



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 19, 2011

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 19, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Vincent called the meeting to order.

M 220 11 Amend and Approve Agenda A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend the Agenda by deleting "PMP Associates (Conditional Use No. 1704) – Request for Time Extension" and by deleting "Pending/Potential Litigation and Land Acquisition" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes The minutes of April 5 and April 12, 2011 were approved by consent.

Correspondence Mr. Moore read the following correspondence:

STATE OF DELAWARE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, DIVISION OF STATE POLICE, DOVER, DELAWARE.
RE: Letter in appreciation of grant to the Camp Barnes Nurses/Recreation Room fundraising campaign.

CLEAR SPACE THEATRE COMPANY, REHOBOTH BEACH, DELAWARE.

RE: Letter in appreciation of grant.

Proclamation

The Council presented the Proclamation entitled “**PROCLAIMING THE WEEK OF APRIL 24 – MAY 1, 2011 AS STEWARDSHIP WEEK**” to William Vanderwende and Debbie Absher of the Sussex Conservation District.

Request for Dismissal/ Appeal of Approval of Subdivision No. 2010-4

Vince Robertson, Assistant County Attorney, reported that the Chesapeake Bay Foundation filed an appeal on the Planning and Zoning Commission’s approval of the Nathaniel’s Landing Subdivision (Subdivision No. 2010-4, application of Jesse Frederick Conaway and Everett T. Conaway). The Commission issued its preliminary approval on December 9, 2010. The Foundation filed its Appeal on January 21, 2011 and paid the filing fee on January 28, 2011. Jim Fuqua, Esquire, on behalf of the Developer, has requested a dismissal of the Appeal based on the untimely filing of it. The Foundation responded in writing to that request for dismissal.

Mr. Robertson reported that he has reviewed all of the filings, correspondence, and related information regarding the Appeal as well as Ordinance No. 1829, which is the amendment to Section 99-39 of the Sussex County Subdivision Code regarding appeals of subdivisions.

Mr. Robertson stated that Section 99-39 of the Code clearly and unequivocally states that an aggrieved Appellant may appeal a decision of the Planning and Zoning Commission “to the County Council within 30 days of the official action of the Commission.” The official action of the Commission occurred on December 9, 2010 when it approved this subdivision. The Letter of Appeal was received by the Planning and Zoning Department on January 21, 2011; this was 43 days after the “official action of the Commission”.

Mr. Robertson stated that the Appeal also fails (and therefore must be dismissed) because the fee for filing an Appeal was not paid until January 28, 2011, long after the deadline for filing any Appeal had expired. According to Section 99-39F, “the fee for filing an appeal to Council shall be \$500.00 and shall be payable to the Clerk of Council on the date of filing the notice of appeal.” That requirement is also incorporated into Section 99-39B which states that “the appellant shall pay the appeal fee hereafter provided” at the same time the Notice of Appeal is filed. In other words, for an appeal to be valid, the notice of appeal and the filing fee must both be received by the County within 30 days of the Commission’s official action. Since this requirement was not satisfied, the appeal must be dismissed.

Mr. Robertson stated that, because the Appeal was not perfected within the required timeframe, there is no basis for County Council to consider it.

**Request
for
Dismissal
of Appeal
(continued)**

Basically, Council does not have jurisdiction over the Appeal if all of the requirements for filing an Appeal did not occur before the time for doing so expired. Any waiver of these timelines and requirements would subject the County to legal challenge by the Developer of Nathaniel's Landing. While there may have been some uncertainty about whether the 30 day period for filing an appeal began when the Commission voted or when the decision was published, there is no uncertainty about the lateness of the appeal fee. According to the chronology provided by the Chesapeake Bay Foundation, that payment was made after the 30 day period from either event expired.

Mr. Robertson referenced a Superior Court decision, which is also a basis for his conclusion that the appeal filed by the Chesapeake Bay Foundation and the Friends of the Nanticoke River is untimely and therefore, should be dismissed.

**M 221 11
Dismiss
Appeal/
Subdivision
No. 2010-4**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that for the reasons outlined by Vince Robertson, Assistant County Attorney, the appeal of Subdivision No. 2010-4, application of Jesse Frederick Conaway and Everett T. Conaway is dismissed because it was not timely filed; neither the notice of appeal nor the appeal fee were filed with the County within 30 days of the official action of the Commission, as required by Section 99-39 of the Code of Sussex County.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. Small Business Caucus Public Forum

As per the attached information, a town hall type meeting will be held at the Sussex County Association of Realtors office in Georgetown on Wednesday, April 27, from 2:00 p.m. to 4:00 p.m. The focus of the meeting will be to gather "input on how Delaware can strengthen its small business environment."

