



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 30, 2009

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 30, 2009, at 3:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

M 404 09 Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

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

Corre- spondence

Mr. Griffin read the following correspondence:

FRED SEARS, PRESIDENT AND CEO, DELAWARE COMMUNITY FOUNDATION, WILMINGTON, DELAWARE.

RE: Letter in appreciation of Council's recent contribution.

WILLIAM A. JEFFERSON, COMMISSION PRESIDENT, TOWN OF BRIDGEVILLE, DELAWARE.

RE: Letter and attachment regarding comments made by Councilwoman Deaver regarding "gang activity in the Bridgeville area". (Attachment - article in the News Journal on June 17, 2009.)

Presentation to County Attorney	The County Council presented a plaque to County Attorney James D. Griffin “for outstanding legal service for the Sussex County Council and for representing the best interest of Sussex Countians and for true and devout service (from January 7, 2003 to June 30, 2009).
FEMA/ MOA/ Household Repair Kit Trailer	Mr. Baker presented a request for approval to allow the Federal Emergency Management Agency (FEMA) to place a 20 foot Household Repair Kit trailer on County property as part of their Pre-Positioned Disaster Supplies (PPDS) Program. Mr. Baker reviewed a Memorandum of Agreement (MOA) between FEMA, the Department of Homeland Security and the County. The purpose of this Agreement is to set forth terms by which FEMA and Sussex County will work together in the implementation of the PPDS Program, which has been designed by FEMA to provide accelerated relief to victims of emergencies and major disasters at remote locations. Mr. Baker advised that the trailer would contain roofing tarps, tools, a generator, lights, and other disaster recovery supplies to be provided by FEMA; the County’s only responsibilities would be to occasionally restock the trailer with the supplies provided by FEMA and to provide a space to store the unit; the unit will most likely be placed at the County’s previous Emergency Operations Center location.
M 405 09 Approve FEMA MOA/ Household Repair Kit Trailer	A Motion was made by Mr. Vincent , seconded by Mr. Cole, that the Sussex County Council approves a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA) to allow them to place a 20 foot household repair kit trailer on County property to be available during an emergency. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea
Early Retirement Option Report	Mr. Baker reported on the limited Early Retirement Option that was offered to employees, which had a deadline of June 15th. The following eleven (11) employees took advantage of the offer: Joyce Bailey, Robert Chaffinch, Ray Cook, Janet Isaacs, Rick Kautz, Van Milligan, Norman (Bud) Rickard, Bill Townsend, Geri Wagamon, Bea Wright, and. Gale Young. The Early Retirement Option provides the employees with five extra years in calculating their pension. Mr. Baker reported that, of the eleven employees, ten of their positions will not be filled, which will result in a substantial savings to the County; the savings will be approximately \$286,600 per year for the next three years and thereafter, \$536,600 per year. The savings reflect the use of remaining personnel and a contribution of \$750,000 over the next three years to the County’s pension and pension benefit fund to cover the additional liability costs for early retirement; it also assumes that the County will not need to replace the staff in the near future.

**Proposal
for
Employee
Bonus**

Mr. Baker stated that, due to the savings resulting from the Early Retirement Option and the remaining funds in the State Police budget line item, he is recommending a separate thanks to County employees in the form of a \$100 bonus. If approved, the bonus would be given to each full-time County employee and would be paid in July. Mr. Baker stated that County employees from every department have stepped up and responded appropriately to help save money; employees have taken on other job responsibilities, cross-trained to fill open positions, plus saved in other ways by reducing expenditures. Mr. Baker reported that the funding would come from the remaining amount of \$47,500 from the state police grant reduction and approximately \$3,800 from the Contingency Fund.

**Proposal
for
Employee
Bonus
(continued)**

**M 406 09
Approve
\$100
Employee
Bonus**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the County Administrator is given the authority to make a one-time payment of \$100 to County employees as soon as possible in July from remaining revenues discussed and approved as part of the Fiscal Year 2010 Budget; this action is in appreciation for the hard work and dedication of County employees during this extraordinary time of cost management and the result of the success of the recent Early Retirement Option program.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance to Millville by the Sea (Section 1), Phase 1-A, Agreement No. 668, on June 24, 2009. The developer is The Millville Group, L.L.C., and the project is located on Substation Road, north of Beaver Dam Road, in the Millville Expansion of the Bethany Beach Sanitary Sewer District, consisting of 124 single-family homes and 73 townhouses. Included with this report is a fact sheet on the project.

