



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 2, 2009

#### Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 2, 2009, at 3:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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. Cole called the meeting to order.

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

#### M 315 09 Approve Agenda as Amended

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to amend the Agenda by deleting "Delaware State Police Hangar – Lease Agreement"; "Request for Time Extension – Conditional Use No. 1540 – James R. Gibson"; and the Grant Request from "Sussex Child Health Promotion Coalition to implement a Healthy Eating Active Living (HEAL) initiative in Sussex County"; and, to approve the Agenda, as amended.

Motion Adopted by Voice Vote.

#### M 316 09 Approve Minutes

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to approve the minutes of May 12, 2009.

Motion Adopted by Voice Vote.

#### Corre- spondence

Mr. Griffin read the following correspondence:

**DELAWARE ENVIROTHON, DOVER, DELAWARE.**

**RE: Letter in appreciation of the Council's recent donation.**

**GARY W. DOWNES, PRESIDENT, DOWNES INSURANCE ASSOCIATES, INC., MILFORD, DELAWARE.**

**RE: Letter regarding the Annual Prayer Breakfast.**

**BUD AND BARBARA BULLOCK, REHOBOTH BEACH, DELAWARE.**

**RE: Letter commending Bob Fisher, District Manager, Wolfe Neck Regional Wastewater Facility, for his efforts and concerns when their wastewater system pipe erupted.**

**Correspondence**  
**DELAWARE HOSPICE, DOVER, DELAWARE.**

**(continued)**  
**RE: Letter in appreciation of the Council's recent donation.**

**JOSEPH CONAWAY, BRIDGEVILLE, DELAWARE.**

**RE: Card thanking the Council members for their comments at the "Roast" held by the Sussex County Association of Towns.**

**Perimeter  
Fence/  
Phase 2/  
Change  
Order  
No. 1**

**Jim Hickin, Director of Airport and Industrial Park Operations, presented Change Order No. 1 for the Perimeter Fence, Phase 2, Project. Mr. Hickin explained that this fence project is the one that closes in approximately 3,000 feet of gaps left after the completion of Phase 1. Mr. Hickin explained that the project was awarded in June 2008 to Abel Fence, LLC. The project was bid using Davis-Bacon wage rates, as required by the FAA. After the contract was awarded, the Delaware Department of Labor informed the County that State wage rates would also apply, since State money will be used to fund the project. The higher rates of the two must be used and State rates are higher in this case. The use of State wage rates increases the project cost by \$3,672.01 to a total cost of \$89,235.51; however, it is expected that the increase will be covered by the existing FAA grant. If this is the case, the County's increased cost would be \$91.80.**

**M 317 09  
Approve  
Change  
Order/  
Perimeter  
Fence/  
Phase 2**

**A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Sussex County Project No. 08-02, Perimeter Fencing, Phase 2, be approved, which increases the contract amount by \$3,672.01 for a new total of \$89,235.51.**

**Motion Adopted: 3 Yeas, 1 Nay, 1 Absent.**

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

**Prince  
George's  
Acres/  
Phase II/  
Change  
Orders**

**Brad Hawkes, Director of Utility Engineering, presented Change Order Nos. 1, 2 and 3 for the Prince George's Acres Sanitary Sewer, Phase II, Project. The project has been completed and the Engineering Department is in the process of closing work items. The Change Orders include an asphalt adjustment (decrease in the amount of \$16,097.32), a revision to paving requirements (decrease in the amount of \$9,986.78), the balancing of final quantities, an increase in the contract time by 47 days and additional Scope of Work items (increase in the amount of \$21,054.00).**

Mr. Hawkes reported that the net effect of these change orders is a decrease to the contract price of \$5,029.78.

**M 318 09**  
**Approve**  
**Change**  
**Orders**  
**M 318 09**  
**Approve**  
**Change**  
**Orders/**  
**Prince**  
**George's**  
**Acres/**  
**Phase II**  
**(continued)**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that Change Order Nos. 1, 2 and 3 for Sussex County Contract No. 07-07, Prince George's Acres, Phase II, with Teal Construction, Inc. be approved, which decreases the contract by the amount of \$5,029.78 for a new contract total of \$361,569.90 and increase the contract time by 47 days contingent upon the receipt of approval from the funding agency.

