



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 8, 2010

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 8, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

M 291 10 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the Agenda by deleting "Land Acquisition" under "Executive Session" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

The minutes of May 25, 2010 were approved by consent.

Minutes

Mr. Moore read the following correspondence:

Corre- spondence

**SEAFORD COMMUNITY FOOD CLOSET COMMITTEE, SEAFORD,
DELAWARE.**

RE: Letter in appreciation of grant.

BETHANY BEACH 4TH OF JULY PARADE COMMITTEE, BETHANY

BEACH, DELAWARE.

RE: Letter in appreciation of grant.

19TH ANNUAL BEACH AND BAY COTTAGE TOUR, FRIENDS OF THE SOUTH COASTAL LIBRARY, OCEAN VIEW, DELAWARE.

RE: Letter in appreciation of grant.

**Corre-
spondence
(continued)**

SOUTHERN DELAWARE CHORAL SOCIETY, REHOBOTH BEACH, DELAWARE.

RE: Letter in appreciation of grant.

JOSEPH R. BIDEN, JR., OFFICE OF THE VICE PRESIDENT, WASHINGTON.

RE: Letter thanking the Council for the invitation to the 33rd Annual Prayer Breakfast.

DELAWARE ENVIROTHON, DOVER, DELAWARE.

RE: Letter in appreciation of grant.

THE AMERICAN LEGION AUXILIARY UNIT NO. 28, MILLSBORO, DELAWARE.

RE: Letter in appreciation of grant.

**Library
Advisory
Board**

Mrs. Deaver advised that a vacancy will exist on the Library Advisory Board in June since Dennis Hughes cannot be reappointed as he has served the maximum of two terms.

**M 292 10
Appoint
Emory
West
to Library
Advisory
Board**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to appoint Emory West to the Library Advisory Board for a term of three years, expiring in June 2013.

Motion Adopted: 5 Yeas.

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

**Board of
Adjustment**

Mrs. Deaver stated that she wants to appoint John G. Walsh to the Board of Adjustment (3rd District).

M 293 10

A Motion was made by Mrs. Deaver to appoint John G. Walsh to the Board of Adjustment (3rd District). The Motion died for the lack of a Second.

**Board
Appoint-
ments**

Mr. Cole stated that he has advocated for years that any prospective members of the Planning and Zoning Commission and the Board of Adjustment should appear before the Council to be interviewed.

**M 294 10
Defer**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to defer action on the appointment of John G. Walsh to the Board of Adjustment until

Action on Board of Adjustment Appointment	<p>June 15th at which time Mr. Walsh will be interviewed by the Council.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</p>
Proposed Policy/ Interview Board Appointments	<p>Mr. Cole asked the Councilmembers to adopt a policy that all appointments to the Planning and Zoning Commission and the Board of Adjustment must be interviewed by the County Council prior to any vote. Mr. Moore advised that this should be considered as an amendment to the Rules of Procedure and he stated that a proposed amendment will be presented to the Council on June 15th for consideration.</p>
Sewer & Water Proposed Capital Plan	<p>Mr. Baker reviewed a draft spreadsheet summarizing water and sewer capital items included in the Proposed Fiscal 2011 Budget. There is a total of \$52 million included in the Proposed Budget; \$1.8 Million of that amount is included in the operations and maintenance portion of the sewer and water budget for capital costs. Most of the funding (\$50 million) is primarily for new sewer expansion projects which are partially funded by stimulus loan funds.</p> <p>Mr. Phillips suggested that the Budget Committee begin to look at every capital purchase item before it comes to the Council for approval.</p> <p>Mr. Phillips also asked that consideration be given to having an outside firm value engineer the larger projects. Mr. Baker responded that help has been requested from a small outside engineering firm to value engineer the Inland Bays Regional Wastewater Facility Project. He noted that some of the projects were facing time constraints due to deadlines attached to stimulus funding. Mr. Baker noted that consideration will also be given to other projects, when feasible.</p>
Manu- factured Housing Committee Update	<p>Mr. Baker presented a report of the Manufactured Housing Committee and he discussed the recommendations of the Committee, as follows:</p> <ul style="list-style-type: none">• Revise the definition of a manufactured home.• Revise the definition of a manufactured home park.• Revise the definition of an accessory building.• Regarding accessory buildings, a new section is recommended to be added to the Code: “No part of any accessory building shall extend closer than five feet to the boundaries of an individual residential site, or within 20 feet to a main residential structure or addition thereto on another residential site, or within 10 feet of an accessory building on another residential site, or exceed an overall height of 25 feet. An existing accessory building, of the same dimension, may be replaced in the same location if the accessory building was previously permitted and if authorized by the Park Management.”• Any decision to grant amnesty for locations of accessory buildings

**Manu-
factured
Housing
Committee
Update
(continued)**

could be left to the County Council's discretion if there is no proof that the structure was previously permitted or grandfathered.

