



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 31, 2009

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 31, 2009, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

Mr. Phillips called the meeting to order.

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

M 177 09 A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to approve
Approve the Agenda, as posted.
Agenda

Motion Adopted: 5 Yeas.

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

Minutes The minutes of February 24, 2009 were approved by consent.

Corre- The following correspondence was read into the record:
spondence

LOWER DELAWARE AUTISM FOUNDATION, LEWES, DELAWARE.
RE: Letter in appreciation of Council's \$500.00 grant in December 2008.

MAYOR DON POST, TOWN OF MILTON, MILTON, DELAWARE.
RE: Letter reminding the Council that the Town wants and needs the

\$25,000 Local Law Enforcement Grant for its police department.

SUSSEX CHILD HEALTH PROMOTION COALITION.

RE: Letter thanking Vance Phillips and David Baker for supporting the Walk Event which will take place on April 4th.

Employee of the Quarter/ Bonnie Hall	The County Council recognized Bonnie Hall, Employee of the Quarter for the First Quarter 2009. Mr. Phillips presented a Tribute to Bonnie Hall on behalf of the Council, commending her for a job well done and extending the Council's appreciation for her service to the County.
Proclamation/ American Red Cross Month	Mr. Baker read a Proclamation entitled "PROCLAIMING THE MONTH OF MARCH AS <u>AMERICAN RED CROSS MONTH</u> IN SUSSEX COUNTY". The Proclamation was presented to Daniel Valle, Chief Executive Officer of the American Red Cross of Delmarva. Mr. Valle reported that in 2008, in Sussex County, 142 people received disaster assistance and 2,400 people received first aid assistance including CPR, community disaster education, etc. Mr. Valle commended volunteers for assisting their neighbors and he thanked the Council for its continued support.
Draft Ordinance/ Register of Wills Office	Mr. Baker presented a Draft Ordinance to increase fees for the Register of Wills Office, as discussed at the March 24th Council meeting. Mr. Baker reviewed the proposal to increase the fees, as recommended by the Register of Wills Greg Fuller. The increase from 1.25 percent of net estate to 1.75 percent of net estate will administratively simplify estate settlements and eliminate controversy, since all three counties would have the same fee.
Introduction of Proposed Ordinance	Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE 1, SECTION 62-1, RELATING TO FEES CHARGED BY THE REGISTER OF WILLS". The Proposed Ordinance will be advertised for Public Hearing.
Discussion and Possible Introduction of an Ordinance to Revise Fees of the Register of Wills Office	Mr. Baker presented a proposal to increase the fees of the Clerk of the Peace Office. He stated that Clerk of the Peace George Parish is suggesting this proposal in an effort to make the Clerk of the Peace Office self-sufficient since the Office has operated in a deficit for many, many years. Mr. Baker reviewed the proposed fee changes and information was distributed outlining current fees and proposed fees. It was noted that, in some cases, the proposed fees are higher than those charged in the other counties. Mr. Baker reported that the proposed fee increases would result in an approximate increase in annual revenue of \$59,150.00. It was noted that the Clerk of the Peace, George Parish, was unable to attend this meeting due to a prior commitment.

With no opposition from the Council, Mr. Phillips asked Mr. Griffin to

prepare a Draft Ordinance for the Council's consideration and possible introduction.

**Western
Sussex
Byway
Project**

Dan Parsons, Historic Preservation Planner, presented additional information on the Western Sussex Byway Project sponsorship proposal, as previously discussed on March 24th.

**Western
Sussex
Byway
Project
(continued)**

In response to questions raised by Mr. Phillips at the March 24th Council meeting, Mr. Parsons presented the 14-point guidelines for developing a Corridor Management Plan (CMP) as set forth by the Federal Highway Administration. He stated that there are no restrictions that are directly prescribed except ones for signage (billboards) along the route and for road improvements (signage and context sensitive road design). As far as any other regulations, there are none. The CMP is a bottom up plan that incorporates the wishes of the property owners and stakeholders along the route.

It was noted that, as the Sponsor, the Sussex County Council would regulate every step and would have oversight of the Plan. It will be the task of the Committee formed to contact all stakeholders along the route, property owners and otherwise, to determine the wishes of everyone involved so as to develop a comprehensive and inclusive plan for the management of the Western Sussex Byway.

In response to questions, Mr. Parsons stated that the final recommendation for the Committee would require the approval of the Council.

**M 178 09
Sponsor
Western
Sussex
Byway**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, that the Sussex County Council agrees to sponsor the creation of a Western Sussex Byway which does not entail a financial commitment except for County staff time.

Motion Adopted: 5 Yeas.

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

**Bookmobile
Report**

Mr. Baker reported that, currently, the Bookmobile is manned by two full-time employees and serves senior centers, day-care centers, schools, certain developments, Boys & Girls Clubs, etc. Extra efforts have been taken this fiscal year to increase the circulation of the Bookmobile by Library Administration. The net cost to the County, after a State grant-in-aid, of maintaining this service next year would be approximately \$110,838.00.

