



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 23, 2010

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 23, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

M 161 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the
Amend Agenda by deleting "Land Acquisition" under "Executive Session" and to
and approve the Agenda, as amended.
Approve
Agenda Motion Adopted: 5 Yeas.

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

Minutes The minutes of March 16, 2010 were approved by consent.

Corre- Mr. Moore read the following correspondence:
spondence

GEORGETOWN LITTLE LEAGUE, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of grant.

COVERDALE CROSSROADS COMMUNITY COUNCIL, INC.
BRIDGEVILLE, DELAWARE.
RE: Letter in appreciation of grant.

Recognition of Agencies/ Snow Storms	The County Council recognized the following organizations and agencies for their assistance during the back-to-back snow storms in Sussex County in February: American Red Cross, Radio Amateur Civil Emergency Service (RACES) and Amateur Radio Emergency Service, Sussex County Fire Service, Delaware Electric Cooperative, Sussex County Farm Bureau, Delaware Emergency Management Agency, Delaware National Guard, Delaware State Police, Delaware Department of Natural Resources and Environmental Control, Sussex County Paramedics, and Sussex County Emergency Operations Center. Others that assisted but not present were: Delmarva Power, DelDOT and Department of Safety & Homeland Security.
Recognition (continued)	
Delaware State Police Agreement Revision	Mr. Baker reviewed a proposed revision to the County's agreements with the Delaware State Police (DSP). The DSP made the County aware that they are short six troopers in their count in fulfilling the County's 40-trooper funding assistance. As per the current Agreement, the DSP is to provide 40 additional troopers in Sussex County, over and above the normal State allotment. Per the DSP, there will be 24 troopers graduating from the Academy on April 9, 2010; at that time, at least six of those graduates will be assigned to Sussex County to meet the minimum required number of troopers as per the Agreement. Mr. Baker reported that the County and the DSP have agreed on a \$200,000 credit due the County as a result of the shortfall from July 1, 2009 to April 9, 2010.
M 162 10 Approve MOU with Delaware State Police	A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council approves a Memorandum of Understanding with the Delaware State Police providing a \$200,000 credit this Fiscal Year. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea
Report and Discussion/ Gambling and Casino Zoning Rules	Mr. Moore stated that, at the request of Mr. Cole, he has researched the County's Zoning Code concerning gambling and the word "casino" does not appear in the Code. Mr. Moore stated that he reviewed the regulations of other state and county jurisdictions to see how they handle this matter. He reported that, in some areas, a casino district was created; other areas have certain restrictions, i.e. location, acreage, size requirements, etc. It was noted that, currently, casino applications can be made through the Conditional Use process. Mr. Phillips questioned the procedure for placing a moratorium on casino applications until zoning regulations have been adopted by the Council. Mr. Moore responded that he would have to research the matter as to whether it should be by policy or ordinance. After a discussion, Mr. Phillips stated that it was his understanding that the Council could vote to put an immediate moratorium on casino applications to stop any influx of

applications until the matter is advertised and heard publicly.

**Report
and
Discussion/
Gambling
and
Casino
Zoning
Rules
(continued)**

Mr. Cole referenced his request of over two months ago that an ordinance be drafted to address applications for casinos and he noted that a moratorium cannot be open-ended. Mr. Cole also noted that, if an ordinance regarding casinos does get approved, it should include a reference to a percentage of the revenues being directed to the County to offset infrastructure costs.

Following a discussion, the Council considered various proposed Motions to direct staff to draft regulations governing gambling venues in Sussex County and to place a moratorium on applications for gambling related venues until such time as those regulations are approved by the Sussex County Council.

**M 163 10
Draft
Regulations
Governing
Gambling
Venues and
Place a
Moratorium
on
Gambling
Related
Venues**

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to direct staff to draft regulations governing gambling venues in Sussex County and to place a moratorium on applications for gambling related venues in Sussex County that include video lottery, table games, horse racing and betting, and sports betting and that the moratorium will be for a period of six months or until regulations are approved, whichever comes first.

Motion Adopted: 5 Yeas.

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

**Rules of
Procedure
Regarding
Drafting
Ordinances**

The Council discussed Rules of Procedure as they relate to the drafting of ordinances. Mr. Moore reported that it appears that the Council's Rules of Procedure differ from what the practice has been in the past. Mr. Moore stated that the Rules of Procedure (Item 10.1 on Page 6) state that "Any member of the County Council may request a staff member or a consultant to draft an ordinance for introduction. The member shall notify all members of the County Council at the time the request is made. Upon drafting of the proposed ordinance, it shall be placed on the agenda for discussion and possible introduction." Mr. Moore noted that it does not appear that this issue requires a consensus, as has been the case in the past.