2. Woodlands of Millsboro Sewer Referendum Results

On June 25, 2009 the Sussex County Council sponsored a referendum for the proposed Woodlands in Millsboro Sewer Project. The results of that referendum were favorable, 40-1, in favor of the County installing a new sewer system for their development. Treatment of flow from the system will be handled by the town of Millsboro. A proposal to establish a sewer district for this project will be made at a forthcoming County Council meeting.

Adminis-
trator's
Report
(continued)

3. **Announcement of Federal Stimulus Funds for Sussex County Wastewater Projects**

As per the attached invitation, the United States Environmental Protection Agency will hold a special announcement on July 2, 2009 at 1:30 p.m. at the Delaware Seashore State Park south of Dewey Beach. The announcement pertains to federal funding from stimulus funds for Sussex County wastewater projects.

4. **Summer Holidays**

The Sussex County Council will not be meeting on Tuesday, July 7, 2009 in honor of the July 4th holiday. On July 3, 2009 Sussex County offices will be closed also in honor of July 4th. The County Council will also not meet on July 14, 2009 for a summer holiday week off. The next meeting of the Sussex County Council will be July 21, 2009 at 3:00 p.m.

5. **Airport Committee Meeting - July 1, 2009**

Attached is an agenda for the Airport Committee meeting to be held July 1, 2009 at 10:00 a.m. at the Sussex County West Complex. Updates will be made regarding various projects at the Airport and Industrial Park.

The attachments to the Administrator's Report are not attachments to these minutes.

Adminis-
tration
Building
Roof
Replace-
ment
Project

Russell Archut, Project Coordinator – Engineering Department, presented an Amendment (No. 5) to the Construction Administration Contract for the Roof Replacement at the Administration Building. Mr. Archut reported that the work will be performed by Studio JAED and will generally include services during the construction and post construction phases of the project for contract administration, submittal reviews, and observation of the work. The cost of the Contract is not to exceed \$13,000.

M 407 09
Execute
Amendment
for Admin-
istration
Building
Roof
Replace-
ment
Project

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Engineering Department, that the Sussex County Council hereby authorizes its President to execute Amendment No. 5, dated May 19, 2009, to its Contract with Studio JAED to provide construction administration services for the Sussex County Roof Replacement Project at a cost not to exceed \$13,000.00.

Motion Adopted: 5 Yeas.

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

Milton Library Second Floor Completion
(continued) **Russell Archut, Project Coordinator – Engineering Department, presented Change Order No. 2 for the Milton Library Second Floor Completion Project. The Change Order results in a net reduction (\$592.00) in the cost of the project. The Change Order is an assimilation of four items: furnish and install three additional strobe devices to meet the requirements of the Fire Marshall, furnish and install drywall, install metal studs for beam in additional stairwell, flooring changes, and ceilings.**

M 408 09 Approve Change Order/ Milton Library Second Floor Completion **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Engineering Department and its Consultant, Studio JAED, that Change Order No. 2 for Sussex County Project No. 07-04, Milton Library Second Floor be approved, which decreases the Contract amount by \$592.00 for a new total of \$723,457.00.**

Motion Adopted: 5 Yeas.

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

Bid Results/ Generator Replacement **Rodney Marvel, Department of Environmental Services, presented the bid results for Sussex County Project No. 09-07, Generator Replacements for the Department of Environmental Services, as follows:**

Zober Contracting \$450,000.00
Dover, DE

Alban Engineer Power Systems \$365,920.00
Elkridge, MD

Cummins Power Systems \$312,000.00
Glen Burnie, MD

Mr. Marvel reported that the generator replacements are for the following sanitary sewer districts: Long Neck, Blades, Fenwick Island, and Dewey Beach. One portable generator will be used throughout all of the districts.

Mr. Marvel advised that the Department of Environmental Services would be installing the generators.

M 409 09 Award Bid/ Generator Replacement **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Sussex County Project No. 09-07, Generator Replacements for the Department of Environmental Services, be awarded to Cummins Power Systems, Inc. of Glen Burnie, Maryland, at the bid amount of \$312,000.00.**

Motion Adopted: 5 Yeas.

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

**Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

Deposit Account **Mrs. Webb presented a recommendation to open a new deposit account with Delaware National Bank.**

M 410 09 **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt**
Adopt **Resolution No. R 019 09 entitled “AUTHORIZING THE PAYMENT**
R 019 09 **FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT**
 WITH THE DELAWARE NATIONAL BANK BEARING THE
 SIGNATURES OF ANY TWO OF VANCE PHILLIPS, PRESIDENT;
 GEORGE B. COLE, VICE PRESIDENT; OR SUSAN M. WEBB,
 FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE
 PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR
 WITHDRAWAL”.