Mr. Baker stated that, given the current budget situation, a recommendation is being made for the next fiscal year to save approximately \$40,000 by reducing the level of service of the Bookmobile to some extent. It is proposed that one of the full-time employees be

Bookmobile Report (continued)	<p>transferred to another library that is short a staff person and use a Library Administration staff person to operate the Bookmobile for two days a week. During the other two days a week, the remaining Bookmobile staff person would concentrate on delivering books at children's day-care centers using a County van. Mr. Baker noted that this proposal would mean reduced service for some areas, especially in developments; however, it would enable the County to save approximately \$40,000 and still provide Bookmobile services to most of the residents currently being served.</p> <p>Carol Fitzgerald, County Librarian, stated that, over time, circulation by the Bookmobile has dropped in some areas and therefore, it is proposed that those areas of circulation be discontinued. She stated that they are proposing to continue service to the congregate care sites, i.e. Easter Seals, nursing homes, schools, etc. In addition, it is proposed that deposit collections would be taken to day care centers in a different vehicle, thereby continuing this important service to the children. Ms. Fitzgerald noted that another use for the Bookmobile is to provide service to libraries that are temporarily closed due to expansion/renovation/relocation.</p>
M 179 09 Approve Reduction in Bookmobile Services	<p>A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to approve the reduction of Bookmobile services, as presented by the County Administrator and County Librarian.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea</p>
Homestead Tax Discussion	<p>Mr. Baker reported that the Budget Committee has done some research on a possible Homestead Tax. He stated that one option would be to charge an additional property tax on residential property owned by non-Delaware residents. Mr. Baker noted that the basis for this option is that non-Delaware residents do not pay Delaware income tax so they are not contributing towards the cost of services through State funding, such as paramedics, State Police, libraries, etc. Mr. Baker stated that the Budget Committee would like to check on this option and other options with the Government Finance Officers Association and National Association of Counties.</p> <p>Mr. Baker stated that a Homestead Tax would take a considerable amount of work to implement and that it could possibly involve legislation to give the County the authority to assess such a tax.</p> <p>Mr. Griffin addressed the legal concerns regarding the implementation of a Homestead Tax. He noted that the Homestead Tax in other states actually exists in the form of an exemption, i.e. exempting a flat amount of assessed value and exempting a homestead from an attachment, judicial sale, etc. He noted that, typically, a Homestead Tax is not to create new revenue. He further noted that the County would be looking at a two-tier tax rate, one</p>

**Homestead
Tax
Discussion
(continued)**

tier for residents and another, higher tier, for non-residents. Mr. Griffin stated that, prior to the Council attempting to implement a Homestead Tax, legal counsel would have to look at the legal implications. Mr. Griffin informed the Council that according to the Delaware Constitution, all taxes shall be uniform on the same class of subjects within the County and that the three counties can exempt properties from taxation; however, it does not say that the counties can adopt a higher/different rate of assessment for non-residents. Mr. Griffin stated that, with the Council's approval, he will pursue legal research to see if this has been done in any county in the United States and to see if it is legally permissible. Mr. Griffin noted that a good resource would be the National Association of Counties (NACo)

It was noted that this topic is appropriate for a future workshop. With no objection from the Council, Mr. Phillips asked that the staff and the County Attorney begin preliminary research through NACo and he asked that legal expenses be kept to a minimum.

**Adminis-
trator's
Report**

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

1. **County Council Meetings – Change of Time**

Ensuing Sussex County Council meetings will be held at 3:00 p.m. Public hearings, when scheduled, will be held at 6:00 p.m. on Tuesdays. This scheduling change has been made with the goal to enable additional citizens to attend public hearings.

2. **Sussex County Paramedics – Silver Medal**

As per the attached Media Release, Sussex County paramedics placed second in the 2009 JEMS Games competition held last week in Baltimore, Maryland. The County's team, including paramedics Mike Carunchio, Jeff Cox, Stuart Henley, and Jill Wix, competed against 13 other teams from across the United States. We wish to congratulate our paramedics who have been very successful in these competitions that reflect on their ability to provide high quality service to the residents of our County.

3. **Clean Hands Ordinance Report**

Since the adoption of the Clean Hands Ordinance on October 22, 2008, approximately \$523,387 has been collected in delinquent taxes and sewer and water charges as a result of this ordinance.

4. **Dedication of Aviation Maintenance Education Center**

On March 30, 2009, Delaware Technical & Community College dedicated its new Aviation Maintenance Education Center at the County's Industrial Airpark. The Sussex County Council contributed \$1.2 Million toward the purchase and renovation of this

hangar to be used for the Delaware Technical & Community College training program for airframe mechanics. This program will fulfill a need in Sussex County and enable Sussex County residents to learn this skill needed by the Industrial Park's largest employer, PATS Aircraft.

**Lease
Renewal/
Paramedic
Supervisor
Station
No. 200 in
Seaford**

Robert Stuart, Deputy Director of Emergency Medical Services, presented a proposal to renew a Lease Agreement between JBT Enterprises, LLC and Sussex County Council.

Mr. Stuart advised that David Webb was the County's previous landlord for the West District Supervisor Station on Brickyard Road in Seaford. (JBT Enterprises, LLC is a company that was formed after David Webb passed away.)