Mr. Cole stated that the policy has been that the Council member intending to have an ordinance drafted would notify the Council and for the sole purpose of deciding whether or not to proceed, determine if there was a consensus. However, whether or not there was a consensus, the Council member would still have the ability to proceed and have the ordinance drafted.

Mrs. Deaver stated that she would like an adequate public facilities ordinance drafted.

Mr. Phillips stated that he would like an ordinance drafted to place a cost benefit analysis on every new regulation.

(continued) Mr. Vincent stated that the draft ordinance relating to gambling venues, which the moratorium has been placed on, should take precedence.

Land Use Planner The Council discussed the fact that the County does not have a Certified Land Use Planner on staff. It was decided to discuss this matter under Additional Business.

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

1. Energy Efficiency Block Grant Award

Sussex County has been notified that we have been awarded a grant up to \$648,600 for a solar project located at the County's Emergency Operations Center. This funding will be used to install an 85kW solar powered system which is projected to save the County \$12,350 annually and generate approximately \$30,000 of revenue in the form of Solar Renewable Energy Certificates. This will offset approximately 49 percent of the annual energy cost of the Emergency Operations Center.

2. Sussex County Emergency Operations Center Callboard Statistics

As per the attached spreadsheet, the Sussex County Emergency Operations Center handled 19,089 calls during the month of February. This is up over 3,000 calls compared to the previous month. Much of the increase could be attributed to the February back-to-back snowstorms.

3. Substantial Completion

The Engineering Department granted Substantial Completion on March 16, 2010, to Fairway Village – Phase 3A, Agreement No. 844-2. The developer is Estates of Fairway Village, L.L.C., and the project is located on County Road 84 and County Road 368 in the Bethany Beach Sanitary Sewer District, consisting of 35 single-family lots. Included with this report is a fact sheet on the project.

4. Myrtle Shockley – Former County Employee

We regret to announce that Myrtle Shockley, a Sussex County employee from January 5, 1977 to June 30, 1987, passed away on March 11, 2010. Mrs. Shockley served as a Deputy in the Prothonotary's Office in 1977 and was transferred to the Utility Billing Division in 1985 and served as a billing clerk there. Mrs.

Shockley was 84 years old. We wish to express our condolences to her family and friends.

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

**EMT
Basic
Training
Program**

Bob Stuart, Director of Emergency Medical Services (EMS), presented a proposed Memorandum of Understanding between Sussex Technical High School and Sussex County EMS to provide an Emergency Medical Technician Basic (EMTB) Training Program at the high school beginning in Fall 2010. The school would provide the venue and an instructor to oversee the venue; however, the County would provide the instructors for the courses. Mr. Stuart stated that there is an EMTB shortage in Sussex County and that it is affecting the Volunteer Fire Service and the Volunteer Ambulance Service. The EMT basic level is required to ride on the ambulances in Sussex County to treat patients. Mr. Stuart stated that this proposal would provide an opportunity for high school students to obtain the education to become an EMTB. The cost to Sussex County would be the salary of the instructors teaching the classes; the maximum cost would be \$12,500.00 annually.

Mr. Cole suggested that the County ask the fire companies to contribute to this program.

**M 164 10
Approve
MOU with
Sussex
Technical
High
School/
EMT
Basic
Training
Program**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council hereby endorses and approves a Memorandum of Understanding between Sussex County, Delaware, Emergency Medical Services and Sussex Technical High School to provide an Emergency Medical Technician Basic Training Program at Sussex Technical High School to qualified students, beginning in August 2010.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Western
Sussex
Byways
Report**

Dan Parsons, Historic Planner, and Kendal Jones, Member of the Western Sussex Byway Committee, announced that DelDOT has approved the designation of the Western Sussex Byway, which creates a scenic route on the western side of the County, a path that will link well known and some not-so-well-known landmarks. The goal of the byway effort is to showcase the area's rich history and to promote rural tourism. Sussex County sponsored the application to DelDOT last fall, and used a series of community meetings with a citizens' advisory group to help shape the course of the route.

Mr. Parsons stated that they now plan to apply for \$150,000 in federal funding for the next phase of the project, which is the creation of the Corridor Management Plan.

