



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 18, 2006**

**Call to Order**      A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 18, 2006 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Lynn J. Rogers</b>	<b>President</b>
<b>Dale R. Dukes</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Finley B. Jones, Jr.</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>Hal Godwin</b>	<b>Administrative Assistant</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

**M 470 06**      A Motion was made by Mr. Jones, seconded by Mr. Dukes, to approve the  
**Approve**      Agenda, as distributed.

**Motion Adopted:**      5 Yea.

**Vote by Roll Call:**      Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea

**M 471 06**      At 6:37 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to  
**Go Into**      go into Executive Session to discuss personnel issues and pending litigation.

**Executive**      **Motion Adopted:**      5 Yea.  
**Session**

**Vote by Roll Call:**      Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea

**Executive**      An Executive Session of the Sussex County Council was held at 6:38 p.m. in  
**Session**      the Caucus Room of the Sussex County Council Chambers for the purpose  
of discussing personnel issues and pending litigation.

**M 472 06  
Reconvene  
Regular  
Session**

**At 6:49 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea**

**M 473 06  
Approve  
Minutes**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of June 6, 2006.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea**

**M 474 06  
Approve  
Minutes**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of June 13, 2006.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea**

**Corre-  
spondence**

**Mr. Griffin read the following correspondence:**

**CITY OF SEAFORD, SEAFORD, DELAWARE.**

**RE: Letter to Heather Sheridan thanking the County's staff, including Gary Hall and three Vactor truck operators who assisted the City in restoring the operation of the Wastewater Treatment Facility.**

**GERALD JESTER, COACH, DELAWARE DIAMONDS,  
GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of the Council's \$500 grant.**

**MILTON ELEMENTARY SCHOOL ODYSSEY OF THE MIND TEAM,  
CAPE HENLOPEN SCHOOL DISTRICT, MILTON, DELAWARE.**

**RE: Letter in appreciation of the Council's support of their participation in the World Finals at Iowa State University.**

**ELAINE T. DICKERSON, NEW CENTURY CLUB, MILFORD,  
DELAWARE.**

**RE: Letter to Councilman Jones in appreciation of the Council's grant.**

**HELEN G. WILLIAMS, PRESIDENT, FRIENDS OF THE  
GEORGETOWN PUBLIC LIBRARY, GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of the Council's grant in sponsorship of the**

**Annual 5K Race/Walk for the benefit of the library's building fund.**

**Center for the Inland Bays**      **Richard Eakle and E. J. Chalabala, Center for the Inland Bays, presented the *Friend of the Bays* Award to Robert L. Stickels "for service to our Board and continued dedication to improve Delaware's Inland Bays".**

**Center for the Inland Bays (continued)**      **The County Council presented a check in the amount of \$10,000.00 to the Center for the Inland Bays for their Shellfish (Oyster) Gardening Program. Mr. Chalabala explained that the Oyster Gardening Program, which was initiated during the Summer of 2003, is a cooperative effort among the Delaware Center for the Inland Bays (CIB), the Delaware Sea Grant Marine Advisory Program and citizen volunteers living along the waterfront on Delaware's three coastal or "Inland" Bays: Rehoboth, Indian River and the Little Assawoman. The Program is an on-going effort which hopes to demonstrate the effectiveness of restoring bivalve shellfish populations in Delaware's Inland Bays to improve and maintain water quality.**

**Uplink Phone Card Program**      **George Ritchie of VFW Post 7234 of Ocean View and Past State Commander, Veterans of Foreign Wars of the USA, was present to thank the Council for their donation to the Uplink Phone Card Program.**

**Appeal/ Reynolds Pond, LLC**      **The Council discussed an appeal of the Sussex County Planning and Zoning Commission's decision to deny the application of Reynolds Pond, L.L.C. for the subdivision (cluster development) of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 836.32 acres into 1,630 lots, located at the intersection of Route 30 and Road 227 (Subdivision No. 2005-56).**

**The County Council held a Public Hearing on the appeal on June 13, 2006 at which time the Public Hearing was closed. No action was taken by the Council on that date.**

