introduced 3 new panel types into the record and he submitted copies to the Council and for the record. He stated that, at the Planning and Zoning Commission hearing, there were comments regarding the height of the panels; at that time, it was stated that they were going to be 5 feet 10 inches tall. Since that time, there has been a correction and the panels will actually be about 6 feet 4 inches.

Mr. Nielson referenced the corrections to the Exhibit Booklet: (1) the height of the solar panels will be about 6 feet 4 inches and (2) there will be no septic system on the site.

Mr. Nielson stated that one of the concerns expressed at the Hearing before the Planning and Zoning Commission was an increase of electro-magnetic fields. Mr. Nielson reviewed diagrams of and explained readings of examples of EMF (electric magnetic fields). He stated that the Cooperative proposes panels that are DC generated electricity panels; that there is nothing conclusive about what EMF may do to human health; that generally, people are exposed to more EMF inside their homes than they would with the solar farm; and that the nearest residence to the solar farm is approximately 682 feet away.

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**Mr. Nielson stated that another concern expressed at the Hearing before the Planning and Zoning Commission was the distance and the visual and aesthetic impact of the view of the solar farm from the residential homes. Mr. Hoyer stated that, from a distance, the solar panels will be barely visible. Mr. Hoyer provided an illustration of the view of a solar farm from a distance of approximately 730 feet from the site, with the solar panels sitting at 6 foot 4 inches tall. Mr. Nielson presented a display board showing various measurements from the solar field to various residences and roads.**

**Mr. Handy commented on the impact of the proposed solar farm on the market value of nearby residential properties and he read his letter into the record. The letter stated that there are 5 residential properties in question; that the line of sight window of the solar panels will be quite narrow; that the potential visual impact of the proposed use would be inversely proportional to a distance from the subject property. He stated that he is not suggesting that the impact of the proposed solar farm on residential properties will be zero; however, in his professional opinion, the impact on property values will be minimal. He noted that the current zoning of the parcel is AR-1 and agricultural uses would be considered by most people to be more objectionable than a solar farm. He stated that, in his opinion, the low level of environmental impact and the low cost of a supplemental power source are very positive factors of the application.**

**Mr. Nielson stated that, during the Commission's hearing on the application, concern was expressed regarding leaching of lead from the solar panels into the groundwater. Mr. Nielson stated that there is some lead in the panels; however, the lead will be contained and the Cooperative will perform monthly inspections and will not let the panels deteriorate.**

**Public comments were heard.**

**John Sergovic, Attorney representing the seller, Heritage Lands, LLC, stated that his clients are in support of the application; that his clients will retain 120 acres; that his clients' intentions are to develop the land for residential housing when the market improves; and that his clients believe the solar farm will enhance their ability to market the property because of the environmental benefits that are perceived by solar panels.**

**Paul Reed, resident on Substation Road, spoke in opposition to the application. He referenced the notice of Public Hearing for the application and he stated that the sign was placed behind the large realtors sign in the weeds; that the only reason the area residents knew about the Public Hearing is because he moved the sign so that it would be visible; that the sign was visible for only one week before the Planning and Zoning Commission's meeting; that the use will bother people; that for the rest of his life, he will be looking at 28,000 solar panels in front of his house and a 10 foot chain link fence with barbed wire wrapped around it; that there are better and more suitable sites for a solar farm; that he spoke with everyone in the area and only one person received a letter from the Cooperative; that**



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he never got an invitation to the workshop; that the proposed use will impact the value of area properties; that he questions how they can prove there will be no radiation and that there will be no leeching of lead; that it will cause cancer and lead poisoning; that it will affect area crops; and that he asks the Council members to go look at the site prior to making a decision on the application.

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

**M 449 12  
Defer  
Action on  
C/U  
No. 1941**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1941 filed on behalf of Delaware Electric Cooperative.

**Motion Adopted:      5 Yeas.**

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

**Continue  
Public  
Hearing  
on C/U  
No. 1933  
(Deferred  
earlier  
on this  
date to  
locate  
Applicant)**

The Council continued the Public Hearing on Conditional Use No. 1933 as it was determined that the Applicant, Mark A. Gilbin, was in attendance.

Mr. Gilbin stated that the business cannot be seen from Route 17; that he does not operate a repo business; that a sign would probably help direct people to his business; that one neighbor expressed concern that people turn into their driveway looking for the Applicant's business but he feels this is almost impossible since the neighbor has various signs in the front of the property, so he finds it hard to believe anyone would turn down that driveway thinking it is a towing company; that his neighbor has already placed a privacy fence along the majority of the property line and that the Applicant will finish the fence if his neighbor does not; that in regards to impounds, he does not release any vehicles after dusk (not after 5:00 p.m.); that he does operate a towing business 24 hours a day; that his tow truck drivers are not all stationed at his property – that are stationed at other locations; that his closest neighbor and he share a driveway and his neighbor does not have a problem with the application; that his neighbor across the street does not have a problem with the application; that they do not work on anything after 5:00 p.m.; that he has been operating the business for 8 to 10 years at this location with no complaints; that he has lived on this site for 17 to 18 years; that the impound yard is not surrounded by fencing but he is in the process of obtaining prices on fencing; that he tows for some area police departments; that he does operate an auto shop and towing business from the site; that the auto shop operates from 8:00 a.m. to 4:30 p.m.; and that his application is for towing, auto service, and landscaping.