Bid Results (SCRWF) **Loran George, District Manager, South Coastal Regional Wastewater Facility, presented the bid results for Sussex County Project No. 09-22, Bulk Delivery of Granular Lime, as follows:**

Bid Results (SCRWF)	Greer Lime Company	\$148.00 per ton
	Carmeuse Natural Chemicals	\$155.79 per ton
	Intercoastal Trading, Inc.	\$176.00 per ton

Granular Lime and Sodium Hypochlorite (continued)

Mr. George presented the bid results for Sussex County Project No. 09-23, Bulk Delivery of Sodium Hypochlorite, as follows:

Coyne Chemical	\$1.145 per gallon
Intercoastal Trading, Inc.	\$1.33 per gallon

Mr. Phillips rejoined the meeting.

M 165 10 Award Bid/ Bulk Delivery of Granular Lime **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 09-22, Bulk Delivery of Granular Lime, be awarded to Greer Lime Company of Morgantown, West Virginia, in the bid amount of \$148.00 per ton.**

Motion Adopted: 3 Yeas, 1 Nay, 1 Abstention.

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

M 166 10 Award Bid/ Bulk Delivery of Sodium Hypochlorite **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 09-23, Bulk Delivery of Sodium Hypochlorite, be awarded to Coyne Chemical at the bid amount of \$1.145 per gallon.**

Motion Adopted: 3 Yeas, 2 Abstentions.

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

(Mr. Phillips was out of the room during the discussion of the bid results and therefore abstained from the vote.)

Public Hearing/ Artisans Bank Annexation into the **A Public Hearing was held to consider extending the boundary of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District to include parcels of land along State Route No. 24 (John J. Williams Highway) and adjoining the existing Beebe Medical Center.**

Rob Davis, Engineering Department, reported that the property owner,

WRE of the DBSSD **Artisans' Bank has provided a letter requesting the annexation and has paid the administrative fee of \$750.00; Artisans' Bank will also pay approximately \$33,000 in system connection charges.**

M 167 10 Adopt R 012 10 **There were no public comments and the Public Hearing was closed.
A Motion was made by Mr. Vincent, seconded by Mr. Cole, to adopt Resolution No. R 012 10 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE WEST REHOBOTH EXPANSION OF THE DEWEY BEACH SANITARY SEWER DISTRICT (WRSSD) TO INCLUDE PARCELS OF LAND ALONG THE SOUTHERLY SIDE OF STATE OF DELAWARE ROUTE 24, WEST OF THE TOWN OF REHOBOTH BEACH, BEING SITUATE IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE".**

Motion Adopted: 5 Yeas.

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

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

M 168 10 Community Grant **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give \$750.00 from Mr. Wilson's Community Grant Account to the Historic Georgetown Association for the restoration of Georgetown's First Firehouse.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 169 10 Community Grant **A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$1,000.00 from Mr. Phillips' Community Grant Account to the Dagsboro Boys & Girls Club for operating expenses.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 170 10 Community Grant **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$250.00 from Mr. Wilson's Community Grant Account to the Woodbridge Elementary School for their reading program called Accelerated Reader.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 171 10 Community Grant A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent's Community Grant Account to the City of Seaford for the Nanticoke Riverfest event.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 172 10 Community Grant A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give \$1,000.00 (\$200.00 from each Community Grant Account) to the Delaware Ducks Unlimited for the 2010 Greenwing Event.

Motion Adopted: 5 Yeas.

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

M 173 10 Community Grant A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00 (\$250.00 each from Mrs. Deaver's and Mr. Wilson's Community Grant Accounts) to the Milford Senior High School for After-Prom Party expenses.

Motion Adopted: 5 Yeas.

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

M 174 10 Community Grant A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to give \$500.00 from Mr. Phillips' Community Grant Account to the Greater Millsboro Chamber of Commerce for operating expenses.

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MARINA WITH

RESTAURANT, RETAIL AND MULTI-FAMILY DWELLING STRUCTURES (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS” (Conditional Use No. 1863) filed on behalf of Andrew and Carol Walton. The Proposed Ordinance will be advertised for Public Hearing.

**Additional
Business/
Land Use
Planner**

Under Additional Business, Mrs. Deaver questioned if the County is going to fill the position of Land Use Planner. It was noted that the position was posted several months ago and applications were received; however, no interviews were held.

Mr. Cole stated that the funding for the position was included in the budget and therefore, the County should proceed.

Mr. Phillips stated that, in light of the 2009 Budget, this did not seem to be a high priority issue.