- Easier approval for handicap ramps which would be permitted for emergency needs, subject to the approval of Park Management, the Director, and the County's Chief of Building Code:

"Open unenclosed landings with steps, and handicap ramps, providing access into the main residential structure may project four (4) feet into the required side yard setback. An open unenclosed landing, not exceeding four (4) feet by four (4) feet located near the elevation of the finished floor of the main residential structure shall have the necessary steps to get down from the landing to the grade of the lot." (The referenced open unenclosed landings and steps shall not be calculated as part of the 35 percent lot coverage requirement.)

- Manufactured home gross floor area definition clarification.
- Setback Variances – When a variance from required setbacks is approved for an improvement, if an adjoining property improvement is replaced later, then that property also is required to obtain a variance. It was the consensus of the Committee that if an adjoining property improvement in this case is replaced, the neighboring property would not be required to obtain a variance for replacement of a building/improvement, as long as the setback requirements are met.
- It was the consensus of the Committee to leave the setback requirement for neighboring improvements at 20 feet.
- The Committee agreed to maintain the maximum 35 percent lot coverage requirement.
- One Committee member requested that the Committee consider some additional issues regarding surveys required to replace structures, setbacks in older parks and Board of Adjustment decisions. (These issues are included in the minutes of the Committee dated February 4, March 4, and April 8, 2010.)

Mr. Cole also noted that any granting of amnesty should include the approval of a park manager/owner.

Mrs. Deaver stated that she would support the granting of amnesty in the case of a hardship.

Mr. Cole commented on the financial hardship of an applicant having to take their appeal to Court and he recommended that the appeal process should start with the Board of Adjustment, then go to the County Council and then to the Courts. It was noted that this may take an amendment to State law and Mr. Moore was directed to report back to the Council on this matter. Mr. Moore noted that, with the Council's permission, he would speak to Richard Berl, Assistant County Attorney and Attorney for the Board of Adjustment (there was no objection by Council).

It was the consensus of the Council to proceed with a Draft Ordinance on manufactured housing issues.

Adminis-
trator's
Report

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

1. South Coastal Regional Wastewater Facility Recognition

Adminis-
trator's
Report
(continued)

Attached is a copy of recognition from the Delaware Department of Natural Resources and Environmental Control for the South Coastal Regional Wastewater Facility near Bethany Beach. As noted per this report, this facility was one of 20 that completed calendar year 2009 with zero violations of Discharge Monitoring Report requirements. We wish to congratulate Ms. Heather Sheridan, Mr. Rodney Marvel, Mr. Loran George, and the staff of the South Coastal Regional Wastewater Facility for this accomplishment.

2. Substantial Completion

The Engineering Department has granted Substantial Completion to the following projects:

- Bethany Crest Mobile Home Park, Agreement No. 932, was granted Substantial Completion on May 24, 2010. The developer is Bethany Crest, L.L.C., and the project is located on Route 26, 1,000 feet east of Route 17, in the Millville Expansion of the Bethany Beach Sanitary Sewer District, consisting of a 59-unit mobile home park and one commercial unit.
- Bethany Bay, Sections 1.3 and 3.1, Revision 1, Agreement No. 935, was granted Substantial Completion on May 25, 2010. The developer is Linder & Company, Inc., and the project is located north of Road 350 in the Millville Expansion of the Bethany Beach Sanitary Sewer District, consisting of revisions to private roads, sewer, and the amount and location of units for Bethany Bay, Sections 1.3 and 3.1.

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

Proposed
Resolution
to Allocate
Recovery
Zone
Economic
Develop-
ment
Bond
Volume

Mrs. Webb presented a Proposed Resolution authorizing the allocation of Recovery Zone Economic Development Bond volume cap received by Sussex County under the American Recovery and Reinvestment Act of 2009 to certain County projects. Mrs. Webb explained that the Act created two new categories of bonds that support local economic development, one of which is the Recovery Zone Economic Development Bonds. These bonds are taxable and will finance public infrastructure projects in which the federal government will reimburse the issuer (Sussex County) 45 percent of the interest paid. The Bonds are not for privately owned projects; this program is available for projects that are located within the previously