Motion Adopted: 5 Yeas.

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

Uniform **Mrs. Webb discussed the concept of unifying the County’s sewer service**
Sewer **charge rate, a project which will be considered in the Fiscal Year 2011**
Service **Budget. She stated that the proposal will be for service charges only, not**
Charge **assessment fees and not collection charges. Mr. Cole stated that all sewer**
Rate **customers receive the same level of service and therefore, there should be**
 one flat fee per household. It was the consensus of the Council to work
 towards uniform rates and Mrs. Webb stated that she would report back to
 the Council with more detailed options and information.

Mr. Godwin discussed the following legislation:

Legislative **House Bill No. 70 – “AN ACT TO AMEND TITLE 29 OF THE**
Update **DELAWARE CODE RELATING TO WIND ENERGY SYSTEMS”.**

This Bill bans the use of covenants or other restrictions to prohibit the installation of wind systems in Delaware and sets minimum requirements for such operations. Mr. Godwin reported that this Bill is out of the House and in the Senate; however, it is not yet on the Senate’s Agenda or Ready List.

A majority of the County Council oppose this Bill.

House Bill No. 106 – “AN ACT TO AMEND TITLES 7 AND 29 OF THE
DELAWARE CODE RELATING TO THE POWERS AND DUTIES OF
THE DELAWARE OPEN SPACE COUNCIL, THE PARKS AND
RECREATION COUNCIL AND THE DELAWARE COUNCIL ON
GREENWAYS AND TRAILS”.

Legislative
Update
(continued)

Mr. Godwin noted that the Council previously raised questions regarding this legislation and he reported that this Bill pertains to funds established by the Conservation Trust Fund which are set aside every year in the State Budget to be used for Open Space funding. This money is forwarded to local communities to buy land for parks and for the development of and for the purchase of equipment for parks. This year, the State has set aside \$750,000 for such grants; in the past, requests for funding were considered by the Delaware Open Space Council and that Council made a recommendation to the Secretary of DNREC, who had the final decision on the allocation of the money. The requests for funding will now be considered and approved by the Parks and Recreation Council. Mr. Godwin noted that the County has never applied for any of this funding and therefore, will not be affected by the legislation.

Senate Bill No. 132 – “AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO LAND USE”

This Bill provides for the review of land use ordinances by the Office of State Planning prior to approval or adoption by the respective county or municipal government. Mr. Godwin stated that, as a matter of policy, the County has been doing this anyway; however, it is not required. Mr. Godwin stated that the Office of State Planning does not want this Bill.

Mr. Godwin reported that this Bill has not moved very far as there has been a lot of controversy in regards to it and that the Bill is currently on the Senate’s Ready List.

It was the consensus of the Council to oppose the Bill.

House Bill No. 233 – “AN ACT TO AMEND TILE 9 OF THE DELAWARE CODE RELATING TO COUNTIES AND TITLE 7 OF THE DELAWARE CODE RELATING TO DOGS”.

The Bill that unanimously passed the House was the original Bill which transferred to the counties the administrative powers and duties relating to dogs and dog control, with an amendment to include a cap for license fees in the amount of \$10.00 (neutered animals) and \$15.00 (un-neutered animals) with the cap expiring in two years, at which time the counties can change the fees.

Mr. Godwin reported that this Bill is currently in the Senate.

It was the consensus of the Council that there are no objections to the Bill with the amendment.

Request to
Withdraw
C/Z

Lawrence Lank, Director of Planning and Zoning, presented a letter of request from Dennis Schrader, Attorney, on behalf of Todd Bariglio, Applicant for Change of Zone No. 1639, requesting approval to withdraw