Mr. Cole and Mrs. Deaver stated that they believe the position is essential.

Mr. Vincent stated that he believes the County should replace the Land Use Planner that retired, in accordance with proper procedures.

Mr. Wilson stated that the County Administrator should hire a Land Use Planner, at his discretion.

**M 175 10
Hire
Land Use
Planner**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, that the County move forward to hire a Land Use Planner, at the County Administrator’s discretion.

Motion Adopted: 5 Yeas.

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

**Additional
Business/
Rules of
Procedure**

Mr. Cole referenced the Council’s earlier discussion regarding Rules of Procedure and he suggested that the Council should designate a person to research matters that have been brought up for the purpose of draft ordinances. Mr. Cole suggested that Hal Godwin be designated as that person. Mr. Phillips stated that this would be a policy change and, therefore, would need to be placed on an Agenda for consideration. The matter will be placed on the March 30th Agenda.

**Additional
Business/
Public
Comments**

Eric Bodenweiser of Georgetown commented on the Council’s discussion and vote on a moratorium on casinos in Sussex County and he thanked the Council for their decision.

Alan Little of Seaford spoke in opposition to casinos and gambling in Sussex

County.

There was no additional business to be brought before the Council.

M 176 10
Go Into
Executive
Session

At 12:11 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel and pending/potential litigation.

Motion Adopted by Voice Vote.

Executive
Session

At 12:12 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 issues relating to personnel and pending/potential litigation. The Executive Session concluded at 12:42 p.m.

M 177 10
Reconvene
Regular
Session

At 12:43 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 by Voice Vote.

Action

Mr. Moore announced that no action was necessary on Executive Session items.

M 178 10
Recess

At 12:44 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to recess until 1:30 p.m.

Motion Adopted by Voice Vote.

M 179 10
Reconvene

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to come back into Regular Session at 1:38 p.m.

Motion Adopted by Voice Vote.

Withdraw
of C/U
No. 1816

Lawrence Lank, Director of Planning and Zoning, announced that Conditional Use No. 1816 filed on behalf of Andrew and Carol Walton was withdrawn on March 16, 2010. (This application was originally scheduled to be heard on this date.)

Public
Hearing
(C/Z
No. 1674)

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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 40,271 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1674) filed on behalf of Lee Repass.

The Planning and Zoning Commission held a Public Hearing on this

application on February 25, 2010 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 25, 2010.)

Public
Hearing
(C/Z
No. 1674)
(continued)

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

Mr. Lank distributed Exhibit Booklets which were provided by the applicant.

Lee Repass and David Repass were present with Eugene Bayard, Attorney, and Ken Christenbury, Professional Engineer with Axiom Engineering, LLC. They stated that Mr. Repass holds the Meineke Franchise for Sussex County; that this application is a textbook infill site; that the site is bordered on the north and south by existing commercial zoning and uses; that the site is adjacent to and in close proximity to several commercial and business uses; that the Applicant proposes to build a Meineke auto service center; that they propose to develop the site with onsite well and septic; that an infiltration basin is proposed; that the State Fire Marshal has advised that there is no need for fire lanes; that the use is in character with the area; that there are no residential neighbors; that DelDOT voiced no objections and has given approval for 200 trips per day; that the auto center will be a complete car care center and will provide general auto maintenance, brakes, oil changes and service, and muffler repair; that hazardous materials handling will be per the Fire Marshal's regulations; that all oils and fluids will be stored in required containers; that all waste oils and fluids will be stored in required containers and will be picked up and disposed of by licensed handlers; that tires will be fenced and will be picked up by tire vendors; that shop rags and uniforms will be picked up by uniform vendors for cleaning and then returned; that operating hours will be from 6:30 a.m. to 6:00 p.m. weekdays and 7:30 a.m. to 2:00 p.m. on Saturdays, with no Sunday hours; that there will be no automobile storage on the site; that they anticipate having seven employees; that the use and rezoning are consistent with the area and the trend of development in the area; that the use and rezoning are consistent with the Comprehensive Plan Update and the Environmentally Sensitive Developing District Overlay Zone; and that proposed Findings of Fact are included in the Exhibit Book.

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

M 180 10
Adopt
Ordinance
No. 2109
(C/Z
No. 1674)

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2109 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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 40,271 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1674) filed on behalf of Lee Repass.

Motion Adopted: 5 Years.