The Proposed Lease would go into effect on May 1, 2009 and would continue for a period of three (3) years to the 30th day of April 2012 unless modified by mutual agreement of both parties or by the Tenant giving the Landlord at least sixty days notice of intent to terminate the lease. The monthly rental amount would be \$815.00

**M 180 09
Approve
Lease
Agreement/
JBT Ent./
Paramedic
Supervisor
Station
No. 200**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council approves the Lease Agreement between JBT Enterprises, LLC, and Sussex County Council, as per the terms and conditions of the written Lease Agreement.

Motion Adopted: 5 Yeas.

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

**SCRWF
Treatment
Upgrade
No. 2/
Change
Order**

Michael Izzo, County Engineer, presented a Balancing Change Order for the South Coastal Regional Wastewater Facility (SCRWF) Treatment Upgrade No. 2 (Contract No. 02-12-B). A Notice to Proceed was issued for this project in January 2005; it was a two-year contract to be completed in January 2007. Mr. Izzo reported that C. O. Falter Construction, Inc. of Syracuse, New York, the Contractor, did not complete the work in a timely manner and it was not until November 2007 that the work was completed, 302 days past the actual contract time. Since January 2007, the County has been trying to finalize the project and get the Contractor to finish the work. A Balancing Change Order was finally negotiated and Mr. Izzo reviewed that Change Order. He reported that most of the changes are decreases resulting in a net positive amount of \$306,685.00. In addition, a time extension will be issued for 302 days in exchange for the penalties that the Contractor will be required to pay.

M 181 09
Approve
C/O for
SCRWF
Treatment
Upgrade
No. 2

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the County's Consulting Engineer, Stearns & Wheler, LLC, and the Sussex County Engineering Department, that Change Order No. 7 for Sussex County Contract No. 02-12-B, SCRWF Treatment Upgrade No. 2 with C.O. Falter Construction Corporation be approved, which increases the contract time by 302 days and decreases the contract amount by \$306,685.25 for a new contract total of \$15,008,172.92, contingent upon the approval of the U.S. Department of Agriculture, Rural Development, and the Financial Assistance Branch, Division of Water Resources, Delaware Department of Natural Resources and Environmental Control.

M 181 09
(continued)

Motion Adopted: 5 Yeas.

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

Draft
Zoning
Ordinances

Lawrence Lank, Director of Planning and Zoning, presented the following draft ordinances that were previously discussed on March 24th:

- Relating to the time period of validity of a preliminary subdivision plat – this Amendment would extend the period of validity for a preliminary subdivision approval from one year to three years, recognizing the fact that it is difficult to obtain all necessary agency approvals required for final approval within just one year.
- Relating to the time period of validity of the approval of a conditional use – the County acknowledges that it is difficult to obtain all necessary State and local agency approvals for an approved conditional use within one year as previously required, subject to two possible time extensions – with this Amendment, the period of validity will be three years.
- Allowing for the staff approval of major subdivisions containing three or fewer lots to be located along a new street – this Amendment would allow, under certain limited conditions, the Planning and Zoning Director to approve for recordation, subdivisions of three or fewer lots – this Amendment further defines those conditions while still allowing minor subdivisions and the division of agricultural land.

Introduction
of Proposed
Zoning
Ordinances

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99, SECTION 99-9B, OF THE CODE OF SUSSEX COUNTY RELATING TO THE TIME PERIOD OF VALIDITY OF A PRELIMINARY SUBDIVISION PLAT".

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY RELATING TO THE TIME PERIOD OF VALIDITY OF THE

APPROVAL OF A CONDITIONAL USE”.

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND”, TO ALLOW FOR THE STAFF APPROVAL OF MAJOR SUBDIVISIONS CONTAINING 3 OR FEWER LOTS TO BE LOCATED ALONG A NEW STREET”.

(continued) The Proposed Ordinances will be advertised for Public Hearing.

**Public
Hearing/
South
Bethany
SSD
Double
Bridges
Annexation**

A Public Hearing was held to consider extending the South Bethany Sanitary Sewer District (SBSSD) to include a parcel of land lying along County Road 363 (Double Bridges Road), west of Ocean Farms, south of the Town of Ocean View. The proposed expansion of the SBSSD is within the boundaries of the proposed extension and contains 46.40 acres, more or less.

John Ashman, Director of Utility Planning, stated that the expansion is proposed to include one parcel (Tax Map and Parcel No. 1-34 17.00 33.00) located near the South Coastal Treatment Plant and Ocean Farm, which are part of the SBSSD. The annexation area is contiguous to the existing SBSSD. The total project consists of seven single family home lots, with 34.25 acres dedicated to open space. Mr. Ashman stated that the concept sewer plan was approved in December 2007 and requires the project to connect to an existing manhole in Neptune Drive in the Ocean Farm Subdivision. The total project is 46.4 acres and the parcels will be responsible for \$4,228.00 per EDU for system connection charges.

Mr. Ashman reported that a list of concerns was received from the neighboring Ocean Farms community and on Thursday, March 26th, County Engineering staff met with the President of the Homeowners Association. Mr. Ashman stated that one of the concerns was construction along Neptune Drive and more specifically, how long the road would be disturbed and how the residents would be affected. Another main concern was a stormwater issue.