**Mr. Griffin explained that this was an appeal under the provisions of the Subdivision Ordinance. The Planning and Zoning Commission denied the approval of the preliminary plat and the applicant had the right to appeal to the Sussex County Council.**

**M 475 06 Grant Preliminary Approval to Reynolds Pond, LLC**      **A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the Sussex County Council grants preliminary approval to Reynolds Pond, LLC for the Isaacs Glen Cluster Subdivision (Subdivision No. 2005-56) based upon the public records created before the Planning and Zoning Commission and the Sussex County Council and subject to the following conditions and findings:**

**Conditions**

- 1. The preliminary approval is conditioned upon DelDOT's approval of the relocation of Hummingbird Road and Beideman Road in**

accordance with the conditions set forth in DelDOT's letter dated January 6, 2005, reviewing the Traffic Impact Study and any additional conditions imposed by DelDOT. If DelDOT prohibits the alteration of these roads, the Applicant must submit a revised preliminary site plan for consideration by the Planning and Zoning Commission at a public meeting on the Agenda under "Old Business".

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2. The maximum number of single family lots shall not exceed 1,630.
3. The construction of the project shall be phased over a period of 10 years, with no more than 160 certificates of occupancy being issued within any given calendar year except during the tenth and final year.
4. Final Site Plan review by the Planning and Zoning Commission shall be required for each phase of the development. Each phase's Final Site Plan shall show all forested areas and shall include a landscape plan prepared by a landscape architect or a certified arborist.
5. An underground gas storage facility providing service only to this project shall be permitted, subject to the approval of the Office of the State Fire Marshall and all other agencies with jurisdiction and subject to site plan review and approval by the Commission. The facility shall be no less than 100 feet from the boundary of any residential lot.
6. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include sidewalks on both sides of the streets, curbing and street lighting, which shall be shown on the final site plan.
7. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT within the time period required by DelDOT.
8. The core recreation areas consisting of the multi-use facility hall, community center, swimming pools, three basketball courts, three tennis courts, softball/baseball field, equestrian facility, soccer/lacrosse field, parks and trails shall be constructed and open to use by residents in accordance with the following schedule:
  - First pool and tennis courts - by issuance of the 150th Certificate of Occupancy.
  - Pool complex - by issuance of the 300th Certificate of Occupancy.

- Equestrian facility, sports fields and basketball/tennis courts - by issuance of the 400th Certificate of Occupancy.
- Multi-use Village Hall - by issuance of the 600th Certificate of Occupancy.
- Trails, paths, parks and lakes - as each phase is built.

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9. The subdivision shall be served by a State-regulated on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed and constructed in accordance with the Sussex County Engineering Department (Ordinance 38) specifications and in conformity with all DNREC regulations. The operation of the central sewer system shall be subject to the Delaware Public Service Commission and all applicable State and County regulations.
10. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection as may be required by applicable State regulations then in effect.
11. Storm water management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements. The Applicant, its successors and assigns, shall operate the storm water management facilities utilizing Best Management Practices to provide positive groundwater recharge.
12. State and Federal wetlands shall not be included within individual lot lines. Wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits. As proposed by the developer, no homes shall be constructed within any flood plains.
13. No individual boat docks or boat launching facilities for motorized watercraft shall be permitted. Access of any type to Reynolds Pond, which is not part of this development, shall be strictly prohibited.
14. The Applicant shall cause to be formed a master homeowners association to be responsible for the perpetual maintenance, repair and replacement of all streets, roads, buffers, storm water management facilities, recreational facilities and other common areas. Prior to the Commission's approval of the site plan for the first phase, the developer will submit for review and approval by the Commission and the County Attorney, the covenants, conditions and restrictions each lot is to be sold subject to.
15. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
16. The Applicant will provide agricultural buffers in accordance with