**M 180 10
(continued)**

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

**Public
Hearing
(C/Z
No. 1694)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 24 IMPOSED ON ORDINANCE NO. 1433 FOR CHANGE OF ZONE NO. 1393, THE APPLICATION OF CMF BAYSIDE, LLC, FOR “AMERICANA BAYSIDE”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY, TO ALLOW REVISED COMMERCIAL ENTRANCE LOCATIONS AS MAY BE APPROVED BY DELDOT, AND TO PERMIT THE COMMERCIAL USE OF 1.27 ACRE PARCEL ON THE NORTH SIDE OF ROUTE 54 (TAX MAP # 5-33-19.00-17.01) [Change of Zone No. 1694] filed on behalf of CMF Bayside, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on February 25, 2010 at which time action was deferred.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 25, 2010.)

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

Mr. Lank distributed Exhibit Book which were provided by the applicant.

Doug Brown and Chris Garland of CMF Bayside, LLC were present with James Fuqua, Attorney with Fuqua & Yori, P.A., and Jim Willey, Professional Engineer with George, Miles & Buhr. They stated that the application is to modify a condition that was attached to a MR-RPC approval for the Americana Bayside RPC Development in February 2001; that the Americana Bayside site contains 887 acres; that the RPC was approved for a mixture of 1,700 residential units, 170,000 square feet of retail and office use, and extensive recreational facilities, including a golf course; that the approval of the RPC was subject to twenty-four conditions; that this application requests the modification of Condition No. 24 that states “All commercial activities shall be limited to the south side of Route 54, with no direct access to Route 54. Entrance to the commercial area shall be a minimum of 300 feet from Route 54.”; that they are requesting that this condition be modified to permit the commercial use of a 1.27 acre parcel located on the north side of Route 54 and to permit a right in and right out entrance/exit on Route 54 for a 7 acre parcel located on the south side of Route 54; that DelDOT issued a Letter of No Objection for the right in and right out entrance/exit; that the

**Public
Hearing
(C/Z
No. 1694)
(continued)**

modified condition is proposed to state that “All commercial activities shall be limited to the south side of Route 54, except for a 1.27 acre parcel designated Tax Map 5-33-19.00, Parcel 17.01, located on the north side of Route 54 on which commercial use shall be permitted subject to commercial entrance approval from DelDOT. Entrance to the commercial area located on the south side of Route 54 shall be a minimum of 300 feet from Route 54, except for a single right in and right out commercial entrance to a parcel designated as Tax Map 5-33-19.00 Parcel 16.00 subject to approval from DelDOT.”; that the modification will allow for the commercial use of the residual 1.27 acre parcel on the north side of Route 54; that this is not a change of zone request since the 1.27 acre parcel is a part of the MR-RPC (Americana Bayside); that the modification will not allow them to exceed the 170,000 square feet of business area in the project; that the parcel adjoins the redesigned intersection of Route 54 and Route 20; that the developers built the new redesigned intersection with DelDOT’s approval; that the 1.27 acre parcel was offered to the Roxana Volunteer Fire Company and the State Police; that both the Fire Company and the State Police declined the offer; that the 1.27 acre parcel is not suitable for residential use due to surrounding roads; that a median island is proposed to eliminate left turns onto Route 54 based on the conceptual plans submitted to DelDOT; and that currently the project has site plan approval to utilize less than 100,000 square feet of the business area proposed.

Public comments were heard.

Ellen Magee, area resident, stated that she does not oppose the proposed change for the 1.27 acre parcel; however, she is concerned about the right in and right out entrance/exit to the 7 acre parcel since it would create a lot of traffic problems on Route 54.

The Public Hearing was closed.

**M 181 01
Defer
Action on
C/Z
No. 1694**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1694 filed on behalf of CMF Bayside, LLC, for modifications to Condition No. 24 imposed on Ordinance No. 1433 for Change of Zone No. 1393.

Motion Adopted: 5 Yeas.

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

**Public
Hearing
(C/Z
No. 1675
and C/U
No. 1853)**

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 MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9.33

**Public
Hearing
(C/Z
No. 1675
and C/U
No. 1853)
(continued)**

ACRES, MORE OR LESS” (Change of Zone No. 1675) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (DUPLEX) DWELLING STRUCTURES (24 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9.33 ACRES, MORE OR LESS” (Conditional Use No. 1853) filed on behalf of Barry Baker.

The Planning and Zoning Commission held a Public Hearing on this application on February 25, 2010 at which time action was deferred. On March 17, 2010, the Commission discussed the application and again deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 25 and March 17, 2010.)