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Laurel**  
**Paramedic**  
**Station**  
**Solar**  
**Panels**

Glenn Luedtke, EMS Director and Robert Schoonover, EMS Technical Services Division Manager, reported on the solar electric panels at the new Laurel Station. At the April 26th meeting, the County Council voted unanimously to proceed with obtaining quotes for energy savings and environmental pollution reduction "green" initiatives for the new station. Mr. Luedtke reported that they received three quotes for the pole mounted solar electric panels and inverter for the new station and that Delaware Renewable Energy Company was the lowest of the three quotes at \$49,994.00. However, due to the demand for grant reimbursement, the State of Delaware has reduced reimbursement from 50 percent to 25 percent. Mr. Schoonover reported that the breakdown of the costs is as follows:

<b>\$49,995.00</b>	<b>Total Cost</b>
<b>\$12,499.00</b>	<b>25 percent DE State Energy Grant Reimbursement</b>
<b>\$14,998.00</b>	<b>40 percent Paramedic grant funding</b>
<b><u>\$22,498.00</u></b>	<b><u>Total County responsibility</u></b>

Mr. Schoonover reported that estimates obtained from the Delaware Office of Energy predict that the County will save a minimum of \$3,000.00 per year in electric costs with a payback in less than 7.5 years. He also reported that the solar panels will generate more power than needed and that this additional power will be sent back to the electric company for a credit.

**M 319 09**  
**Approve**  
**Expenditure**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, that the Sussex County Council approves the expenditure in the amount of \$49,995.00, less the rebates, for the installation of a solar electric system at

**for Solar Electric System/ Laurel Paramedic System**      **the Laurel Paramedic Station (the cost to the County will be \$22,498.00).**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**Public Hearing/ Issuance of Bonds/ Prince George's Acres Expansion of the DFSSD**      **A Public Hearing was held on the Proposed Ordinance entitled "AN ORIDNANCE AUTHORIZING THE ISSUANCE OF UP TO \$500,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE PRINCE GEORGE'S ACRES EXPANSION OF THE DAGSBORO – FRANKFORD SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".**

**Mrs. Webb reported that the Proposed Ordinance will provide for the issuance of up to \$500,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for a portion of the costs for the design, construction and equipping of the wastewater collection facilities for the Prince George's Acres Expansion of the Dagsboro – Frankford Sanitary Sewer District. Mrs. Webb reported that this project was funded by a USDA loan and grant; the terms of the loan were 2.5 percent for 40 years.**

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

**Mr. Baker introduced the County's Bond Attorney, Emilie Ninan of Ballard, Spahr, Andrews and Ingersoll in Wilmington.**

**M 320 09 Adopt Ordinance No. 2049**      **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to Adopt Ordinance No. 2049 entitled "AN ORIDNANCE AUTHORIZING THE ISSUANCE OF UP TO \$500,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTYF OR THE CONSTRUCTION AND EQUIPPING OF THE PRINCE GEORGE'S ACRES EXPANSION OF THE DAGSBORO – FRANKFORD SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**M 321 09 Adopt Loan Resolution/ Prince**      **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt the Loan Resolution entitled "A RESOLUTION OF THE SUSSEX COUNTY COUNCIL AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING,**

**George's Acres Expansion of the DFSSD**      **CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS PRINCE GEORGE'S ACRES EXPANSION OF THE DAGSBORO-FRANKFORD SANITARY SEWER DISTRICT FACILITIES TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION".**

**Motion Adopted:      4 Yeas, 1 Absent.**

**M 321 09 (continued)**      **Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Vincent, Yea;**  
**Mr. Wilson, Yea; Mr. Cole, Yea;**  
**Mr. Phillips, Absent**