- No. 1639/
Todd
Bariglio**
- Request
(continued)**
- the application and to re-file the application as a Conditional Use for general and professional offices at the same location, which the Applicant believes will alleviate many concerns expressed during the public hearing process before the Commission and the Council. Mr. Lank noted that the Applicant has also requested that the new application be expedited. In response to questions, Mr. Lank stated that if the request for the expedited application is not approved, the Applicant will have to wait one year to reapply; additionally, if the request to withdraw is denied and the application is denied, the Applicant will have to wait one year to reapply.
- M 411 09
Accept
Request
to With-
draw
Application
C/Z
No. 1639
(DENIED)**
- A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to accept the request to withdraw Change of Zone No. 1639 and to deny the request for a new expedited application.
- Motion Denied:** 3 Nays, 2 Yeas.
- Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Vincent, Nay;
Mr. Wilson, Nay; Mr. Cole, Yea;
Mr. Phillips, Nay
- M 412 09
Accept
Request
to With-
draw
Application
C/Z
No. 1639**
- A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to accept the request to withdraw Change of Zone No. 1639 filed on behalf of Todd Bariglio and to allow the Applicant's new application to be expedited.
- Motion Adopted:** 3 Yeas, 2 Nays.
- Vote by Roll Call:** Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Nay;
Mr. Phillips, Yea
- Old
Business/
C/Z
No. 1681**
- The Council considered Change of Zone No. 1681 filed on behalf of Shipbuilders, LLC.
- The Planning and Zoning Commission held a Public Hearing on this application on April 16, 2009 at which time they deferred action. On May 14, 2009, the Commission recommended that the application be approved with the following conditions:
1. The maximum number of lots or units shall not exceed 296. There shall be 224 single family lots and 72 townhouses. A minimum of 15%, or 45, of the total number of units shall be Moderately Priced Housing Units.
 2. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
 3. A traffic calming device shall be installed for Joseph Court Road and shall be shown on the Final Site Plan.

Old
Business/
C/Z
No. 1681
(continued)

4. The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
5. The RPC shall be served by central water.
6. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
7. Sidewalks, street lighting and roadside trees shall be provided for the internal streets and their location shall be shown on the Final Site Plan.
8. The Park Area shown on the Preliminary Site Plan shall be created for the community and the Town of Ellendale, with details provided as part of the Final Site Plan. The Final Site Plan shall also include at least 10 parking spaces for this Park Area.
9. The Developer shall form a homeowners' association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
10. There shall be active and passive recreational amenities provided. The active amenities shall include a centralized recreational area including a tot lot, clubhouse, and swimming pool open to use by residents by the issuance of the 72nd Building Permit. All the amenities shall be shown on the Final Site Plan.
11. The Developer shall minimize tree removal. Conservation Easements shall be created for the northerly and southerly upland forested areas with these areas shown on the Final Site Plan.
12. Upon the completion of development, all silt fences shall be removed from the site.
13. A school bus stop and DART bus stop shall be provided. The location of the bus stop areas shall be shown on the Final Site Plan.
14. Twenty (20) foot wide forested and landscaped buffers shall be installed along the entire perimeter of the site.
15. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
16. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.

17. The Final Site Plan shall include a landscape plan for all of the open space and buffer areas, showing all of the landscaping and vegetation to be included in those areas.

18. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

(continued) The County Council held a Public Hearing on this application on May 5, 2009 at which time action was deferred.

M 413 09 **A Motion was made by Mrs. Deaver to defer action on Change of Zone No. 1681 filed on behalf of Shipbuilders, LLC until the annexation of the property into the Town of Ellendale.**

**Defer
Action
(Motion
Died)**

The Motion died for the lack of a Second.

M 414 09 **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend Condition No. 1 recommended by the Planning and Zoning Commission by adding the following: “and the applicant shall be required to execute a Moderately Priced Housing Unit Agreement prior to Final Site Plan approval”.**

**Amend
Condition/
C/Z
No. 1681**

Motion Adopted: 4 Yeas, 1 Nay.

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

M 415 09 **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2069 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICUTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 141.086 ACRES, MORE OR LESS” (Change of Zone No. 1681) filed on behalf of Shipbuilders, LLC, with the following conditions:**

**Adopt
Ordinance
No. 2069
(C/Z
No. 1681)**

1. The maximum number of lots or units shall not exceed 296. There shall be 224 single family lots and 72 townhouses. A minimum of 15%, or 45, of the total number of units shall be Moderately Priced Housing Units and the Applicant shall be required to execute a Moderately Priced Housing Unit (MPHU) Agreement prior to Final Site Plan approval.

2. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements.

3. A traffic calming device shall be installed for Joseph Court Road and

shall be shown on the Final Site Plan.