Mr. Ashman stated that the Council previously questioned the County’s ability to just include the seven lots that are proposed versus the entire parcel. In response to that question, Mr. Ashman stated that the Engineering Department believes this is a viable alternative.

Mr. Ashman noted that all of the seven lots are for single family homes and they are currently unimproved. The balance of the property is primarily wetlands and is to be dedicated to open space.

Public comments were heard. Jim Harding, President of the Ocean Farms Homeowners Association, stated that they concur with the hook-up and he expressed concern about the development of the property. He questioned if there would be another public hearing before the Council on this matter. County staff responded that since it is a minor subdivision, there would be

no additional public hearing on the development of the property.

Mr. Harding referenced their stormwater concerns. He stated that there are water problems in the area now and that the development of seven lots will cause more run-off to properties in Ocean Farms. He questioned what, if anything, will be done to eliminate the problem.

**Public
Hearing/
South
Bethany
SSD
Double
Bridges
Annexation
(continued)**

Lawrence Lank, Director of Planning and Zoning, responded that, in reference to an additional public hearing, four lots could be approved this year for development and three lots could be approved for development the next year; however, any further subdivision of that parcel would require another public hearing. Mr. Lank also stated that stormwater management issues would have to be addressed by the Sussex Conservation District and that stormwater has to be maintained on the site.

Andrew Hayes, representing Double Bridges OV, LLC, stated that the application is for the extension of the district for seven lots only; that they propose to preserve the rear of the site; that the area they want to preserve adjoins County property and they have initiated conversations with the County for the preservation of the site; that in reference to disturbance to the community, they estimate thirty days of construction; that in regards to drainage, they propose to develop the front of the site only; that a large body of wetlands goes through the middle of the site; that the lot configuration is to create the required road frontage that DelDOT wanted; that they propose shared driveways to minimize the number of entrances on Double Bridges Road; that improvements for drainage includes ditching existing wetlands; and that the County's long-term plan for the property was for 101 EDUs and that they propose only the seven lots and the EDUs for the seven lots.

Ford Pruitt, Vice President of the Ocean Farms Homeowners Association, stated that there are a lot of unanswered questions that the County needs to investigate before proceeding with this proposal; that on the drawing, it says that two manholes exist and that he only knows of one existing manhole; that there is supposed to be repairs done to the first house where the piping into the house is not right; that this will be the second time their entrance has been torn up and he questioned the method of repaving; and that there should be no more than the seven houses. Mr. Pruitt submitted pictures of his back yard showing where water goes under normal circumstances and he reiterated his concern about where the water will go with seven additional lots.

Mr. Ashman responded that there is not a manhole in front of the house referenced by Mr. Pruitt; that there is terminal clean-out located there; and that they propose to remove the terminal clean-out and re-lay the pipe from the existing manhole and set a new manhole in Double Bridges Road, improving the current design. These improvements will be for by the developer.

Mr. Izzo responded to Mr. Pruitt's question regarding the road repaving and he stated that the County would require that the entire surface be overlaid and that construction would take approximately thirty days.

There were no additional public comments.

**Public
Hearing/
SBSSD
(continued)**

Mr. Griffin questioned whether scaling the project back to seven lots versus the entire acreage would require that the Proposed Resolution be rewritten and the accompanying map redrawn. Mr. Ashman stated that the body of the Proposed Resolution would have to be rewritten (metes and bounds legal description).

**M 182 09
Defer
Action on
Proposed
Resolution/
SBSSD
Double
Bridges
Annexation**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on the Proposed Resolution to extend the boundaries of the South Bethany Sanitary Sewer District to encompass a parcel of land consisting of seven lots (Double Bridges Annexation).

Motion Adopted: 5 Yeas.

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

Requests

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

**M 183 09
Community
Grant**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$250.00 (\$200.00 from Mr. Vincent's and \$50.00 from Mr. Phillips' Community Grant Accounts) to the Boys and Girls Club of Western Sussex for a new refrigerator.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 184 09
Community
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$50.00 from Mr. Cole's Community Grant Account to The National Active and Retired Federal Employees Association for a golf tournament fundraiser to benefit Alzheimer's Research.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 185 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give**
Community **\$500.00 from Mr. Wilson's Community Grant Account to the Georgetown**
Grant **Little League for new equipment.**

Motion Adopted: 4 Yeas, 1 Absent.

M 185 09 **Vote by Roll Call: Mrs. Deaver, Absent; Mr. Vincent, Yea;**
(continued) **Mr. Wilson, Yea; Mr. Cole, Yea;**
 Mr. Phillips, Yea

M 186 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give**
Community **\$100.00 from Mr. Wilson's Community Grant Account to the Milford**
Grant **Senior High School for the After-Prom Party.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 187 09 **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$200.00**
Community **from Mr. Wilson's Community Grant Account to the Milford Little League**
Grant **for program sponsorship.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 188 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give**
Community **\$500.00 from Mr. Wilson's Community Grant Account to the Town of**
Grant **Bridgeville for shutters for Town Hall.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 189 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give**
Community **\$500.00 (\$250.00 each from Mr. Wilson's and Mr. Phillips' Community**
Grant **Grant Account) to the Georgetown – Millsboro Rotary Club for their**
 Winter Gala fundraiser.