**Public Hearing/ Boundary of the DFSSD/ Custis Annexation**      **A Public Hearing was held to consider extending the boundary of the Dagsboro – Frankford Sanitary Sewer District (DFSSD) to include one parcel of land along County Road 356 (Honolulu Road), east of the Town of Frankford, known as the lands of Clarence E. and Frances Custis.**

**Rob Davis, County Engineering Department, reported that the existing home on the parcel was destroyed by fire and a newer mobile home was placed on the lot. The existing sewer system was located on an adjacent property and DNREC will not allow the new residence to be connected to it.**

**Mr. Davis reported that the parcel is contiguous to the existing district and there is a connection point for the parcel, but it must be annexed into the sewer district before the connection can be made. The property owner will be responsible for system connection charges in the amount of \$5,828.00 based on current rates.**

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

**M 322 09 Adopt R 015 09**      **A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to Adopt Resolution No. R 015 09 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE DAGSBORO – FRANKFORD SANITARY SEWER DISTRICT (DFSSD) TO INCLUDE A PARCEL OF LAND ALONG COUNTY ROAD 356 (HONOLULU ROAD), EAST OF THE TOWN OF FRANKFORD, AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, DELAWARE".**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**Draft Ordinance Relating to Fees Charged**      **Mr. Baker reviewed a draft ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV § 62-15 RELATING TO FEES CHARGED BY THE SHERIFF". Sheriff Eric Swanson presented the draft ordinance to the Council for consideration on May 19th. At that time, concern was**

by the  
Sheriff

expressed regarding the proposal to increase the cap fee for the sale of real estate; currently, the fee is 4 percent of the total selling price, including costs, with a \$10,000 maximum. Mr. Baker reported that, since that meeting, the Sheriff has indicated that he would support the deletion of Section (19), as follows:

Draft  
Ordinance  
Relating  
to Fees  
Charged  
by the  
Sheriff  
(continued)

*Selling lands and tenements on execution 4% of the total selling price, including costs, except that the total amount paid under this subsection shall be no less than [\$300] \$500 and shall not exceed [\$10,000] \$15,000; provided, however, that this fee shall not be imposed or collected when the purchaser is an incorporated municipality within Sussex County and where the property purchased at sale is located, in whole or in part, within the boundaries of the purchasing municipality. The purchaser shall also submit to the Sheriff a fee of \$200 to be utilized by the Sheriff for the preparation and recordation of a deed to transfer the property to the purchaser. That fee will be refunded if the purchaser, within 45 days of confirmation or within forty-five days of the expiration of any statutory period of redemption, presents to the Sheriff an appropriate deed for such transfer.*

Mr. Baker reviewed the remaining proposed fee changes:

For serving a writ of summons and complaint, amended summons, writ of alias summons, first, second pluries, etc.[, scire facias, replevin], writ of waste, summons in partition, subpoena ad respondendum, attachment for attaching property, process of certiorari, citation, appeal, complaint and notice of ejectment, attachment, attachment upon garnishees, for each garnishee summoned, or any process of arrest in a civil case, notice of sale to each plaintiff and defendant and landlord or execution creditor, notice to plaintiffs and defendants in inquisition, advertising rule or notice to defendant in divorce or any other process in the nature thereof and making due return of the same for each person so served or notified (per person, whether served or not): \$30. For service of an alias or additional scire facias summons, for each person so served or notified (per person, whether served or not): \$40. For service of an original or additional summons in replevin, for each person so served or notified (per person, whether served or not): \$50.

For selling goods and chattels on execution: \$50 for service of the Sheriff plus [3] 4% of the amount made by the sale and legally applied. If an execution is levied upon goods and chattels and settled without sale after the expiration of 30 days from the levy and notice thereof to the defendant, the Sheriff shall be entitled to the costs of the sale; otherwise if the execution is settled before the expiration of 30 days, the costs of the sale shall not accrue or be endorsed.