**M 415 09
Adopt
Ordinance
No. 2069
(C/Z
No. 1681)
(continued)**

- 4. The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.**
- 5. The RPC shall be served by central water.**
- 6. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.**
- 7. Sidewalks, street lighting and roadside trees shall be provided for the internal streets and their location shall be shown on the Final Site Plan.**
- 8. The Park Area shown on the Preliminary Site Plan shall be created for the community and the Town of Ellendale, with details provided as part of the Final Site Plan. The Final Site Plan shall also include at least 10 parking spaces for this Park Area.**
- 9. The Developer shall form a homeowners' association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**
- 10. There shall be active and passive recreational amenities provided. The active amenities shall include a centralized recreational area including a tot lot, clubhouse, and swimming pool open to use by residents by the issuance of the 72nd Building Permit. All the amenities shall be shown on the Final Site Plan.**
- 11. The Developer shall minimize tree removal. Conservation Easements shall be created for the northerly and southerly upland forested areas with these areas shown on the Final Site Plan.**
- 12. Upon the completion of development, all silt fences shall be removed from the site.**
- 13. A school bus stop and DART bus stop shall be provided. The location of the bus stop areas shall be shown on the Final Site Plan.**
- 14. Twenty (20) foot wide forested and landscaped buffers shall be installed along the entire perimeter of the site.**
- 15. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- 16. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater**

management areas and erosion and sedimentation control facilities.

17. The Final Site Plan shall include a landscape plan for all of the open space and buffer areas, showing all of the landscaping and vegetation to be included in those areas.

M 415 09
Adopt
Ordinance
No. 2069
(C/Z
No. 1681)
(continued)

18. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Nay.

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

Grant
Requests

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

Reverend Diane Lofland of the New Coverdale Outreach Mission presented their request for grant funding for material costs associated with the construction of their new facility.

M 416 09
Community
Grant

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give \$2,500.00 (\$1,000.00 from Mr. Wilson's Community Grant Account and \$500.00 each from Mr. Cole's, Mr. Phillips' and Mr. Vincent's Community Grant Accounts) to New Coverdale Outreach Mission for material costs associated with the construction of their new facility.

Motion Adopted: 5 Yeas.

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

M 417 09
Community
Grant

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$500.00 (\$125.00 each from Mr. Cole's, Mr. Phillips', Mr. Vincent's, and Mr. Wilson's Community Grant Accounts) to the Boy Scouts of America, Del-Mar-Va Council, for youth programs.

Motion Adopted: 5 Yeas.

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

Discussion
Relating
to Corre-
spondence

Mrs. Deaver questioned who asked the County Attorney to read the letter from the Town of Bridgeville under the Reading of Correspondence. Mrs. Deaver stated that she answered the letter and that all the Councilmen received a copy of her letter. Mrs. Deaver stated that this was an error made by the newspaper and they were wrong in what they said.

Additional Business Under Any Additional Business, Marie Rogers spoke in regards to the Johnsons Corner Sewer District. She stated that the costs will be an enormous financial burden on all of the residents; that there should be a fairness approach to establishing rates; that more grants and funding are needed for this project; that they are to pay \$850.00 per year for thirty years; that they are to pay \$3,500 to hook up; and that “the County must reduce our costs”; that everyone on this system should pay the same price; and that taxes should be reduced.

Additional Business (continued)

Milton Schnitzker stated that he is concerned about the costs associated with the Johnsons Corner Sewer District; that he is bewildered as to how much he will have to pay; and that they need help writing government grant applications.

David Baker responded that the County has applied for a Stimulus Grant to the State of Delaware and the Clean Water Advisory Council has made a recommendation that a grant be awarded for this project in the amount of \$1,248,000. Mr. Baker stated that the grant has not been officially approved and the County is awaiting that news. This funding would help reduce costs for the project. In addition, the Engineering Department is working to reduce costs below the Engineer’s estimates during the time of the referendum. Mr. Baker reported that the first and second contracts were lower than the Engineer’s estimate. In addition, there are developer contributions for the common parts of the project, which are anticipated to be higher than estimated at referendum time. The County is also working on better loan terms for the loan portion of the funding. Mr. Baker stated that the County is working diligently to obtain the best financing and to reduce costs.

Davis Lange stated that most sewers in the area are newer and up to date and that he is concerned about leaking of nitrates, the restoration of roads and properties following construction, the high cost of this project, and the location of the pump station. He stated that the residents should be exempt from impact fees assessed to new developments and that the County should wait for stimulus money before constructing the project. Mr. Lange asked that the County allow the individual homeowners to amortize their portion of the expenses and he stated that the project should be put on hold.

Louis Rixam, President of the Swann Estates Homeowners Association, expressed concern about (1) the cost of the project and fees proposed to be charged and required to be paid in one year and (2) the location of the pump station, which has been changed twice. He stated that currently there is a total of \$3.2 million of funding towards a \$11.8 project.

Mr. Phillips stated that the County will respond to the Homeowners Association’s concerns.

M 418 09 At 5:04 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson,

Go Into Executive Session to recess the Regular Session and to go into Executive Session for the purpose of discussing issues regarding pending/potential litigation and land acquisition.