Motion Adopted: 4 Yeas, 1 Absent.

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

(Mrs. Deaver was out of the office during the discussion and the vote on the grant requests.)

**Additional Business/
Jim Kelly** Under Additional Business, Jim Kelly of Milton talked about traffic safety concerns on Cedar Creek Road and Sylvan Acres Road where there is a power plant (sub-station) that is an obstruction for view (Jefferson's Crossroads). Mr. Phillips advised Mr. Kelly that his concerns should be addressed to DelDOT and he asked Mr. Kelly to discuss his concerns with Mr. Godwin, the Deputy County Administrator.

Mr. Kelley also commented on the Council's discussion on a Homestead Tax. He stated that he is from Virginia and that they had Tax Districts, whereby new construction was taxed higher, which lessens the burden on existing residents.

**M 190 09
Recess
Regular
Session/
Go Into
Executive
Session** At 11:43 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing land acquisition, personnel and pending/potential litigation.

Motion Adopted: 5 Yeas.

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

**Executive
Session** At 11:44 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing land acquisition, personnel and pending/potential litigation. The Executive Session concluded at 12:05 p.m.

**M 191 09
Reconvene** At 12:06 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted by Voice Vote.

**M 192 09
Recess** At 12:06 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.

Reconvene Mr. Phillips called the Council back into session at 1:30 p.m.

**Public
Hearing
C/U
No. 1769** A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN

PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,244 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1769) filed on behalf of Thomas Kucharik.

The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2009 at which time they recommended approval with the following eight conditions:

**Public
Hearing/
C/U
No. 1769
(continued)**

- 1. There shall be no more than two (2) employees of the company on the site.**
- 2. The hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday.**
- 3. No retail sales shall occur on site.**
- 4. One unlighted sign shall be permitted, not to exceed 32 square feet in size.**
- 5. Any dumpster shall be located in a fenced enclosure behind the dwelling.**
- 6. All vehicles, utility trailers and equipment associated to the business shall be parked to the rear of the dwelling.**
- 7. Any security lighting shall be installed with downward illumination and screening so that it does not impact neighboring properties or motorists traveling along Route 9.**
- 8. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated March 12, 2009.)

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

Thomas Kucharik was present on behalf of his application and he stated that he has been operating the landscaping business since 1994; that he has had a business license since 1994; that he receives no deliveries at this location; that it is a family business operated by his brother and himself; that he did receive a violation from the Planning and Zoning Department; that he has no intent to expand the business; that normal business hours are from 7:00 a.m. to 3:30 p.m. Monday through Friday; that the site is improved with a dwelling; that they store some equipment and materials on the site; that they have no need for a large advertising sign, but would like the option of placing a small sign on the site; that the office is located in a small room in the house; that the existing 24 foot x 24 foot garage is used for

**Public
Hearing
(continued)**

storage; that they would like to build a similar 24 foot x 24 foot garage to the rear of the site for the storage of equipment and materials so they can make use of the front garage as an accessory garage to the dwelling; that all work is done off-site; that there is no stockpiling of materials on site although he would like to be able to store some materials on the site which are brought back to the site if left over from a job; that he would like to receive an occasional, small delivery of mulch to the site; that a designated area would be set aside for this limited storage; that he has installed a 20 foot living vegetated “fence” around the site; and that no retail sales take place on the site.

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

**M 193 09
Modify
Recom-
mended
Conditions
for C/U
No. 1769**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to modify the conditions recommended by the Planning and Zoning Commission for Conditional Use No. 1769 by adding the following two conditions:

Existing evergreen screening or fencing shall be maintained.

Landscaping material, mulch, and stones shall be stored in an area 40 feet by 60 feet adjacent to the proposed garage at the rear of the site.

Motion Adopted: 5 Yeas.

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

**M 194 09
Adopt
Ordinance
No. 2037
(C/U
No. 1769)**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2037 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,244 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1769) filed on behalf of Thomas Kucharik, with the following conditions:

1. There shall be no more than two (2) employees of the company on the site.
2. The hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday.
3. No retail sales shall occur on site.
4. One unlighted sign shall be permitted, not to exceed 32 square feet in size.

5. Any dumpster shall be located in a fenced enclosure behind the dwelling.
6. All vehicles, utility trailers and equipment associated to the business shall be parked to the rear of the dwelling.
7. Any security lighting shall be installed with downward illumination and screening so that it does not impact neighboring properties or motorists traveling along Route 9.
8. Existing evergreen screening or fencing shall be maintained.
9. Landscaping material, mulch, and stones shall be stored in an area 40 feet by 60 feet adjacent to the proposed garage at the rear of the site.
10. 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. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**M 194 09
Adopt
Ordinance
No. 2037
(C/U
No. 1769)
(continued)**

**Public
Hearing
(C/U
No. 1825)**

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 REGIONAL WATER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING A TOTAL OF 2.25 ACRES, MORE OR LESS, WITH EASEMENT AREA “A” CONTAINING 2.00 ACRES AND EASEMENT AREA “B” CONTAINING 0.25 ACRES” (Conditional Use No. 1825) filed on behalf of Artesian Water Company, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2009 at which time they recommended that the application be approved, with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 12, 2009.)