For a certified letter: [\$5] \$7.50

(continued)

Advertising sale of lands and tenements; advertising in two newspapers and handbills under 10 Del. C. § 4973; advertising and selling, under order of a Court or a Judge, goods and chattels, lands and tenements: such costs, charges and allowances as shall be fixed and determined by the various vendors and the Sheriff together with a deposit of [\$500] \$1,000 to be credited against the costs of advertising and selling the property. This deposit is refundable to the extent that the proceeds of the sale exceed the total of Sheriff's costs.

The Council tabled the introduction of the draft ordinance to allow for it to be amended by deleting Section (19).

Adminis-  
trator's  
Report

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

1. Delaware Department of Transportation Public Hearing and Workshop

On Monday, June 8, 2009, at 10:00 a.m. at the DelDOT South District Administration Building in Georgetown, a public hearing will be held regarding the realignment proposed for a portion of Bethesda Road and Avenue of Honor near Millsboro. Also on Monday, June 8, the Delaware Department of Transportation will hold a public workshop from 4:00 to 7:00 p.m. at the Millsboro Fire Company regarding improvements to Iron Branch Road and State Street in Millsboro. Attached are copies of public notices regarding these meetings.

2. Delaware State Police Report – April 2009

Attached is a copy of the activity report for the Delaware State Police for April 2009. As noted, the Delaware State Police in Sussex County handled 3,625 complaints and made 4,027 traffic arrests and 1,488 criminal arrests during April 2009.

3. Delaware Technical & Community College Airframe Maintenance Technology Program

We were pleased to hear that the Delaware Technical & Community College Airframe Maintenance Technology Program has been approved by the Federal Aviation Administration. Classes at the facility at the County Airport will begin on June 8, 2009. Approval was received to start with 24 students. Students have begun taking courses at the main Georgetown campus in English, math, and other general topics. Classes will begin at the Airport on more technical topics on June 8. Four certified mechanic instructors will teach the program, which is typically a two-year program.

We wish to congratulate the Delaware Technical & Community College staff, especially Mr. Barry Weiss, for achieving this accomplishment. Please contact Mr. Weiss at 855-2309 with any questions you may have.

4. Addressing Department

Adminis-  
trator's  
Report  
(continued)

The County's Addressing Department has moved to the second floor of the West Complex. The move of this office from the County Administrative Building on The Circle to the West Complex will enable the Clerk of the Peace office to move out of rented office space. We wish to thank the Addressing Department for their cooperation in this move. The Addressing Department is available at 855-1176.

5. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance to The Meadows at Bayard, Agreement No. 580, on May 29, 2009. The developer is The Meadows at Bayard, L.L.C., and the project is located on County Road 84 (Bayard Road) in the Bayard Planning Area, consisting of a ten-lot subdivision. Included with this report is a fact sheet on the project.

(Attachments to the Administrator's Report are not attached to the minutes.)

Public  
Hearing/  
Blue  
Hen  
Organics  
Project/  
IRB

A Public Hearing was held to consider authorizing the issuance of up to \$4,500,000 variable rate demand Industrial Revenue Bonds (Series 2009) for the Blue Hen Organics, LLC Project.

Mrs. Webb reported that, on April 23, 2009, the Industrial Revenue Bond Committee reviewed an application filed on behalf of Blue Hen Organics LLC. The purpose of the application to finance a project through the County issuing its tax exempt industrial development revenue bonds and lending the proceeds thereof to the Applicant in order to assist in the acquisition, construction, furnishing and equipping of certain solid waste disposal facilities located in Dagsboro and to pay the costs of issuance of the Bonds. The facilities will be used for the composting of valueless yard waste and other organic matter, which will be recycled into bagged or bulk mulch, and will then be sold. The aggregate principal amount of the Bonds will not exceed \$4,500,000.

Robert Tunnell III stated that, by using Industrial Revenue Bond financing, it will allow them to do the site work and to construct the facility on a shorter timeframe than if the facility was constructed in phases, as originally planned. The construction of the facility all at one time will also allow them to employ more people sooner than if the project is phased. He noted that, without the IRB, the project would be constructed in phases



over an approximate seven-year period. Mr. Tunnell stated that the proceeds of the IRB will be used for site construction, building construction and bagging and composting equipment.