Cap	designated Recovery Zone Area, which the County designated in July 2009, and for public infrastructure and economic development. Mrs. Webb asked for the Council's approval to apply the County's Recovery Zone Economic Development Bond volume cap to two infrastructure projects – the Inland Bays Regional Wastewater Facility Expansion (\$10,475,000) and the South Coastal Regional Wastewater Facilities Pump Station No. 3 and Force Main (\$6,169,000). The total volume cap allocation is \$16,644,000. The Bonds must be issued by December 10, 2010.
Proposed Resolution (continued)	Mr. Baker noted that this program was recommended to the County by the USDA. He also noted that the program will benefit the users of the two wastewater treatment plants.
M 295 10 Adopt R 020 10	A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Resolution No. R 020 10 entitled "SUSSEX COUNTY COUNCIL ALLOCATES RECOVERY ZONE ECONOMIC DEVELOPMENT BOND VOLUME CAP".
	Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea
Draft Ordinance Providing for the Issuance of Bonds	Mrs. Webb stated that, due to the December 10, 2010 deadline to use the Bonds, she is requesting the introduction of a draft ordinance that provides for the issuance of up to \$6,169,000 of Sussex County General Obligation Recovery Zone Economic Development Bonds in order to finance or reimburse the County for a portion of the costs for the design, construction, and equipping of improvements to and expansion of the South Coastal Regional Wastewater Facilities – Pump Station No. 30 and Force Main.
Introduction of Proposed Ordinance	Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$6,169,000 OF GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE SOUTH COASTAL REGIONAL WASTEWATER FACILITIES – PUMP STATION NO. 30 AND FORCE MAIN AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". The Proposed Ordinance will be advertised for Public Hearing.
Wastewater Agreements	Mr. Godwin presented wastewater agreements for the Council's consideration.
M 296 10 Execute Wastewater	A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 839, that the Sussex

**Agreements/
Windhurst
Manor,
Phase 4** **County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Millville Associates, LLC, for wastewater facilities to be constructed in Windhurst Manor, Phase 4, located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.**

**M 296 10
(continued)** **Motion Adopted: 5 Yeas.**

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

**M 297 10
Execute
Wastewater
Agreements/
The Refuge
at Dirickson
Creek,
Phase 9** **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 972, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Bunting – Gray, LLC, for wastewater facilities to be constructed in The Refuge at Dirickson Creek – Phase 9, located in the Fenwick Island Sanitary Sewer District.**

Motion Adopted: 5 Yeas.

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

**Local Law
Enforce-
ment
Grant
Requests** **Mr. Godwin presented the following requests for Local Law Enforcement Grants:**

Blades	\$15,000.00	National Night Out & Salaries
Ellendale	\$15,000.00	Salaries
Milford	\$ 5,275.00	Tasers & Cartridges , Gun Mounts
Ocean View	\$ 3,226.94	Simunition Training Equipment

**M 298 10
Approve
Local Law
Enforce
ment
Grants** **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to approve the Local Law Enforcement Grants, as presented.**

Motion Adopted: 5 Yeas.

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

**Legislative
Update** **Mr. Godwin presented a Legislative Update and he reported that House Bill Nos. 26, 95, 209, and 132 (all introduced last year) are not moving; House**

Bill No. 300 and House Bill No. 194 (new in 2010) are not moving either. House Bill No. 333, which is sponsored by Sussex County, has passed the House and is in the Senate.

Mr. Godwin informed the Council of Senate Bill No. 240 and asked the Council whether to oppose or support this Bill. No direction was given by the Council.

**Legislative
Update
(continued)**

Mr. Godwin reported that Senate Bill No. 265 may not be run in its entirety this year and that House Bill No. 30 has been amended to restrict it to the Middletown School District.

Mr. Godwin stated that Sussex County has two pieces of draft legislation that the Council is sponsoring: (1) reset property tax schedules and (2) change the word “representative” to “Council” in Title 9 as it refers to appointments to County Planning and Zoning Commission. These Bills have not yet been introduced. Mr. Vincent clarified that the draft legislation (2) is to also reference appointments to the Board of Adjustment of Sussex County. Mr. Godwin stated that he will have the draft legislation reworded prior to introduction.

Mr. Godwin discussed House Bill Nos. 402, 403, 404, 405, 406 and 407, which are all housekeeping bills relating to agriculture and which were all sponsored by Representative Walls.

Mr. Godwin referenced House Bill No. 426 and he reported that the County’s Building Code Supervisor has not stated any objection to the legislation.

Mr. Godwin stated that, to date, no legislation has been introduced transferring the responsibilities of the Offices of the Register of Wills and the Recorder of Deeds to the State.

**Request
for Time
Extension**

Lawrence Lank, Director of Planning & Zoning, presented a request for a one year time extension on Conditional Use No. 1681 filed on behalf of W. Edward Metz. He noted that Mr. Metz is requesting additional time to allow his engineers to obtain final approval from DNREC.

**M 299 10
Grant
Time
Extension/
C/U
No. 1681**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to grant a one year time extension (until June 5, 2011) on Conditional Use No. 1681 filed on behalf of W. Edward Metz.

Motion Adopted: 5 Yeas.