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

Mr. Lank distributed an Exhibit Book which was provided by the Applicant.

Public
Hearing
(C/U
No. 1825)
(continued)

Scott Pinder, P.E. of Artesian Water Company, Inc. and Dennis Schrader, Attorney, were present on behalf of the application. They stated that they are proposing to convert the existing water treatment facility at The Jefferson School into a Public Utility (Water Treatment Facility); that the subject property is owned by The Jefferson School; that they propose a well site, a storage tank and the necessary transmission facilities to serve the projects in the certificated area; that the area is not served by any municipality nor by the County; that the State Strategies reference that the site is located in an Investment Level 4 Area; that the County Comprehensive Plan Update references that the site is located in a Low Density Area; that the two (2) proposed sites on the property are both easement parcels; that the existing water treatment facility and two (2) wells are located on 0.25 acre; that a 2.0 acre site is proposed for future facilities; that the 2.0 acre site is wooded; that they plan on retaining as many trees as possible when improving the 2.0 acre site; that the closest dwelling off-site is approximately 800 feet from the proposed facility; that DNREC will have to approve the facility; that the facility will be at least 200 feet from any property line and 300 feet from any production wells to any existing wells off-site; that some storage of chemicals will be required; that the facility will be improved with monitoring and alarm systems; that the proposed service area is not yet defined; that they may connect to their proposed system at the Elizabethtown project near Milton; that their Certificate of Public Convenience and Necessity has been approved by the Public Service Commission; that other agency approvals will be required; that their intent is to have the option to erect a water tower, if needed, in the future; that the water tower would be approximately 145-feet tall; that the water tower would be painted a neutral color; that the water tower may have a capacity of 1,000,000 gallons; that the two existing wells have a capacity to draw 310,000 gallons of water; that generators will be housed outside in a Type 2 Hospital Level enclosure to reduce noise; that the only possible changes in the 0.25 acre easement area will be landscaping; that construction will take place during off-season school days; that the facility will be an unmanned facility; that periodic inspections will take place for maintenance; that a wooded buffer will be maintained; that the facility will be designed to exceed the minimum setbacks from property lines; that the 2.0 acre easement facility will be fenced; that they will utilize the 0.25 acre facility immediately upon approval and are uncertain of the scheduling of the building of the water tower; that the use meets the purposes of a Conditional Use as a public utility; that the use will have no adverse effects on existing residential wells; that the approval of this application will provide a water distribution system that will safely serve the Applicant's certificated areas, will provide original and redundant service, and will not harm the environment; and that this application is part of an overall strategy to provide for the regionalization of water throughout the area, as indicated during this Public Hearing

Mr. Schrader stated that Dean Sherman, President of The Jefferson School Board was also present. Included in the Exhibit Book was a letter from The

Jefferson School stating their support of Artesian Water Company's application to use the permanent easement areas delineated on the parcel for a regional water treatment plant and elevated storage tank. The letter also designates Artesian Water Company as an authorized agent for the application.

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

M 195 09
Adopt
Ordinance
No. 2038
(C/U
No. 1825)

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2038 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REGIONAL WATER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING A TOTAL OF 2.25 ACRES, MORE OR LESS, WITH EASEMENT AREA "A" CONTAINING 2.00 ACRES AND EASEMENT AREA "B" CONTAINING 0.25 ACRES" (Conditional Use No. 1825) filed on behalf of Artesian Water Company, Inc., with the following conditions:

1. One unlighted sign shall be permitted on the site to identify the operator of the system.
2. With the exception of emergency generators and wells that may be located on the site, all of the equipment needed in the operation of the facility shall be located indoors. The generators shall be housed in enclosures to reduce noise.
3. Any elevated water tower construction on the site shall be neutral in color and shall not include any signage other than that which is necessary for emergency identification.
4. The Final Site Plan shall be subject to review and approval by the Planning and Zoning Commission. It shall include the proposed location of any elevated water storage tanks or towers, which shall not exceed a height of 150 feet. The water tower and other facilities on the 2.0 acre easement site shall be located on the western portion of the site. It shall also include a landscape plan showing all vegetation, buffers, and existing trees that will remain.

Motion Adopted: 5 Yeas.

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

Public
Hearing
(C/Z
No. 1634)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A

CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,033 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1634) filed on behalf of Rehoboth Beach Film Society.

**Public
Hearing
(C/Z
No. 1634)
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2009 at which time they recommended that the application be denied since the property is currently zoned MR Medium Density Residential and is part of an existing plotted residential subdivision; that while there are commercial and business uses in the vicinity of this site, those uses are oriented to Route One; that this site is entirely within a single family residential subdivision and a change of zone to B-1 would not be consistent with the residential neighborhood; and that although the Applicant stated that its intended uses are limited, a change of zone to B-1 would potentially allow more intensive uses that are not compatible with residential neighborhoods.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 12, 2009.)

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

Mr. Lank distributed an Exhibit Book which was provided by the Applicant.

Mr. Lank reported that, since the Public Hearing before the Commission, approximately 74 additional letters of support were received and have been made a part of the record.