Motion Adopted: 5 Yeas.

M 418 09 (continued) **Vote by Roll Call:** Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea

Executive Session At 5:05 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 pending/potential litigation and land acquisition. The Executive Session concluded at 6:04 p.m.

M 419 09 Reconvene Regular Session At 6:05 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

Farmland Preservation Program Mr. Baker reported that the Sussex County Land Trust (SCLT) has made a recommendation to the Council for the purchase of agriculture preservation rights for five properties totaling 218.87 acres. The estimated value of the development rights is \$1.1 million. Mr. Baker explained that the proposal is to use \$300,000 of County funds that have been set aside for open space, approximately \$172,723 of private money raised by the SCLT, and \$649,628 in federal grant money. The State of Delaware Department of Agriculture would use these funds to purchase the development rights of the properties for the Farmland Preservation Program.

M 420 09 Defer Action/ Farmland Preservation Program A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to defer action on the County's participation in the Farmland Preservation Program until July 21, 2009 (when the County will know the outcome of the General Assembly's decisions regarding funding, i.e. Realty Transfer Tax, paramedic funding, etc.)

Motion Adopted: 5 Yeas.

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

M 421 09 Recess At 6:12 p.m., a Motion was made Mr. Vincent, seconded by Mr. Cole, to recess for 10 minutes. Motion Adopted by Voice Vote.

- Reconvene** **Mr. Phillips called the Council back into session at 6:24 p.m.**
- Withdraw of C/U No. 1782** **Lawrence Lank, Director of Planning and Zoning, announced that Conditional Use No. 1782 filed on behalf of the Center for Neurology Properties, LLC was withdrawn on June 2, 2009.**
- Public Hearing C/U No. 1836** **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 PRIVATE CLUB TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,033 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1836) filed on behalf of Rehoboth Beach Film Society.**
- The Planning and Zoning Commission held a Public Hearing on this application on June 11, 2009 at which time they recommended that the application be approved with conditions.**
- (See the minutes of the meeting of the Planning and Zoning Commission dated June 11, 2009.)**
- 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.**
- James Fuqua, Attorney, and Sue Early and Fritz Schranck of the Rehoboth Beach Film Society were present on behalf of the application. Mr. Fuqua stated that they appeared before the Council on March 31, 2009 on an application to rezone the property to B-1 Neighborhood Business; that the Council’s investigation determined that a Conditional Use could be available to the same application since the Film Society is a private club; that the original application was re-filed as a Conditional Use; and that they are proposing the same use as presented previously.**
- Mr. Fuqua asked that the Public Hearing record of March 31, 2009 be incorporated into the record of this Application and Public Hearing.**
- Public comments were heard.**
- Dave Racine stated that the proposed conditions are as the Development believes they should be and therefore, they have no objection to the Conditional Use.**
- Fritz Schranck, President of the Rehoboth Beach Film Society, thanked the Council for making the suggestion to explore the option of a Conditional Use application for a private club.**
- The Public Hearing was closed.**

**M 422 09
Adopt
Ordinance
No. 2066
M 422 09
Adopt
Ordinance
No. 2066
(C/U
No. 1836)
(continued)**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2066 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PRIVATE CLUB TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,033 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1836) filed on behalf of Rehoboth Beach Film Society, with the following conditions:

- 1. The property shall be used exclusively either as the administrative office of the Rehoboth Beach Film Society or as a single family residence.**
- 2. The building shall maintain the style and appearance of a single family residential structure.**
- 3. One unlit sign, not exceeding eight (8) square feet in size, indentifying the Rehoboth Beach Film Society, shall be permitted.**
- 4. Hours during which the office shall be open to the public shall be 8:00 a.m. to 6:00 p.m. Monday through Friday.**
- 5. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing
C/Z
No. 1645**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A TO A CR-1 COMMERCIAL-RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 22,500 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1645) filed on behalf of Cellular Fish, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on June 11, 2009 at which time action was deferred; on June 25, 2009, the Commission recommended that the application be denied.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 11 and 25, 2009.)