2. Indian River Inlet Bridge Replacement Project – Open House and Site Tour

An open house and site tour will occur on Saturday, April 30, 2011, from 1:00 p.m. to 5:00 p.m. at the Indian River Inlet Bridge. Attached is information regarding this DelDOT sponsored tour.

3. Holidays

The Sussex County Council will not meet on April 26, 2011, in honor

of the Easter holiday. The next regularly scheduled meeting will be held on May 3, 2011, at 10:00 a.m. County offices will be closed on April 22, 2011, for the Good Friday holiday. Offices will reopen at 8:30 a.m. on Monday, April 25, 2011.

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

**Renewal
of Audit
Contract**

Mrs. Webb presented a recommendation to extend the County's Audit Contract with Jefferson, Urian, Doane and Sterner, P.A. (JUDS) for a period of one year. The current Audit Contract expired on June 30, 2010.

Mrs. Webb explained that her recommendation is based on the following reasons: they have done a good and thorough job in the past; the firm is local; they have sufficient staff to perform and complete the audit; they know the County's organization and staff, and they are available when needed with no travel costs. Mrs. Webb stated that a one year contract with JUDS is necessary due to the County's expectation of beginning the ERP (Enterprise Resource Planning) Project in August or September, which coincides with the County's audit fieldwork time.

**M 222 11
Renew
Audit
Contract
(No
Action)**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that Sussex County's contract with Jefferson, Urian, Doane & Sterner, P.A. to provide audit services for the Fiscal Year Ending June 30, 2011 be approved at \$90.00 per hour; each library compilation at \$2,300.00; each library review at \$3,500.00; and the regular audit fee at \$76,000.00.

Mrs. Deaver and Mr. Phillips questioned how JUDS justifies an increase in their special hourly rate.

**M 223 11
Amend
Motion
M 222 11**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to amend the Motion to change the Special Hourly Rate to \$88.00.

Motion Adopted: 5 Yeas.

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

**M 224 11
Renew
Audit
Contract,
as
Amended**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, that Sussex County's contract with Jefferson, Urian, Doane & Sterner, P.A. to provide audit services for the Fiscal Year Ending June 30, 2011 be approved at \$88.00 per hour; each library compilation at \$2,300.00; each library review at \$3,500.00; and the regular audit fee at \$76,000.00 (not to exceed amount), as amended.

Motion Adopted: 5 Yeas.

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

Mr. Vincent, Yea

**Proposed Ordinance/
\$2,114,000
General Obl. Bonds
Proposed Ordinance/
\$2,114,000
General Obligation Bonds/
Piney Neck
Treatment Facilities
(continued)**

Mrs. Webb presented a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,114,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE PURCHASE OF LAND IN ORDER TO IMPROVE AND EXPAND THE PINEY NECK TREATMENT FACILITIES AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH”. Mrs. Webb explained that the Proposed Ordinance provides for the issuance of up to \$2,114,000 of Sussex County General Obligation Bonds to finance or reimburse the County for the costs of purchasing certain land adjacent to the Piney Neck Sewer Treatment Plant for spray irrigation in order to accommodate development and improve the County’s wastewater facilities. The Bonds are backed by the County’s full faith and credit and it is expected that the debt service will be paid by the revenues of the Dagsboro Frankford Sanitary Sewer District. The term of the Bonds is not to exceed 40 years and will have an interest rate of 4.125 percent. The Bonds will be sold to the United States Department of Agriculture, Rural Development. Mrs. Webb noted that this is a project that the County is wrapping up from 2004; 195 acres of land were purchased for the Piney Neck Expansion to expand the treatment capacity. It has now been determined, based on growth since 2004, that the County only needs the \$2,114,000 for the land purchase. Based on this information, Mrs. Webb recommended the closeout of the Bond Issue.

Mr. Baker noted that, in 2004, it was thought that additional land would need be purchased; however, this has not transpired. The USDA had authorized additional money (up to \$5.6 million) for the land purchases.

Introduction of Proposed Ordinance

Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,114,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE PURCHASE OF LAND IN ORDER TO IMPROVE AND EXPAND THE PINEY NECK TREATMENT FACILITIES AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH”. The Proposed Ordinance will be advertised for Public Hearing.

Proposed Loan Resolution

Mrs. Webb presented a Loan Resolution for the Council’s consideration. She noted that this is also for the purchase of the land adjacent to the Piney Neck Sewer Treatment Plant.