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

**Request for
Rehearing**

Mr. Lank presented a request from Michael Rhue, owner of Candleberry Creek, Inc., for a rehearing on Conditional Use No. 1819 Mr. Rhue did not

- on C/U
No. 1819** attend the Public Hearing before the County Council on April 13, 2010 and therefore, the application was denied due to the failure of the Applicant or his representative to appear and due to the lack of a record of support of the application. Mr. Rhue's letter to the Council states that he was not formally instructed to attend the County Council's Public Hearing and that he did not receive any notification of the Public Hearing.
- Request for
Rehearing
on C/U
No. 1819
(continued)** Mr. Lank reported that the public hearing notification information sent to the Applicant (Michael Rhue) included a cover letter addressed to the Applicant with both public hearing dates and times referenced, a copy of the Notice of Public Hearing for the Planning and Zoning public hearing, and a copy of the Notice of Public Hearing for the Sussex County Council public hearing.
- M 300 10
Deny
Request
for
Rehearing
on C/U
No. 1819** A Motion was made by Mr. Cole, seconded by Mr. Vincent, to deny the request of Michael Rhue for a rehearing on Conditional Use No. 1819.
- Motion Adopted:** 5 Yeas.
- Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea
- Old
Business/
C/Z
No. 1670** The Council considered Change of Zone No. 1670 filed on behalf of Nentego Properties, LLC.
- The Planning and Zoning Commission held a Public Hearing on this application on March 25, 2010 at which time they deferred action. On April 22, 2010, the Commission recommended that the application be approved.
- On April 13, 2010, the Council held a Public Hearing on this application at which time action was deferred.
- M 301 10
Adopt
Ordinance
No. 2120
(C/Z
No. 1670)** A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2120 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.8609 ACRES, MORE OR LESS" (Change of Zone No. 1670) filed on behalf of Nentego Properties, LLC.
- Motion Adopted:** 5 Yeas.
- Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea

**Old Business/
C/U
No. 1827** **The Council considered Conditional Use No. 1827 filed on behalf of Dry Dock, Inc.**

The Planning and Zoning Commission held a Public Hearing on this application on April 22, 2010 at which time they deferred action. On May 13, 2010, the Commission recommended that the application be approved with conditions.

(continued) On May 11, 2010, the Council held a Public Hearing on this application at which time action was deferred.

**M 302 10
Adopt
Ordinance
No. 2121
(C/U
No. 1827)** **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Ordinance No. 2121 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A NON-PROFIT FACILITY (MEETING PLACE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.436 ACRES, MORE OR LESS” (Conditional Use No. 1827) filed on behalf of Dry Dock, Inc., with the following conditions:**

- 1. The use shall be limited to meetings for charitable non-profit organizations only.**
- 2. One lighted sign, not to exceed 32 square feet per side, shall be permitted.**
- 3. Any security lighting shall be downward screened so that it does not shine on neighboring properties or Angola Road.**
- 4. The project shall be connected to County Sewer. The Applicant shall comply with all Sussex County Engineering Department requirements for connection to the District.**
- 5. Stormwater management on the site shall comply with all DNREC and Sussex Conservation District requirements.**
- 6. The site plan and use shall comply with all Sussex County parking requirements as set forth in the County Zoning Code. The Final Site Plan shall clearly delineate all parking areas.**
- 7. The Final Site Plan shall contain a landscape plan for the site.**
- 8. 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. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**Public
Hearing/
Millville
Expansion
of the
BBSSD/** **A Public Hearing was held to consider extending the Millville Expansion of the Bethany Beach Sanitary Sewer District (MVE) to include three parcels of land containing approximately 3.21 acres, along Beaver Dam Road east of Roxana Road. John Ashman, Director of Utility Planning, reported that the proposed expansion is part of a project known as H&D Townhouses with the balance of the project already being located in the MVE; the**

**H&D
Town-
houses**

proposed expansion is contiguous to the MVE.

Mr. Ashman noted that the only correspondence received is from the owner of an adjacent parcel (Gerald Smith) and that the homeowner is questioning why the project is moving forward when he still does not have sewer on his side of Beaver Dam Road.

**Public
Hearing
(continued)**

In response to questions raised by Mr. Cole, Mr. Ashman reported that the total number of EDUs allocated in this area is 4 units per acre and that the density of this project is less than 4 units per acre. Mr. Ashman also reported that a portion of the Beaver Dam Planning Area is in the MVE and a portion is in the Miller Creek Sanitary Sewer District.

Public comments were heard. Gerald Smith stated that he wants the lateral to his property off of Beaver Dam Road to the front of his property. He stated that he has been waiting two years and now this proposed expansion is moving forward prior to his property being served. Mr. Smith stated that he is not opposed to the expansion as long as there is capacity and as long as the developer incurs all costs.

Michael Izzo, County Engineer, stated that the development is in the town limits of Millville and therefore, it can have a higher density. He stated that there is capacity and this area could be allocated up to 6.2 EDUs per acre. Mr. Izzo reported that, in regards to Mr. Smith's situation, he does have a lateral that could serve his property and he can connect his home if he wishes; however, he prefers to have his lateral come off of Beaver Dam Road rather than Substation Road.