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

**Public
Hearing
C/Z
No. 1645
(continued)**

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

Bill Baker and Alan Lehman of Cellular Fish, LLC were present with Roger Gross of Merestone Consulting, Inc. on behalf of the application. Mr. Gross stated that there is a substantial amount of commercial zoning along this stretch of Route 24; that the applicants have cleaned up the site; that they are applying for CR-1 Commercial Residential zoning on approximately 0.5 acres; that they did submit an illustrative site plan for the purpose of display and realize that it is only conceptual and that if the rezoning is approved, anything permitted in the CR-1 zoning would be permitted; that retail or office use of the site is proposed; that submittal through the PLUS process is not required; that they did receive a waiver from PLUS since the proposed use would not be any more impacting than the pre-existing use, an auto repair shop; that the site is located in an Investment Level 2 Area according to the State Strategies Maps; that the site is located in a mixed residential area and within the Environmentally Sensitive Developing Area according to the County's Comprehensive Land Use Plan; that the use is compatible to the non-residential uses listed in the Environmentally Sensitive Developing Area; that the site is adjacent to residential lots to the west and south; that they realize that the building setback on the south side of the lot is 20 feet due to the residential lot and that the rear setback is 30 feet for the same reason; that the photographs in the Exhibit Booklet reference commercial uses within 1,000 feet of the site; that sewer capacity is available from the County when available; that sewer connection is approximately 500 feet away and that they realize that connection will be at the cost of the developer; that Tidewater Utilities, Inc. will provide central water for drinking and fire protection; that B-1 and C-1 zoning exist to the north and in close proximity; that since DelDOT may require a dedication of right-of-way along Route 24 they hope that the Commission will be flexible to allow parking in the front yard; that Envirotech Environmental Consulting, Inc. has reviewed the site and performed a Phase One Environmental Assessment due to the existence of the previous automotive repair shop with tanks; that the site has been cleared and the tanks have been emptied; that they have not yet designed the site plan for stormwater management; that infiltration could be in the design; that they realize that Sussex Conservation District and DelDOT approvals are required; and that stormwater management could be placed in the rear.

Mr. Gross stated that the Planning and Zoning Commission's recommendation of denial infers that a B-1 Zoning or a Conditional Use may be more appropriate for the site; that he calculated all the frontage on the section of Route 24 between Long Neck Road and Bay Farm Road which equaled approximately 6,500 linear feet of road frontage; that

Public
Hearing
C/Z
No. 1645
(continued)

approximately 3,000 feet is either zoned C or CR-1 (comprising about 47 percent of the total); that there is only 493 feet of that road frontage (consisting of two parcels) that is designated as B-1 zoning (8 percent); and that the remaining 2,965 linear feet is residential (45 percent); and that CR-1 zoning is consistent with the zoning in the area.

In response to questions raised by Mr. Cole, Mr. Lank stated that the parking requirements would be subject to the approval of the Planning and Zoning Commission; that no parking would be allowed in the front yard unless the Commission approves it; and that there is a 20 foot landscaping requirement.

Bill Baker and Alan Lehman stated that the site is not appropriate for residential use with commercial uses all around it; that from the site, you can see a Harris Teeter shopping center, a Giant shopping center, and a car wash; that the property is only large enough for a doctor's office, an accountant office, retail stores, or similar activities; that they have cleaned up and improved the property since they purchased it; that the site was previously used as welding and automotive repair uses (for 20 years); and that they have waited for 18 months for their application to be heard.

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

Mr. Lank read possible reasons of approval for the Council's consideration.

M 423 09
Adopt
Ordinance
No. 2067
(C/Z
No. 1645)

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2067 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A TO A CR-1 COMMERCIAL-RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 22,500 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1645) filed on behalf of Cellular Fish, LLC.

Motion Adopted: 3 Yeas, 2 Nays.

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

Public
Hearing
C/Z
No. 1646

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.71 ACRES, MORE OR LESS" (Change of Zone No. 1646) filed on behalf of Overbrook Acres, LLC, c/o Fred A. Chappelli.

The Planning and Zoning Commission held a Public Hearing on this

application on June 11, 2009 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 11 , 2009.)

Public
Hearing
C/Z

No. 1646
(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.

Mr. Lank reported that a letter dated June 3, 2009 was received from Nancy Hankin in opposition to the application

In response to questions raised by Mrs. Deaver, Mr. Lank stated that DelDOT did not require a Traffic Impact Study; that the entrance to the project will be on Cave Neck Road; and that once improvements have been made to the intersection, left turns will be prohibited from Cave Neck Road going north.

Mrs. Deaver entered the following information into the record: (1) an Editorial in the Cape Gazette on June 30, 2009 entitled "Critical decision looms for Sussex Council", (2) an article in the Cape Gazette on June 30, 2009 stating that the Secretary of DelDOT is not going to put a traffic light at the intersection; and (3) a Report dated February 2007 published by the National Highway Traffic Safety Administration, National Center for Statistics and Analysis, entitled "Analysis of Fatal Motor Vehicle Traffic Crashes and Fatalities at Intersections, 1997 to 2004". Mrs. Deaver distributed copies of the newspaper articles and the Report.