**M 225 11
Adopt Loan Resolution/
\$2,113,000/
Piney Neck
Treatment**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt the Loan Resolution entitled “A RESOLUTION OF THE SUSSEX COUNTY COUNCIL OF THE COUNTY GOVERNMENT AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS SEWER TREATMENT FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE

Facilities (\$2,113,000.00 – PINEY NECK TREATMENT FACILITIES).

Motion Adopted: 5 Yeas.

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

Request for Time Extension/ Good Earth Market (C/U No. 1715) Lawrence Lank, Director of Planning and Zoning, presented a request for a time extension on the approval of Conditional Use No. 1715 filed on behalf of Good Earth Market, LLC. The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2008; on February 14, 2008, the Commission recommended that the application be approved. The Sussex County Council held a Public Hearing on this application on February 12, 2008; on April 1, 2008, the Council recommended that the application be approved. The Planning and Zoning Commission granted time extensions on August 19, 2009 and on April 14, 2010. The last extension ran out on the anniversary date, which is April 1, 2011. Mr. Lank reported that the request for the time extension was received on March 17, 2011, prior to the date of termination. Mr. Lank noted that the application was for a 3,000 sq. ft. office and café next to the Good Earth Market on Route 26. He also noted that the application was for an expansion of an existing use on the same site. Mr. Lank reported that, on March 25, 2011, the Applicant submitted all agency approvals.

M 226 11 Approve Time Extension/ Good Earth Market (C/U No. 1715) A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to extend Conditional Use No. 1715, filed on behalf of Good Earth Market, LLC, for a period of one year, until April 1, 2012.

Motion Adopted: 5 Yeas.

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

American Portable Mini Storage/ Sublease Request Jim Hickin, Airport Manager, reported that American Portable Mini Storage, Inc. currently leases Lot 23 in the Sussex County Industrial Park and that they have requested the Council's approval to sublease a portion of the property to Delaware Landscape Construction LLC. Their lease requires they obtain written consent from the Sussex County Council before any sublease. American Portable Mini Storage has a 30 year lease which began in 2004; they currently pay \$1,860.00 per year in rent and are current with their payments.

Mr. Hickin advised that Delaware Landscape Construction desires to sublease 1,200 square feet of warehouse space for the storage of landscape machinery and office equipment.

Mr. Hickin stated that the current lease limits the use of the property to the production and sales of portable mini storage units only. If the sublease is

approved, the Lease will need to be amended to allow the property to be used for the type of activities Delaware Landscape Construction will conduct on the property.

Sublease
Request
(continued)

Mr. Hickin read a Proposed Motion: Be it Moved that the Sussex County Council approves the use of Lot 23 at the Sussex County Industrial Airpark by American Portable Mini Storage, Inc. for the storage of landscape machinery and office equipment, and consents to American Portable Mini Storage, Inc. entering into a commercial lease agreement with Delaware Landscape Construction LLC, subject to American Portable Mini Storage, Inc.'s compliance with their existing Lease with Sussex County.

No action was taken on the Proposed Motion.

Generator
Replace-
ments
Project/
Recommend
Bid
Rejection

Rodney Marvel, Assistant Director of Environmental Services, referenced the April 12th agenda item regarding the bid results for the Generator Replacements for the Department of Environmental Services (Sussex County Project No. 10-08). The County received one bid from Cummins Power Supply of Bristol, Pennsylvania, in the amount of \$231,565.00. The bid came in over budget; the Engineer's estimate was \$203,000.00. On April 12th, the Council discussed the fact that only one bid was received and that bid was 15 percent over budget. On that date, the Council deferred action.

Mr. Marvel recommended, based on the fact that only one bid was received, that the bid be rejected and that the project be rebid.

M 227 11
Reject
Bids/
Generator
Replace-
ments

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that all bids for Sussex County Project 10-08, Generator Replacements for the Department of Environmental Services, be rejected.

Motion Adopted: 5 Yeas.

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

Greenwood
Library/
Feasibility
Study
Results

Michael Izzo, County Engineer, and Mike Wigley and Mike Wheedleton of Davis, Bowen & Friedel were in attendance to present the results of the Site Feasibility Study for the Greenwood Public Library.

Mr. Izzo reported that, in February 2011, the County executed a contract with Davis, Bowen & Friedel to prepare a Site Feasibility Study for County-leased property from the Town of Greenwood, the site of the Greenwood Public Library. The purpose of the Study was to consider the expansion of the existing Greenwood Library on its current site. Essentially, the goal of the study was to determine whether or not the existing site could accommodate a 10,400 GSF facility with reasonable parking accommodations, maintained access to other buildings on the site, reserved

area(s) to handle storm water management and potential modest expansion. A strong preference from library representatives was to see if this could be accomplished with a one-story structure. Mr. Izzo reported that the study resulted in two schematic site plans: one incorporates the existing library (Schematic Site Plan A) and one assuming a new library (Schematic Site Plan B). Mr. Izzo noted that the Friends of the Greenwood Library prefer Site Plan B.