Emily Ninan of Ballard, Spahr, Andrews and Ingersoll, LLP, the County's Bond Counsel, stated that the federal tax code allows governmental entities to issue bonds, not only for themselves, but also as a conduit for certain borrowers that are qualified to borrow tax exempt proceeds. She stated that this is not County money and it is not an obligation of the County.

Public  
Hearing/  
Blue  
Hen  
Organics  
Project/  
IRB  
(continued)

Mrs. Webb reported that the Industrial Revenue Bond Committee voted to approve this IRB application.

Mr. Griffin read the following findings and determinations:

- the Project is eligible for financial assistance and the financing of the Project will accomplish the public purposes contemplated by the General Ordinance; and
- the Project will (1) tend to maintain or provide gainful employment opportunities within and for the people of the County; (2) aid, assist and encourage the economic development or redevelopment of the County and (3) maintain, diversify or expand employment promoting enterprises within the County; and
- the issuance and sale of the Bonds will enable the Applicant to obtain sufficient and cost effect financing thereby enhancing the applicant's ability to accomplish the public purpose of the project; and
- the Bonds will be limited obligations of the County and the County does not pledge its general credit or taxing power to the repayment of the Bonds; and
- the Bonds are to be payable solely from revenues of the project as specified in Section 7 of the General Ordinance.

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

M 323 09  
Adopt  
R 016 09

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Resolution No. R 016 09 entitled "A PROJECT RESOLUTION AUTHORIZING ISSUANCE OF UP TO \$4,500,000 VARIABLE RATE DEMAND INDUSTRIAL REVENUE BONDS (BLUE HEN ORGANICS, LLC PROJECT) SERIES 2009".

Motion Adopted: 4 Yeas, 1 Absent.

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

State of  
Delaware  
Farmland

Secretary of Agriculture Ed Kee discussed the State of Delaware Farmland Preservation Program. Secretary Kee stated that the Program began in 1994 and to date, there have been a total of 15 rounds. During that time,

**Preservation Program** statewide, the program has permanently preserved almost 93,000 acres, with a market value of over \$344 million. Secretary Kee explained how the program works; there is an appraisal of each farm and each landowner puts in a discount, which is subtracted from the appraised value. He explained that the actual money invested to get the \$344 million is \$156 million with the landowners having contributed over \$187 million in equity.

**Farmland Preservation Program (continued)** Secretary Kee stated that the program allows the farmers to stay on their land and to keep open space. Additionally, other significant factors of the program are keeping farmers profitable and maintaining a critical mass of agricultural production to support processing companies, fresh market industries, and supply companies.

Secretary Kee stated that Kent County will be participating this year; however, New Castle County will not.

Mr. Baker reported that the County has contributed \$2,061,000 to the program since 2003, which has assisted in maintaining 2,471 acres of farmland. He noted that the Sussex County Land Trust has contributed funds that they have raised to this effort.

Also present were Wendy Baker of the Sussex County Land Trust and Mike McGrath of the Delaware Department of Agriculture.

Wendy Baker stated the Sussex County Land Trust supports this program and that it is one of the best ways to leverage funds. She reported that the Land Trust has received the listing of participating farms in this Round and the Board will evaluate them based on established criteria and whether they fit into the Grand Preservation Loop. The Land Trust will make a recommendation to the County Council at a later date.

The amended draft ordinance relating to fees charged by the Sheriff was distributed.

**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 IV § 62-15 RELATING TO FEES CHARGED BY THE SHERIFF”. The Proposed Ordinance will be advertised for Public Hearing.