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

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

Mr. Lank reported that the following correspondence was received after the Public Hearing was held before the Commission:

A letter from Kenneth Mecham, Lewes Board of Public Works, stating that the Board of Public Works will accept wastewater from the above referenced property.

Barry Baker, Applicant, was present with Mark Dunkle, Attorney with Parkowski, Guerke & Swayze; Jeffrey Bross, Professional Engineer, and Jennifer Gresh, Professional Geologist with Duffield Associates, Inc.; and Mike Riemann, Registered Engineer with Becker Morgan Group, Inc. They stated that the application is for the rezoning of an old dump (known as the Donovan’s Dump); that Mr. Baker purchased the property; that Mr. Baker proposes to take advantage of the Brownfield program and clean up the site; that the surface clean-up process has already begun; that the site has been improved environmentally and has been studied, drilled, and tested; that Duffield Associates and DNREC have been monitoring the clean-up; that the next step is to remediate the property under a plan certified by DNREC and prepared by Duffield Associates; that the Applicant proposes to develop the site with 24 multi-family units in 12 duplex buildings; that 2.5 units per acre is proposed on the 9.33 acre site; that the density is needed to justify the clean-up of the site; that the proposed use is compatible with the area; that the site is surrounded by MR zoned property; that there is also commercial property adjacent to the site; that according to the Comprehensive Plan, the area is to be a mixed residential area; that the proposal is the best cost effective way to redevelop the site as a usable property; that the clean-up of the site will benefit the

Public
Hearing
(C/Z
No. 1675
and C/U
No. 1853)
(continued)

community; that property values will not be detrimentally affected as a result of this project; that the project will have a positive economic impact on the Brownfield redevelopment; that this will be a carefully monitored construction project and therefore, more expensive; that the site was operated as an unpermitted landfill from approximately 1961 through 2007; that DNREC has been investigating the site since 1986; that the site was certified as a Brownfield site in December 2006; that the Applicant entered into a Brownfield Development Agreement with DelDOT; that the site is a suitable site for redevelopment per DNREC; that a Contaminated Materials and Soils Management Plan has been developed and prepared and is pending approval from DNREC; that the proposed buildings will appear to be larger dwellings and will be approximately 32 feet in height; that the street will be private and that an existing easement will be relocated to provide access from the private street to the property to the rear of the site; that DelDOT will be requiring a five foot wide dedication of right-of-way along Old Orchard Road, a multi-modal path, right-turn lanes, and a bike path; that public central water will be provided by Tidewater Utilities, Inc; that public sewer will be provided by the City of Lewes Board of Public Works; that they have reserved an area for a pump station; that they are proposing to buffer all perimeter property lines; that stormwater management will be to the rear of the site near the branch; that groundwater monitoring has been completed; that the exact route of the sewer line has not yet been established; that sidewalks and street lights will be provided; that there will be no disturbance of wetlands; and that full disclosure will be provided to buyers of units in the project about the Brownfield (written disclaimer will be made in the marketing materials, contracts and deeds).

Mr. Fuqua submitted an acceptance letter from DNREC, dated March 18, 2010. The letter states the approval of the CMMP (Contaminated Material Management Plan for the Donovan Site and states that a work plan for methane screening will be submitted to DNREC prior to the initiation of construction activities at the site.

Mr. Cole questioned if a wider buffer could be provided between this site and the AR-1 zoned lands as opposed to the commercial zoned lands.

There were no public comments in support of the application.

Glenn Piper, an area resident, stated that he was speaking on behalf of 24 homeowners in The Orchard Subdivision. He stated that he is not opposed to MR zoning; that he is opposed to multi-family housing units; that the site is surrounded by single family houses; that he questions why anyone would want to build on filled sites; that the Brownfield site would have to be disclosed to potential buyers; that sewer capacity may be available, but the City of Lewes does not have availability to this site and there are currently no pipes to the area; that a swale is needed; that the existing tree line needs to be improved; that traffic is a concern; that the intersection of Old Orchard Road and Savannah Road is a bad intersection and will only get

worse; and that DelDOT's traffic count is from 1998 and does not reflect existing conditions.

The Public Hearing was closed and action was deferred.

M 182 10 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action
Defer on Change of Zone No. 1675 and Conditional Use No. 1853 filed on behalf of
Action Barry Baker.

Motion Adopted: 5 Yeas.

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

M 183 10 A Motion was made by Mr. Vincent, seconded by Mr. Cole, to adjourn at
Adjourn 3:15 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council