Mr. Izzo stated that the developer will be paying to extend the line which Mr. Smith also has the ability to do. He noted that Mr. Smith has elected to wait until the County extends sewer service in the area.

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

**M 303 10
Adopt
Resolution
No.
R 021 10**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Resolution No. R 021 10 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE MILLVILLE EXPANSION OF THE BETHANY BEACH SANITARY SEWER DISTRICT (MVE) TO INCLUDE PARCELS OF LAND ALONG BEAVER DAM ROAD EAST OF ROXANA ROAD, THAT IS CONTIGUOUS TO THE MVE, AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas.

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

Request	Mrs. Webb presented a grant request for the Council's consideration.
M 304 10 Community Grant	A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to give \$2,000.00 from Mrs. Deaver's Community Grant Account to the Lewes Historical Society for the Annual Chautauqua Tent Show.
M 304 10 (continued)	Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea
Introduction of Proposed Ordinance	Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR AN EXPANSION OF AN EXISTING CEMETERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.205 ACRES, MORE OR LESS" (Conditional Use No. 1866) filed on behalf of the Trustees of Church of Christ. The Proposed Ordinance will be advertised for Public Hearing.
Additional Business/ Census Bureau	Under Additional Business, Jess Quintero of the U.S. Census Bureau had signed up to speak; however, he had to leave and he requested that Chip Guy (Sussex County Public Information Officer) speak on his behalf. Mr. Guy stated that Mr. Quintero extends his thanks to the Council for the County's efforts to help with the Census. Additionally, he reported that the response rate in Sussex County for the 2000 Census was 53 percent; to date, the response rate in Sussex County for the 2010 Census is 58 percent. Census takers are out in the communities through July 10th in an attempt to get responses from those who did not return their forms.
Leash Law	Under Additional Business, Mrs. Deaver reported that Sussex County does not have a leash law.
Building Permit Tax	Under Additional Business, Mr. Cole reported that he received an email regarding the building permit tax and he questioned the specifics of the tax. Mr. Baker reported that this tax is a 1 percent State tax; additionally, the County has a 1 1/2 percent building permit tax. Mr. Baker reported that, approximately three years ago, the County Council approved the 1 1/2 percent tax. It was noted that the County does not collect the 1 percent tax for the State. It was also noted that this tax can only be assessed for year after the purchase of a lot.
M 305 10 Go Into Executive Session	At 12:15 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to pending litigation and personnel. Motion Adopted by Voice Vote.

Executive Session **At 12:16 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to pending litigation and personnel. The Executive Session concluded at 12:40 p.m.**

M 306 10 Reconvene Action **At 12:41 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to come out of Executive Session. Motion Adopted by Voice Vote. Mr. Moore announced that no action was necessary on Executive Session items.**

M 307 10 Recess **At 12:42 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

M 308 10 Reconvene **At 1:44 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to reconvene. Motion Adopted by Voice Vote.**

Attorney **Mr. Moore was not present and Vince Robertson, Assistant County Attorney, served as legal counsel.**

Public Hearing (C/U No. 1829) **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 TO EXPAND EXCAVATION OF BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 40.85 ACRES, MORE OR LESS” (Conditional Use No. 1829) filed on behalf of M. L. Joseph Sand & Gravel, Inc.**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on May 13, 2010 at which time action was deferred. On May 27, 2010, the Commission recommended that the application be approved with the following conditions:

- 1. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- 2. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- 3. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- 4. The hours of operation shall be as follows:**
 - a. Material may be hauled offsite only between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 2:00 p.m. on Saturdays.**
 - b. Continuous on-site operations of the plant dredge and pit is permitted Monday through Saturday.**

Public
Hearing
(C/U
No. 1829)
(continued)

- c. There shall be no borrow pit operations after 8:00 p.m. on Saturdays until 6:00 a.m. on Mondays.
5. No materials shall be stored on any access roads or within any buffer area.
6. Fuel shall be stored on-site in confined storage tanks as required by DNREC, the Fire Marshal or any other applicable regulations.
7. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
8. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion.
9. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
10. The Applicant shall comply with all State and County erosion and sediment control regulations.
11. Markers and signs shall be placed at appropriate locations to designate pit areas.
12. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
13. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
14. It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B (6)(e).
15. Markers and signs shall be placed at appropriate locations to designate pit areas as required by the Mine Safety and Health Administration (MSHA).
16. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership and 50 feet from all other property lines of other ownership. The buffer area shall include a 30 foot wide vegetated buffer of native species vegetation.
17. Borrow pit operations shall be consistent with the Mine Safety and Health Administration (MSHA). MSHA Directives and Regulations supersede these plans and specifications.
18. Per MSHA requirements, the borrow pit shall be surrounded by a berm with a minimum height equal to 1/2 the height of the tallest tire used in the mining operation. Current minimum height is 3 feet.
19. The Final Site Plan shall include a landscape plan for all buffer areas, the berms, and the slopes. The buffers shall include native plantings, and crops are considered as part of the vegetative buffer. As stated by the Applicant, the buffer is designed to provide a visual, dust and other nuisance barrier.
20. 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 May 13 and 27, 2010.)