Mr. Vincent raised the question that the title of the Proposed Ordinance, as advertised, states "... FOR A TOWING SERVICE AND LANDSCAPING" and that it doesn't mention anything about an impound yard or a service

**Continue  
Public  
Hearing  
on C/U  
No. 1933  
(Deferred  
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date to  
locate  
Applicant)  
(continued)**

**shop.**

**Mr. Gilbin stated that his original application stated towing, landscaping, and auto repair shop.**

**Mr. Abbott stated that the actual application filled out by the Applicant for the proposed Conditional Use states “towing, service and landscape business” and that in the notice of advertisement, there is not a comma between towing and service.**

**Mr. Cole asked for an opinion as to whether or not the application has been properly/correctly advertised.**

**Mr. Rutt stated that he believes the advertisement should have had a comma after “towing” and that an option would be to re-advertise it and hold new Public Hearings.**

**Public comments were heard.**

**There were no public comments in support of the application.**

**James Mershon, an adjacent property owner, was present and he stated that the Applicant has not lived on the site 17 or 18 years, that he has been there 10 or 11 years; that if you put the Applicant’s address in a GPS, it will give you his (Mershon’s) address; that they are performing auto service work on the site; that you cannot see the business from the road and the Applicant has been operating illegally for years; that he now wants 18 parking spaces and at the Public Hearing before the Planning and Zoning Commission he wanted 11 parking spaces; that the Applicant should be required to follow all regulations and obtain all permits to be able to operate his business; that the Applicant should not be allowed to operate an impound yard at a residence; that he (Mershon) should not be required to provide fencing for his and his family’s safety; that they are providing service center work on the site; that he is concerned that EPA standards are not being adhered to, i.e. removal of fluids, storage of chemicals, fumes, toxicity; that he is concerned about the soils and potential leaks; that he questions if the EPA and the fire company is aware of the business use on the site; that the Applicant hasn’t followed the law for 10 years; that the Roxana Athletic Club has not been built yet and that he questions letter of support from the Club; that the Applicant has been operating a towing service for 3 or 4 years; that there is a petition going around Roxana against an impound yard; that they already have a garage in the area – Roxana Automotive; that the illegal use has had a significant negative impact on his own business; that he is concerned about the safety of his children because the Applicant’s customers drive up his lane; that the use should not be located in a residential area; that he has no problem with a landscaping business (as long as it is run properly and there is no chemical runoff, etc.) and towing dispatch service on the site; and that he has a Jim’s Bait & Tackle sign because he is running a legal operation.**

**Continue  
Public  
Hearing  
on C/U  
No. 1933  
(Deferred  
earlier  
on this  
date to  
locate  
Applicant)  
(continued)**

Franklin Bennett of Ocean View spoke in opposition to the application. He stated that the Applicant has made many false statements; that he (Bennett) owns an impound yard and that if he tows a vehicle in from the Delaware State Police, DNREC, and other municipal police departments, the rules are that he has to give the person's car back no matter what time of day/night; that he was at the Applicant's property recently to tow a bus out of there and the Applicant runs an auto and truck repair business; that he has been told the Applicant runs a second shift diesel mechanic shift; that the property is in bad shape – it is junk yard – he saw over 100 used tires sitting outside, abandoned vehicles, wrecked vehicles and tall weeds; that impound yards have to deal with battery acid, oil, antifreeze and brake fluid leaks which contaminate the ground; that theft problems go along with impound yards; that you cannot have minimum lighting on an impound yard, security lighting is needed; that trucks go in and out of impound yards and the trucks have back-up alarms and lights; and that the site/Applicant has received many violations, i.e. from the Constables Office and the Planning and Zoning Office.

Charles Moore of Coastal Towing on Cedar Grove Road in Lewes was present in opposition to the application. He stated that the application did not mention (storage/impound); that he was at the site to pick up a wrecked vehicle and saw oil leaking on the ground; that an impound yard has to release a vehicle anytime of the day/night (24 hours a day, 7 days a week); that the Applicant should reapply and state specifically what he wants; that for 10 years the Applicant has not played by any rules; and that he questions if the Fire Marshal has been to the site.

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

**M 450 12  
Leave the  
Record  
Open on  
C/U  
No. 1933**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to leave the record open on Conditional Use No. 1933 filed on behalf of Mark A. Giblin for the purpose of receiving a report from the Planning and Zoning Department staff and the County Attorney regarding the advertisement issue.

**Motion Adopted: 5 Yeas.**

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

**M 451 12  
Defer  
Action on  
C/U 1933**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1933 filed on behalf of Mark A. Giblin.

**Motion Adopted: 5 Yeas.**

**M 451 12  
(continued)**

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

**M 452 12  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at  
3:46 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**