Councilman Vincent questioned if the County could make a modification in the MR Zoning District to allow this type of organization in that District. Mr. Lank responded that it would require an ordinance amendment.

Councilwoman Deaver questioned if the organization falls under the definition of a “club”. Mr. Lank responded that a determination would have to be made by the County’s legal counsel. Mr. Lank advised that, in Section 115-4 of the Sussex County Code, there is a definition for “Club, Private” which states that “Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose but not primarily for profit which inures to any individual and not primarily to render a service which is customarily looked on as a business.” Mr. Griffin stated that the Council would have to be satisfied that the organization is non-profit.

Mr. Lank stated that, if the Council decides that the organization can be considered a Private Club, then an application could be filed for a Conditional Use, which would permit the Council to apply conditions to the application’s approval.

Mr. Griffin clarified that the application before the Council on this date is for a Change of Zone; that it could not be treated as a Conditional Use application; and that the Applicant could withdraw their Change of Zone application and reapply for a Conditional Use. It was noted that the Council could waive the fees for and/or expedite the application for a Conditional Use.

Public
Hearing
(C/Z
No. 1634)
(continued)

Jim Fuqua, Attorney, was present on behalf of the Rehoboth Beach Film Society's application. He stated that he believes the area residents do not have a problem with what the Rehoboth Beach Film Society (RBFS) wants to do, which is to upgrade their Administrative Offices at this site; that the problem is the process; that the property is improved with a single-family residential structure; that the structure has been used as the Administrative Offices for the RBFS since Summer 2006; that the requested rezoning will allow the RBFS to continue their operation at the site; that the site is located on the corner of Paynter Lane and Truitt Avenue in Truitt's Midway Development; that the general nature of the area is commercial with the exception of Truitt's Midway Development, which is an "island" of residential development surrounded by commercial uses; that they are proposing to rezone the property to B-1 Neighborhood Business; that they purchased the property in June 2006, after losing their lease at another site; that the RBFS converted the dwelling into their Administrative Offices; that the RBFS is in a unique situation and acted in good faith; that representatives of the Film Society were cited with a violation and advised by a Zoning Inspector that they may need to apply for a Conditional Use; that they immediately started the process by making application to DeDOT for comments; that they then found out that since the property was zoned MR Medium Density Residential they could not apply for a Conditional Use and that to continue with the use of the property, they would have to apply for a rezoning to B-1 Neighborhood Business; that whether the use is considered as a Conditional Use or a Change of Zone, their only intent is to utilize the site for an Administrative Office; that they would like to have a 6.0 square foot sign on the premises; that adequate space is available on the site for parking; that they have replaced the roof and improved the interior of the structure; that they maintain the site; that they plan on replacing the siding and removing an old shed from the premises; that the site is located in an older traditional subdivision with mixed zoning; that due to the existing commercial and business uses in the area, they feel that the Administrative Office use is compatible; that they do not agree with the concerns of the residents of the area; that they have been good neighbors and they maintain a low profile in the community; that they have no intent to change the use from the existing activity that has been there since 2006; that the State Planning Office waived the requirement that the application go through the PLUS process; that the proposed use would be compatible with the area but they acknowledge that many permitted uses in B-1 Zoning Districts would not be appropriate for this site and they acknowledge that any structure on this site should remain consistent with the residential appearance of the development; and that the application involves a non-

profit organization that is comprised of area residents which provides a benefit to the community and provides a cultural and economic benefit to County residents.

Mr. Fuqua addressed some of the concerns of the area residents:

**Public
Hearing
(C/Z
No. 1634)
(continued)**

- **That the RBFS would open Martin and Paynter Lanes, which are dead-end roads in the development.**
Mr. Fuqua stated that the RBFS has no authority or reason to open those roads; they are community roads and they cannot be opened at the Applicant's request.

- **A letter from the Engineering Department stated that if the zone is changed to B-1, it would require more EDUs.**

Mr. Fuqua stated that the site will be restricted to the use proposed and that the actual EDU use of the site is less than 1 EDU, since there is limited use of the facility, mostly Monday through Friday during day-time hours.

- **Impact on residential wells.**

Mr. Fuqua stated that there will be no impact on wells since everything will remain the same.

- **If B-1 zoning is approved, it could set a precedent for future B-1 rezonings in the development.**

Mr. Fuqua stated that the residents of Truitt's Development should be protected from inappropriate uses. He stated that the Applicant wishes this was a Public Hearing for a Conditional Use application and that they have tried to make this application as similar to a Conditional Use request as possible. Therefore, they have voluntarily offered to place restrictive covenants on the property that, in effect, control the use. The deed restriction would be recorded upon the approval of the Change of Zone application.

Mr. Fuqua distributed a copy of the Deed Restriction and reviewed it. He noted that two additional restrictions have been added since the Public Hearing before the Commission. In accordance with the Deed Restriction, the ownership and use of the property would be subject to the following restrictions and conditions:

- 1) The subject property shall be used exclusively as the administrative office of the Rehoboth Beach Film Society or use as a single family residence. No other use of the property shall be permitted regardless of the zoning designation of the property under the Sussex County Zoning Ordinance.**

Public
Hearing
(C/Z
No. 1634)
(continued)

2) Any building on the subject property shall maintain the style and appearance of a single family residential structure.