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

**Public
Hearing
(C/U
No. 1829)
(continued)**

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

Ken Adams, President of Stockley Sand and Gravel, was present on behalf of the application with Mark Dunkle, Attorney; James Willey of George, Miles & Buhr; and Steven Smailier of Duffield Associates. They presented a color map showing the proposed site, properties in the area, and properties of land owners in the area in support of the application. They stated that they propose to expand excavation of a borrow pit; that the site plan shows the proposed borrow pit, seeded stabilization banking, the 30-foot landscaped buffer, and the existing entrance; that DelDOT has voiced no objections; that they are dedicating 30 feet from the centerline of Bunting Road for rights-of-way and will be providing a 15-foot easement for a future multi-modal path; that the borrow pit area will be at least 100-feet from the right-of-way of Bunting Road, at least 50-feet from any property line, and at least 200 feet from any dwelling on adjacent properties; that in existing sections of the pit, the slopes have been seeded and stabilized and there is a seeded berm around all areas that have been exhausted; and that the reclamation plan provides for a pond.

Mr. Cole suggested that the Council stipulate a maximum time limit for the use. It was noted, that in the past, the Council has imposed a 40 year limit on previous applications.

The Council discussed the conditions recommended by the Commission and considered amendments thereto: deleting Condition No. 14; adding additional wording to Condition No. 20 that states that the Final Site Plan shall contain a phasing and reclamation guarantee method for approval by the Planning and Zoning Commission; and adding a condition stating that this Conditional Use shall be valid for 40 years.

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

**M 309 10
Adopt
Ordinance
No. 2122
(C/U
No. 1829)**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2122 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO EXPAND EXCAVATION OF BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 40.85 ACRES, MORE OR LESS" (Conditional Use No. 1829) filed on behalf of M. L. Joseph Sand & Gravel, Inc., with the following conditions, as amended:

M 309 10
Adopt
Ordinance
No. 2122
(C/U
No. 1829)
(continued)

1. No materials shall be brought from off the site for processing, mixing or similar purposes.
2. Water or a water truck shall be available to control dust from road traffic when conditions require.
3. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
4. The hours of operation shall be as follows:
 - a. Material may be hauled offsite only between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 2:00 p.m. on Saturdays.
 - b. Continuous on-site operations of the plant dredge and pit is permitted Monday through Saturday.
 - c. There shall be no borrow pit operations after 8:00 p.m. on Saturdays until 6:00 a.m. on Mondays.
5. No materials shall be stored on any access roads or within any buffer area.
6. Fuel shall be stored on-site in confined storage tanks as required by DNREC, the Fire Marshal or any other applicable regulations.
7. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
8. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion.
9. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.
10. The Applicant shall comply with all State and County erosion and sediment control regulations.
11. Markers and signs shall be placed at appropriate locations to designate pit areas.
12. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all regulations.
13. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
14. This Conditional Use shall be valid for 40 years.
15. Markers and signs shall be placed at appropriate locations to designate pit areas as required by the Mine Safety and Health Administration (MSHA).
16. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership and 50 feet from all other property lines of other ownership. The buffer area shall include a 30 foot wide vegetated buffer of native species vegetation.
17. Borrow pit operations shall be consistent with the Mine Safety and

**M 309 10
Adopt
Ordinance
No. 2122
(C/U
No. 1829)
(continued)**

Health Administration (MSHA). MSHA Directives and Regulations supersede these plans and specifications.

- 18. Per MSHA requirements, the borrow pit shall be surrounded by a berm with a minimum height equal to 1/2 the height of the tallest tire used in the mining operation. Current minimum height is 3 feet.**
- 19. The Final Site Plan shall include a landscape plan for all buffer areas, the berms, and the slopes. The buffers shall include native plantings, and crops are considered as part of the vegetative buffer. As stated by the Applicant, the buffer is designed to provide a visual, dust and other nuisance barrier.**
- 20. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall contain a phasing and reclamation guarantee method for approval by the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing
C/U
No. 1830**

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 AN OUTPATIENT PHYSICAL THERAPY CLINIC TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 24,553 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1830) filed on behalf of J & T Properties, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on May 13, 2010 at which time action was deferred. On May 27, 2010, the Commission recommended that the application be approved 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 or roadways.**
- 3. As proposed by the Applicant, the hours of operation shall be limited to between 7:00 a.m. and 8:00 p.m. Monday through Friday.**
- 4. As stated by the Applicant, the building shall have a residential appearance.**
- 5. The Applicant must comply with all DelDOT requirements concerning the entrance, easement and roadway improvements.**
- 6. As stated by the Applicant, the use shall be a physical therapy practice.**

7. The Final Site Plan shall include a landscape plan for the property.
8. The Applicant shall comply with all County Engineering Department requirements for connection of the property into the Sussex County Sewer District, including any system upgrades that are necessary to serve the property.
9. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

Public
Hearing
C/U

(See the minutes of the meeting of the Planning and Zoning Commission dated May 13 and 27, 2010.)