James Fuqua, Attorney, was present on behalf of the Applicant and he questioned if Councilwoman Deaver was present as a judge of the application or as a witness against the application. He stated that he believed Councilwoman Deaver's submissions were in opposition to the application; that it is unfair to his client; that it appears to be an indication to be a pre-judged application; and that he expects a fair hearing and a decision made based on the evidence presented and based on the facts and the law.

Mr. Fuqua stated that Mr. and Mrs. Fred Chappell, principals of Overbrook Acres, LLC, were also present on behalf of the application.

Mr. Fuqua stated that the application is for a rezoning from AR-1 to B-1; that the rezoning was originally filed in 2007 by B.B.C. Properties; that B.B.C. Properties withdrew their contract on the property and that the Applicants desire to continue with the application; that a conceptual site plan was submitted by B.B.C. Properties and that they realize that the site plan is only conceptual; that they do not have any specific use planned at this time; that B-1 zoning is appropriate at this location since the purpose of this district is to provide primarily for retail shopping and personal service

Public
Hearing
C/Z
No. 1646
(continued)

uses, to be developed either as a unit or in individual parcels, to serve the needs of a relatively small area, primarily nearby rural, low-density or medium-density residential neighborhoods; that the parcel is ideally situated to serve the community and the general area since the parcel is adjacent to a Residential Planned Community and other developments in the area; that DelDOT referenced in their PLUS comments that the parcel is located in an Investment Level 3 Area as defined by the State Strategies and is an area recognized by the State for anticipated future growth; that DelDOT has noted that the dedication of an additional right-of-way along both Route One and Route 88 will be required and that certain other improvements will be required along both Route One and Route 88; that an entrance from Route One will not be allowed; that the entrance will be on Cave Neck Road; that future improvements and acceleration lanes have already been planned by DelDOT were not caused by this application; that central water will be provided by Tidewater Utilities, Inc.; that public sewer will be provided by the County; that the acreage is cleared land being tilled; that the parcel has been owned by the Applicant's family since 1950; that the parcel is not located in a well-head protection area or a recharge area; that there are no wooded lands on the site; that B-1 zoning is consistent in both the 2003 and the 2008 Comprehensive Land Use Plans; that the site is located in the Environmentally Sensitive Developing District; that the Office of State Planning Coordination has voiced no objections to this application; that they may provide cross access easements to the three smaller parcels to the south which are zoned AR-1; that the site is in close proximity to other commercial properties, i.e. an antique store, office space, and motel to the south; to the west of Route One, a Conditional Use for Delaware Guidance Services; a large day care center to the south; auto repair shop, bike shop, retail and office space to the east of Route One; farm produce, self storage, heating and air business, and auto repair to the north; and a small B-1 type business center within the adjacent RPC community; that the proposed use is in character with the area; that the emails in opposition to the application express concern about the close proximity to the Paynters Mill RPC; that the property line is 220-feet from the closest building within the Paynters Mill RPC; that the Planning and Zoning Commission will determine the rear buffer; that the site has adequate space for screening, landscaping, berms, etc, to provide buffering from Paynters Mill; that some of the concerns relate to a fear of a precedent being set for a larger project east of Route One; that the site is appropriate for B-1 zoning since it is on Route One and Route 88 in close proximity to other commercial and business uses and zoning, and since they received no negative objections from State agencies; that this site is probably not appropriate for residential use due to the location at the intersection of Route One and Route 88; that B-1 zoning is the most restrictive commercial zoning in the County; that they are willing to provide service roads to access other parcels; that pedestrian access is probable; that vehicular cross access easements may be required by DelDOT; that traffic will increase in this area, whether it is from B-1 use or residential use of the parcel; that the small business section in Paynters Mill contains approximately 1.5 acres of the RPC; that the site is not appropriate for residential use; and that B-1 zoning is appropriate.

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

**M 424 09
Adopt
Ordinance
No. 2068
(C/Z
No. 1646)**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2068 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.71 ACRES, MORE OR LESS” (Change of Zone No. 1646) filed on behalf of Overbrook Acres, LLC, c/o Fred A. Chappelli.

Motion Adopted: 4 Yeas, 1 Nay.

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

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to adjourn at 7:39 p.m. Motion Adopted by Voice Vote.

**M 425 09
Adjourn**

Respectfully submitted,

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