3) One unlit sign not exceeding six (6) square feet in size identifying the Rehoboth Beach Film Society shall be permitted.

4) This restriction shall not be amended or modified without the written consent of a majority of the owners of lots in Truitt's Midway Development, a plot of which is of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 1, Page 209.

5) If the Rehoboth Beach Film Society determines to cease using the subject property as its Administrative Office, it will file and present an application to Sussex County to rezone the subject property back to "MR" (Medium Density) under the Sussex County Zoning Ordinance.

6) The Restrictions and Conditions stated herein are intended to be and are specifically authorized to be enforced by any owner of a lot in Truitt's Midway Development.

In regards to the question of a Private Club designation, Mr. Fuqua stated that the RBFS would qualify as a Private Club.

Sue Early, Executive Director, Fritz Schranck, President, and Beth Hochholzer, Past President and Member, of the Rehoboth Beach Film Society were also present on behalf of the application. They stated that RBFS makes unique contributions to the quality of life in Sussex County; that they provide year-round programs that relate to and promote the arts, social issues, environmental concerns, political activity and international issues; that they provide a constant stream of quality films for their ever-growing year-round audience; that they are a major community resource; that they have met with the neighbors and heard their concerns and that they wish to be a good neighbor and for this reason, they have proposed self-restrictions in their Deed; that the structure already serves as a transitional buffer between the residential properties of the Truitt's Development and the commercial properties; and that the RBFS is a membership-based organization and that it is a 501 (c) 3 Corporation.

Public comments were heard.

David Racine of Truitt's Development stated that their development has struggled over the years to manage their development; that they would prefer if the application was not for a zoning change; that they would prefer a Conditional Use; that they do not really object to the use proposed by the RBFS; that they just want to control the use; that the RBFS is a club; that maybe the use should be a club facility and not an office; that their development is surrounded by commercial property, which is not by their

choice; that they are concerned that if the zoning is changed to B-1, it is possible one of their roads into the mall may be opened; that it has already been tried and the Development made a major effort to stop it; and that if the zoning is changed, DelDOT may override the agreement that the Development has with them since the agreement references a change in zone.

**Public
Hearing
(continued)**

Janice Burns, Jim and Janice Yingling, and Carla Avery stated that they would prefer that the RBFS apply for a Conditional Use.

There were no additional public comments.

**M 196 09
Defer
Action on
C/Z
No. 1634**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Change of Zone No. 1634 filed on behalf of Rehoboth Beach Film Society; to allow the Applicant the opportunity to withdraw the Change of Zone application and to file an application for a Conditional Use; and further, that the Council authorizes said Conditional Use application to be expedited and the filing fee waived.

Motion Adopted: 5 Yeas.

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

Recess

At 3:10 p.m., Mr. Phillips declared a five minute recess.

Reconvene

At 3:15 p.m., Mr. Phillips called the Council back into session.

**Public
Hearing/
C/Z
No. 1635**

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 AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES, MORE OR LESS” (Change of Zone No. 1635) filed on behalf of Charles Davidson.

The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2009 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 12, 2009.)

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

Mr. Lank distributed an Exhibit Book which was provided by the

Applicant.

**Public
Hearing/
C/Z
No. 1635
(continued)**

Charles and Elva Davidson were present on behalf of the application along with Mark Davidson of DC Group. Mark Davidson stated that Charles and Elva Davidson are the owners of the property and the owners of the Donut Connection on Route 9; that they are proposing to change the zoning of the site from AR-1 and C-1 to CR-1; that the front portion of the site is zoned C-1 and is improved with a commercial donut bakery facility; that they propose to expand the facility; that the site is in a Developing Area according to the Comprehensive Plan Update; and that the site currently has an on-site septic system, a commercial entrance, stormwater management facilities, and an on-site well.

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

**M 197 09
Adopt
Ordinance
No. 2039
(C/Z
No. 1635)**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2039 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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES, MORE OR LESS” (Change of Zone No. 1635) filed on behalf of Charles Davidson.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
C/Z
No. 1682**

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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26,400 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1682) filed on behalf of Nicholas Varrato, Jr. and Joann T. Varrato.

The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2009 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 12, 2009.)

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

Mr. Lank informed the Council that the Commission held a Public Hearing on an application for this site on January 22, 2009 for a rezoning from AR-1 to CR-1; that the Commission had expressed concerns about such a rezoning; and that on January 23, 2009, the Applicant withdrew his application and reapplied for B-1 Neighborhood Business zoning.

**Public
Hearing/
C/Z
No. 1682
(continued)**

Nicholas Varrato was present on behalf of his application and he stated that the property is already improved with a building previously used for a photography studio; that he would like to rent the building; that he proposes to provide neighborhood type businesses, possibly office spaces; that Layton Avenue is an abandoned road; and that the site will be accessed off of Jersey Road.

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

**M 198 09
Adopt
Ordinance
No. 2040
(C/Z
No. 1682)**

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2040 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26,400 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1682) filed on behalf of Nicholas Varrato, Jr. and Joann T. Varrato.

Motion Adopted: 5 Yeas.

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

**M 199 09
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 3:30 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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