No. 1830
(continued)

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

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

Lester Moyer and Art Abbott were present on behalf of the application with James Fuqua, Attorney, and Roger Gross of Merestone Consultants. Mr. Fuqua stated that the application is for a physical therapy office; that the site is located on the north side of Savannah Road; that J&T Properties owns the land and will construct the proposed building and lease it to Southern Delaware Physical Therapy (SDPT); that SDPT has been in business for 20 years and has six locations in Delaware; that the site is improved with a dwelling and a garage that will be removed; that there are no wetlands on the site; that the proposed building will be a 2-story building with a residential appearance; that the total floor area would be 6,506 square feet; that business hours are proposed to be 7:30 a.m. to 7:30 p.m. Monday through Friday; that the entrance to the site will be located near the rear of the site on the DelDOT easement for the future realignment of Old Orchard Road; that the site will have no direct access onto Savannah Road; that a Traffic Impact Study was not required; that Tidewater Utilities will serve the project; that the County will provide sewer service; that the owners are aware that they may be required to participate in upgrades to the sewer system; that stormwater management would comply with County and State regulations; that 27 parking spaces are proposed and are to be located both in the front, side and rear yards; that a screened dumpster would be located in the rear corner of the property; that the site would have landscaping or fencing along the north and east boundaries; that the proposed use is consistent with the zoning and existing uses in the area, which are predominantly business and medical office uses; and that the proposed use would be the best use of the property.

Mr. Cole stated that the application is requesting six times the recommended allocation for sewer and that the comments of the Sussex County Engineering Department reference that wastewater capacity is not available since there are deficiencies.

Mr. Fuqua referenced the Conditional Use in the area that was recently denied and he stated that it was not only due to sewer. He stated that a planning area is based on assumptions and not necessarily exactly how

things will be; that an assumption is only an assumption; that some projects were allocated 12 EDUs but will use significantly less; that some EDUs won't be used, i.e. some land in the area is owned by the State and no EDUs will be utilized on that ground; and that there has to be some flexibility.

**Public
Hearing
C/U
No. 1830
(continued)**

Michael Izzo, County Engineer, stated that, even though the application is for six times the EDU allocation, it is still only a total of six EDUs, which is not substantial. He also stated that the Engineering Department knows that there are lines down-gradient to this application site that have to be upgraded regardless of the approval or disapproval of this proposed project.

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

**M 310 10
Adopt
Ordinance
No. 2123
(C/U
No. 1830)**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2123 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTPATIENT PHYSICAL THERAPY CLINIC TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 24,553 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1830) filed on behalf of J & T Properties, LLC., 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 or roadways.
3. As proposed by the Applicant, the hours of operation shall be limited to between 7:00 a.m. and 8:00 p.m. Monday through Friday.
4. As stated by the Applicant, the building shall have a residential appearance.
5. The Applicant must comply with all DelDOT requirements concerning the entrance, easement and roadway improvements.
6. As stated by the Applicant, the use shall be a physical therapy practice.
7. The Final Site Plan shall include a landscape plan for the property.
8. The Applicant shall comply with all County Engineering Department requirements for connection of the property into the Sussex County Sewer District, including any system upgrades that are necessary to serve the property.
9. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 3 Yeas, 2 Nays.

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

Mr. Phillips, Yea

**Public
Hearing
(C/U
No. 1863)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MARINA WITH RESTAURANT, RETAIL AND MULTI-FAMILY DWELLING STRUCTURES (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS” (Conditional Use No. 1863) filed on behalf of Andrew and Carol Walton.

**Public
Hearing
(C/U
No. 1863)
(continued)**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on May 13, 2010 at which time action was deferred. On May 27, 2010, the Commission recommended that the application be approved with the following conditions:

- 1. This Conditional Use shall replace Conditional Use No. 1088 for the property.**
- 2. There shall be no more than 10 boat slips permitted, and all boat slips, dock, pier and marina activities shall be subject to all State and Federal requirements that may be applicable to the use.**
- 3. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.**
- 4. No boat storage shall be permitted, except for boats belonging to the owner of the property.**
- 5. No boat motor repair shall be permitted.**
- 6. No fuel sales will be permitted.**
- 7. There shall not be an arcade.**
- 8. There shall be no more than 5 residential units on the property.**
- 9. There shall be parking as required by the Zoning Code. The spaces shall be delineated on the site, and there shall be landscaping or a fence between the parking area and Oak Orchard Road to separate the parking area from the roadway.**
- 10. The property shall be connected to the Oak Orchard Sanitary Sewer District and shall comply with all Sussex County Engineering Department requirements for the connection or system upgrades required to serve the property.**
- 11. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices.**
- 12. Security lighting shall be screened from neighboring properties and roadways.**
- 13. All dumpsters or trash receptacles shall be screened from view.**
- 14. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission

dated May 13 and 27, 2010.)