**Greenwood
Library/
Feasibility
Study
Results
(continued)**

Mr. Izzo explained that the project cost is \$3.1 million. The State will provide 50 percent of the funding; the Friends have committed to providing \$150,000; the County will be responsible for the remaining amount.

In response to questions, Mr. Izzo stated that, since the project will receive State funding, State wage rates are required.

Mr. Phillips questioned if State wage rates would be required if the building is constructed off-site (modular). Mr. Izzo started that he would have to research this issue.

**M 228 11
Defer
Action
on
Greenwood
Library
Expansion
Project**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to defer action for two weeks on the Greenwood Library Expansion for the purpose of obtaining additional information on State wage rates and modular off-site construction.

Motion Adopted: 5 Yeas.

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

**Axiom
Engineering
Contract/
Wetlands
Feasibility
Study**

Juel Gibbons, Project Engineer, presented a proposed consulting contract with Axiom Engineering for a wetlands feasibility study and mitigation plan. This action is directed by the Environmental Protection Agency (EPA) to mitigate impacts to wetlands at the Airport. Ms. Gibbons reported that the County has identified a potential site; the site consists of 9 acres of a 75 acre parcel that is owned by the County and located south of Route 54. In investigating the suitability of the land for wetlands creation, the following tasks will be performed by Axiom Engineering: wetland investigation and delineation, preliminary soils investigation, environmental assessment, and wetland mitigation plan design. The fee for this work is \$48,762.00; the project will be funded by a grant by the Federal Aviation Administration (FAA).

**M 229 11
Approve
Contract
with
Axiom
Engineering/
Wetlands**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department that the Sussex County Council approves the Contract with Axiom Engineering, LLC for the Airport wetlands mitigation project in the amount of \$48,762.00.

Motion Adopted: 5 Yeas.

**Feasibility
Study**

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

Requests

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

**M 230 11
Community
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$250.00 each from Mrs. Deaver's and Mr. Cole's Community Grant Account) to Coastal Concerts for expenses.

Motion Adopted: 5 Yeas.

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

**M 231 11
County
Council
Grant
and
Community
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,500.00 (\$750.00 from County Council Grants, \$500.00 from Mr. Wilson's Community Grant Account, and \$250.00 from Mr. Phillips' Community Grant Account) to the Greater Georgetown Chamber of Commerce for sponsorship of the Delmarva Chicken Festival.

Motion Adopted: 5 Yeas.

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

**M 232 11
Community
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$600.00 (\$250.00 from Mr. Phillips' Community Grant Account, \$250.00 from Mr. Cole's Community Grant Account, and \$100.00 from Mr. Wilson's Community Grant Account) to the Indian River High School Baseball Boosters for expenses.

Motion Adopted: 5 Yeas.

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

**M 233 11
Community
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 from Mr. Cole's Community Grant Account to Cats Around Town Society for their spay/neuter program.

Motion Adopted: 5 Yeas.

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

Mr. Vincent, Yea

M 234 11 Community Grant	A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Community Grant Account) to Big Brothers Big Sisters of Delaware in support of their Bowl for Kids Sake fundraiser.
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M 234 11 (continued)	Motion Adopted: Vote by Roll Call:	5 Yeas. Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
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Introduction of Proposed Ordinance	Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.11 ACRES, MORE OR LESS” (Conditional Use No. 1900) filed on behalf of Doris D. Turner. The Proposed Ordinance will be advertised for Public Hearing.
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There was no additional business.

M 235 11 **At 11:13 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,**
Go Into **to recess the Regular Session and to go into Executive Session for the**
Executive **purpose of discussing issues relating to job applicants' qualifications and**
Session **personnel pursuant to 29 Del. C. §10004(b).**

Motion Adopted: 5 Years.

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

Executive Session	At 11:15 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 issues relating to job applicants' qualifications and personnel. The Executive Session concluded at 11:50 a.m.
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M 236 11 At 11:51 a.m., a Motion was made by Mr. Phillips, seconded by Mrs.
Reconvene Deaver, to come out of Executive Session and to reconvene the Regular
Session.

Motion Adopted by Voice Vote.

There was no action taken following the Executive Session.

M 237 11 **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at**
Adjourn **11:53 a.m.**

Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith, Clerk of the Council