**Legislative Update** Mr. Godwin updated the Council on pending legislation before the General Assembly.

**Local Law Enforcement Grant Program** Mr. Godwin presented the following requests for funding through the Local Law Enforcement Grant Program:

Ocean View	\$25,000.00	Speed Awareness Trailer, Software, Binoculars, Computers, Handguns and
------------	-------------	--

**related equipment**

**Milford            \$ 1,656.59    Handgun, Rifle, Taser Cartridges**

**Greenwood        \$25,000.00    Holding Cell, Video Security System**

**M 324 09            A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to approve the Local Law Enforcement Grants to Ocean View, Milford, and Greenwood, as presented.**

**M 324 09  
Approve  
Local  
Law  
Enforce-  
ment  
Grants**

**Motion Adopted:     4 Yeas, 1 Absent.**

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

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

**M 325 09            A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give \$1,000.00 (\$200.00 from each Community Grant Account) to VFW Department Delaware Up-Link for Operation Up-Link.**

**Community  
Grant**

**Motion Adopted:     4 Yeas, 1 Absent.**

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

**M 326 09            A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$500.00 from Mr. Cole's Community Grant Account to Del-Mar-Va Forest No. 201 for their Muscular Dystrophy Fundraiser.**

**Community  
Grant**

**Motion Adopted:     4 Yeas, 1 Absent.**

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

**Introduction of Proposed Ordinance    Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.33 ACRES, MORE OR LESS" (Conditional Use No. 1845) filed on behalf of Rick Banning.**

**Introduction of Proposed Ordinance    Mrs. Deaver introduced 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 18.33 ACRES, MORE OR LESS” (Change of Zone No. 1687) filed on behalf of Rick Banning.**

**The Proposed Ordinances will be advertised for Public Hearing.**

<b>Additional Business/ Brad Bamberger</b>	<b>Under Additional Business, Brad Bamberger, a resident of Sea Air Village and President of the Homeowners Association, stated that he has proof that, over the years, Jeanne Sisk has constantly improved her property without any regard for the laws of this County and the County Council has allowed this. He stated that the residents of Sea Air Village are being held hostage in regards to permits, shed replacements, and various zoning matters until the Sisk case is resolved and he asked the County Council to resolve this matter which has been going on for over one year. Mr. Bamberger stated that he represents 100 homeowners in Sea Air Village.</b>
<b>M 327 09 Go Into Executive Session</b>	<p><b>At 4:46 p.m., a Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel, pending/potential litigation, and land acquisition.</b></p> <p><b>Motion Adopted: 4 Yeas, 1 Absent.</b></p> <p><b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Absent</b></p>
<b>Executive Session</b>	<p><b>At 4:47 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 personnel, pending/potential litigation, and land acquisition. The Executive Session concluded at 5:17 p.m.</b></p>
<b>M 328 09 Reconvene Regular Session</b>	<p><b>At 5:18 p.m., a Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.</b></p> <p><b>Motion Adopted: 4 Yeas, 1 Absent.</b></p> <p><b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Absent</b></p>
<b>M 329 09 Negotiate Land Purchase/ Sale Agreement</b>	<p><b>A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council authorizes the County Administrator to negotiate an agreement for the purchase and/or sale of property in Georgetown relating to parking.</b></p> <p><b>Motion Adopted: 4 Yeas, 1 Absent.</b></p>

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

**Legislative Update**        **Mr. Godwin advised that the Senate unanimously approved House Bill No. 1 on this date that will subject the Legislature to the open-meetings law. The legislation now heads to Governor Jack Markell to receive his signature.**

**M 330 09 Recess**                **At 5:19 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to recess until 6:00 p.m. Motion Adopted by Voice Vote.**

**Public Hearing/ C/U No. 1779**        **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SPA (MASSAGE, FACIALS, ETC.) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12,750 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1779) filed on behalf of Jim and Carla Clark.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 14, 2009 at which time they deferred action. On May 28, 2009, the Commission recommended that the application be approved with the following seven conditions:**

- 1.    There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side.**
- 2.    Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties on Route 24.**
- 3.    The hours of operation shall be from 10:00 a.m. to 7:00 p.m. Monday through Saturday and 1:00 p.m. to 7:00 p.m. on Sunday.**
- 4.    Although the project is located on Route 24, the adjoining properties are residential and the front yard is limited in size. Therefore, no more than four parking spaces shall be allowed in the front yard. The remaining required parking shall be relocated to the rear of the premises. The Applicant shall supply a means of accessing the rear parking as part of the Site Plan approval process. The required parking shall be depicted on the Final Site Plan.**
- 5.    The Final Site Plan shall be subject to the Applicant receiving entrance approvals from DelDOT and any applicable approvals from the Sussex Conservation District for stormwater management and erosion and sedimentation control.**
- 6.    The Final Site Plan shall contain the location of all trash or dumpster storage areas, which shall be screened from the view of neighboring and adjacent properties. A landscape plan for the project shall be included with the Final Site Plan.**

**7. The Site Plan shall be subject to approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated May 14 and 28, 2009.)