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

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

Public
Hearing
(C/U
No. 1863)
(continued)

Mr. Lank reported that one letter of correspondence was received on May 17, 2010, following the date of the Public Hearing before the Commission. The letter was from Margaret Hurt of Millsboro stating that she is in opposition to the retail aspect of the application but that she does not oppose the restaurant portion of the application. Ms. Hurt also questioned if sufficient parking would be available.

Andrew Walton was present on behalf of the application with Zach Crouch, Professional Engineer with Davis, Bowen & Friedel. They stated that the Applicant does not propose to close the roadway that runs across the property; that the site is subject to a previously approved application in 1994 for the marina with boat rental, boat slip rental, bait and tackle sales, sandwich shop, crabbing pier, office and residence (Conditional Use No. 1088); that the approval allowed for a maximum of 20 boat slips but only 10 boat slips exist and no additional boat slips are proposed; that the existing boat slips and docks will remain; that they are proposing to relocate the existing building to the north of the site and to convert it into a single family dwelling; that they are proposing four multi-family units above a restaurant and retail area; that the proposed building is proposed to include a 2,800 square foot restaurant facility with a 700 square foot patio, a 1,600 square foot retail store, and four apartments; that each apartment will contain 2,000 square feet and will be located on the second and third floors; that adequate space is available for parking on the site; that 29 parking spaces are required and 30 spaces are proposed (10 for the rental units and 20 for the restaurant); that the County will provide sewer service; that stormwater management will be Best Management Practices; that they will comply with the Pollution Control Strategies; that DelDOT did not require a Traffic Impact Study; that no wetlands exist on the site; and that the Owner is participating in the Delaware Clean Marina Program.

Public comments were heard.

Linda Walls spoke in support of the application and she stated that the project will be beneficial to the area and that traffic and parking is not a concern.

Councilmembers discussed whether or not the project provides sufficient parking. Mrs. Deaver stated that there should be parking for boat slips. It was noted that the County should consider addressing parking regulations for marinas.

The Public Hearing was closed.

M 311 10
Adopt
Ordinance
No. 2124
(C/U
No. 1863)
M 311 10
Adopt
Ordinance
No. 2124
(C/U
No. 1863)
(continued)

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to Adopt Ordinance No. 2124 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MARINA WITH RESTAURANT, RETAIL AND MULTI-FAMILY DWELLING STRUCTURES (5 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.84 ACRE, MORE OR LESS” (Conditional Use No. 1863) filed on behalf of Andrew and Carol Walton, with the following conditions:

- 1. This Conditional Use shall replace Conditional Use No. 1088 for the property.**
- 2. There shall be no more than 10 boat slips permitted, and all boat slips, dock, pier and marina activities shall be subject to all State and Federal requirements that may be applicable to the use.**
- 3. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.**
- 4. No boat storage shall be permitted, except for boats belonging to the owner of the property.**
- 5. No boat motor repair shall be permitted.**
- 6. No fuel sales will be permitted.**
- 7. There shall not be an arcade.**
- 8. There shall be no more than 5 residential units on the property.**
- 9. There shall be parking as required by the Zoning Code. The spaces shall be delineated on the site, and there shall be landscaping or a fence between the parking area and Oak Orchard Road to separate the parking area from the roadway.**
- 10. The property shall be connected to the Oak Orchard Sanitary Sewer District and shall comply with all Sussex County Engineering Department requirements for the connection or system upgrades required to serve the property.**
- 11. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices.**
- 12. Security lighting shall be screened from neighboring properties and roadways.**
- 13. All dumpsters or trash receptacles shall be screened from view.**
- 14. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

Agenda Mr. Cole requested that the issue of sewer capacity be placed on a future

Item	agenda for the purpose of discussion.
Conditional Use Process	Mr. Cole commented on the County's Conditional Use process and he commented that possibly, Conditional Uses could be permitted for a designated period of time, after which the Use would be reviewed to determine whether or not the Conditional Use permit would remain valid.
(continued)	Mr. Robertson noted that this type of process may work for a smaller geographic area; however, in Sussex County, the Commission's/Council's Agendas could get clogged up with reviews.
M 312 10 Adjourn	A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to adjourn at 3:37 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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