**all applicable State and County requirements.**

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- 17. The Applicant shall include the Agricultural Use Protection Notice specifically referencing the nearby and adjacent Agricultural Preservation Districts, within the restrictive covenants. In addition, the covenants shall include a similar warning notifying purchasers that hunting occurs on neighboring and adjacent properties, including the Reynolds Pond area.**
- 18. Bus stop areas shall be located as necessary for the project. The location of these bus stop areas shall be shown on the Final Site Plan for each phase and the developer shall provide proof that the school district's transportation manager has approved the bus stop locations.**
- 19. In connection with improvements to Route 30, the developer shall pave the shoulders on both sides of the road to insure the safe passage of farming equipment.**
- 20. Within the network of planned walking and/or hiking paths, the developer shall include one trail which is planned and designed to educate users about the flora, fauna, topography and history of the area. In planning and constructing this trail, the developer shall consult with DNREC's Department of Fish & Wildlife and Division of Parks & Recreation and the Center for the Inland Bays to receive input as to how to create a meaningful educational experience for the trail users.**
- 21. Site plan review for each phase of development shall be reviewed and approved by the Planning and Zoning Commission.**
- 22. The applicant shall provide adequate security for residents of the development including the establishment of a neighborhood watch with sufficient staff, equipment and vehicles to coincide with the increased number of occupants for the project and shall consult with the State Police in establishing the neighborhood watch program.**
- 23. The applicant shall coordinate with the State and County Emergency Planning Offices to develop and implement an emergency evacuation procedure for the development which will be incorporated into the restrictions of the development and may require early mandatory evacuation, if requested by the State and/or Emergency Planning Offices.**
- 24. No site preparation, site disturbance, back excavation or other construction shall be commenced until all permits required by other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded.**
- 25. Lastly, this approval is conditioned upon the developer submitting a**

revised preliminary site plan containing such changes, as required to comply with all the conditions placed upon the approval by Council. The Planning and Zoning Commission shall review and approve the revised preliminary site plan.

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**Findings of Fact**

1. With the conditions imposed with this approval, the development will be designed in accordance with both the Subdivision Ordinance and the cluster development option.
2. The cluster design as modified by the developer and with the conditions imposed herein, is superior to a standard subdivision with approximately 50% of the project remaining as open space which includes approximately 43% of the site to be used as accessible common areas or recreational areas. In addition, under the modified cluster design, the developer will be able to provide an open space corridor along Route 30 and greater buffering from the wetlands, streams and ponds. Also, the modified cluster design will allow the creation of several smaller neighborhood areas that will be separated from one another by open space, yet controlled and managed by a common homeowners association. Under the modified cluster design, many of the lots will back up to open space instead of the back yards of other lots. The modified cluster design will allow the developer to maintain 80% (or 122 acres) of the existing forested areas.
3. The development is consistent with the trend of single family residential development in the area. Other residential developments are located just north of the site at Jefferson's Crossroads and west and east of the site, such as Windancer, Prestwick, Sandstone, Hummingbird Meadows and Captain's Way, which are also in the Level 4 Area on the State's Policies and Spending Map.
4. The development will comply with all agricultural use requirements required by law including buffers, setbacks and agricultural use deed restrictions.
5. The developer has taken steps to protect adjacent Agricultural Preservation District lands by locating lots away from the common boundaries with those lands.
6. The development will be served by central water and sewer systems operated by a publicly regulated utility.
7. The development's location provides efficient access to Route 1 and

**Route 16 which are major roadways as well as access to shopping areas in Milton. All entrance and off-site roadway improvements required by DelDOT will be the developer's responsibility.**

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- 8. The developer will be responsible for construction of all water and sewer utility systems, and sewer utilities will be designed and constructed to comply with County and DNREC standards.**
  - 9. The development is consistent with the uses permitted in the "low density area" of the 2002 Sussex County Land Use Plan update as certified by the State and the purpose of the AR-1 Zoning District, which permits residential development.**
  - 10. The items listed in Section 99-9C of the Subdivision Ordinance have been favorably addressed, in that:**
    - a. The cluster subdivision will be integrated into the existing terrain and surrounding landscape with the maintenance of large areas of open space, trees and buffer areas.**
    - b. There will be no use of or impact on wetlands, as no lots will contain any wetlands or be located within flood plains.**
    - c. Existing natural features will be largely preserved through the use of buffers and open space. Additional natural areas will be created through approximately 54 acres of new lakes created on the property. According to the State, there are no significant historical or natural features on the site.**
    - d. The cluster design option will allow the preservation of a significant amount of open space and will create scenic views of Reynolds Pond and the other open space areas and the lakes to be created in the subdivision.**
    - e. The developer will provide assurances that tree, vegetation and soil removal will be minimal and enhanced through additional landscape features.**
    - f. Potentially objectionable features such as homes adjacent to public roads will be minimized as they will be screened from neighboring property and roadways. This includes an open space corridor along Route 30 and screening from utility areas. Also, buffering will be provided between adjacent Agricultural Preservation Districts and any of the proposed lots.**
    - g. The subdivision will be served by private central water and sewer designed and constructed to County and DNREC standards and requirements.**