**Public  
Hearing/  
C/U**

**No. 1779  
(continued)**

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

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

**Mr. Lank distributed a revised site plan which was submitted by the Applicant.**

**Carla Clark was present with Tim Willard, Attorney. They stated that Mrs. Clark is an aesthetician; that she will operate the spa; that the revised site plan is in response to comments made during the Public Hearing before the Planning and Zoning Commission; that the Commission asked for a minimum of four parking spaces in the front; that there is a misrepresentation on the revised site plan; that there are five parking spaces in the front and they can eliminate one space if Council so stipulates; that they could have four parking spaces in the front and six in the back; that the site is in close proximity to other commercial uses; that the maximum number of employees should not exceed four; that the Applicant owns the adjoining parcel to the north and that additional parking could be provided or access could be provided on that lot to get access to parking to the rear of the building; that there would be some retail sales of products relating to the spa business; and that there are no prohibitions referenced in the deeds.**

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

**M 331 09  
Amend  
Condition  
No. 4  
for C/U  
No. 1779**

**MOTION  
FAILED**

**A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend Condition No. 4 recommended by the Planning and Zoning Commission to read as follows:**

**Although the project is located on Route 24, the adjoining properties are residential and the front yard is limited in size. Therefore, no more than five parking spaces shall be allowed in the front yard. The remaining required parking shall be relocated to the rear of the premises. The Applicant shall supply a means of accessing the rear parking as part of the Site Plan approval process. The required parking shall be depicted on the Final Site Plan.**

**Motion Failed: 2 Yeas, 2 Nays, 1 Absent.**

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

**M 332 09**  
**Adopt**  
**Ordinance**  
**No. 2050**  
**M 332 09**  
**Adopt**  
**Ordinance**  
**No. 2050**  
**(C/U**  
**No. 1779)**  
**(continued)**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent to Adopt Ordinance No. 2050 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SPA (MASSAGE, FACIALS, ETC.) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12,750 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1779) filed on behalf of Jim and Carla Clark, with the following conditions:

1. There will only be one lighted sign on the premises that shall not exceed 32 square feet on each side.
2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties on Route 24.
3. The hours of operation shall be from 10:00 a.m. to 7:00 p.m. Monday through Saturday and 1:00 p.m. to 7:00 p.m. on Sunday.
4. Although the project is located on Route 24, the adjoining properties are residential and the front yard is limited in size. Therefore, no more than four parking spaces shall be allowed in the front yard. The remaining required parking shall be relocated to the rear of the premises. The Applicant shall supply a means of accessing the rear parking as part of the Site Plan approval process. The required parking shall be depicted on the Final Site Plan.
5. The Final Site Plan shall be subject to the Applicant receiving entrance approvals from DelDOT and any applicable approvals from the Sussex Conservation District for stormwater management and erosion and sedimentation control.
6. The Final Site Plan shall contain the location of all trash or dumpster storage areas, which shall be screened from the view of neighboring and adjacent properties. A landscape plan for the project shall be included with the Final Site Plan.
7. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

**Motion Adopted:** 3 Yeas, 1 Nay, 1 Absent.

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

**Public**  
**Hearing/**  
**C/Z**  
**No. 1642**

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 GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.647 ACRES, MORE OR LESS” (Change of Zone No. 1642) filed on behalf of Georgetown Auto Sales, Inc.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 14, 2009 at which time they recommended that the application be approved.**

**Public Hearing/**  
**C/Z**  
**No. 1642**  
**(continued)** (See the minutes of the meeting of the Planning and Zoning Commission dated May 14, 2009.)

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

**Jim Stickels was present on behalf of Georgetown Auto Sales, Inc. and he stated that he is proposing to develop the site with an auto sales facility and office space; that his southerly lot line adjoins the Town of Georgetown’s boundary; that he has no desire for the property to be annexed; and that commercial zoning and uses exist on both sides of his property and across U.S. Route 113.**

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

**M 333 09**  
**Adopt**  
**Ordinance**  
**No. 2051**  
**(C/Z**  
**No. 1642)** A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2051 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 GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.647 ACRES, MORE OR LESS” (Change of Zone No. 1642) filed on behalf of Georgetown Auto Sales, Inc.

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Public Hearing/**  
**Proposed Ordinance**  
**Relating**  
**to Validity**  
**of a**  
**Preliminary**  
**Subdivision**  
**Plat** A Public Hearing was held on 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”.

**The Planning and Zoning Commission held a Public Hearing on this application on May 14, 2009 at which time they recommended that the application be approved.**

(See the minutes of the meeting of the Planning and Zoning Commission dated May 14, 2009.)



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

**Mr. Lank stated that this Amendment extends 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.**

**(continued) There were no public comments and the Public Hearing was closed.**

**M 334 09  
Adopt  
Ordinance  
No. 2052**      **A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2052 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".**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**Public  
Hearing/  
Proposed  
Ordinance  
Relating**      **A Public Hearing was held on 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".**

**to the  
Time  
Period of  
Validity**      **The Planning and Zoning Commission held a Public Hearing on this application on May 14, 2009 at which time they recommended that the application be approved.**

**of the  
Approval**      **(See the minutes of the meeting of the Planning and Zoning Commission dated May 14, 2009.)**

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

**Mr. Lank stated that this Amendment extends the period of validity for a Conditional Use; that the County Council acknowledges that it is difficult to obtain necessary State and Local agency approvals for an approved Conditional Use within one year as presently required, subject to two possible time extensions; that with this Amendment, the period of validity will be 3 years; and that after three years, the application would be void and the applicant would have to reapply.**

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

**In response to questions raised by the Council, Mr. Lank stated if the Proposed Ordinance is approved, an application receiving a conditional use**

approval would have to be substantially underway. Mr. Lank also stated that, in the Conditional Use section of the Code, there is no clear definition of “substantially”. It was noted that this issue should be addressed.

**M 335 09**  
**Adopt**  
**Ordinance**  
**No. 2053**  
**M 335 09**  
**(continued)**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2053 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”.

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Public**  
**Hearing/**  
**Proposed**  
**Ordinance**  
**Relating to**  
**Staff**  
**Approval**  
**of Major**  
**Subdivisions**

A Public Hearing was held on 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”.

The Planning and Zoning Commission held a Public Hearing on this application on May 14, 2009 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated May 14, 2009.)

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

Mr. Lank stated that this Amendment would allow, under certain limited conditions, the Planning and Zoning Director to approve for recordation, subdivisions of 3 or fewer lots. The Amendment further defines those conditions while still allowing minor subdivisions and the division of agricultural land.

Mr. Lank expressed some concerns about the method of advertising and notices to other residents in close proximity to an application site; that public notices with attachments of the proposed subdivision would have to be sent to residents and also advertised to see if interested parties may request that a public hearing be held on an application; that anyone could request a public hearing; that the fee would be the same as a major subdivision; that it would take additional time deciding whether a public hearing was to be held; that it would require advertising to see if anyone requests a public hearing to be held, and if requested, another advertising to schedule a public hearing; and that it is a lot of work for three lots.

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

**M 336 09**  
**Defer**  
**Action on**  
**Proposed**  
**Ordinance**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to defer action and to leave the record open for the decision of the Planning and Zoning Commission on 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”.

**M 336 09**  
**(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 337 09**  
**Adjourn**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to adjourn at 6:56 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith  
Clerk of the Council