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- h. Through the establishment of an extensive storm water management plan, erosion and sedimentation and pollution of surface and groundwater will be minimized on the site. In addition, any potential impact on Reynolds Pond will be positive in that runoff from the present agricultural uses of the site will be eliminated and all lots will be set back from the pond by generous buffer areas.**
  - i. Subject to DelDOT's approval, the Applicant will provide for safe vehicular and pedestrian movement within the site and onto connecting public roads. Route 30, which is a designated truck route, has been addressed through only one proposed entrance into the project from Route 30 and with the open space corridor on both sides of the road.**
  - j. The area property values will not be decreased and may be increased by the development of the project.**
  - k. The project will have a positive effect on the schools by generating economic benefits in the form of property taxes for the school district where the project is located. At the same time, the expected demographic of the purchasers within the project is not expected to create a burden from the number of pupils projected to attend the local school district.**
  - l. The developer's traffic impact study indicates that there will not be an adverse effect on area roadways and public transportation and all required upgrades to the area roadways will be provided at the developer's expense in accordance with DelDOT's requirements.**
  - m. The project will be compatible with other area land uses, including existing residential developments in the general vicinity. In addition, the project has been designed to minimize any adverse impacts on properties that are directly adjacent to it.**
  - n. The project will not adversely affect area waterways as a result of the buffering that has been provided for all wetlands and Reynolds Pond. In addition, surface and storm water will be contained and treated on site through the project's extensive storm water management plan.**
- 11. The Development will provide extensive active and passive recreational uses including swimming pools, basketball and tennis courts, fields for softball and soccer, an exercise facility, a multi-use building, a community center, numerous parks, miles of multi-use trails, an equestrian facility and sidewalks and street lighting.**

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- 12. The development is designed to minimize environmental impacts. In addition to central water and sewer systems, storm water management facilities will be designed and operated in accordance with all County ordinances and DNREC regulations and will utilize Best Management Practices. Significant buffers will be provided from all wetland areas; no wetland areas are located within lot lines and extensive areas of existing woodlands will be preserved.**
  - 13. The developer has agreed to phase the build-out of the project, which will further integrate the project into the area without significant negative effects.**
  - 14. This project, with a single homeowners association managing the entire project including open areas, amenities, storm water management areas, streets and sidewalks, is superior to several smaller unrelated and separate subdivisions of the same property.**
  - 15. While the State's comment concerning the Level 4 Area designation has been considered, it is overcome by the fact that this project complies with the County Land Use Plan Update that was reviewed and approved by the State and it will comply with all County ordinances.**
  - 16. The project, with the stipulations and conditions placed upon it, will not adversely impact the County, the neighborhood or adjacent properties.**
  - 17. In approving the preliminary cluster subdivision plan, Council is aware of and responds to the concerns which earlier motivated the Commission to deny preliminary approval, as follows:**
    - (1) Although the site is not within a designated Development District, it is zoned AR-1 where a low density single family residential subdivision with a cluster option is a permitted use.**
    - (2) Although the site is in an Investment Level 4 area according the Strategies for State Policies and Spending, where the State does not plan to provide infrastructure funding or additional public services, that State policy should not be used as a basis for denial if the project otherwise complies with the County Subdivision Ordinance in effect at the time the application was considered by the Commission.**
    - (3) Although Route 30 is a designated truck route and is also used for the passage of agricultural equipment and approval may result in increased traffic on area roadways, the on and off-site roadway improvements that will be funded by the developer, as approved by DelDOT, will accommodate all of**

those concerns. If DelDOT does not approve the proposed relocation of Hummingbird and Beidemann Roads, the developer will be required to go back to the Commission for additional site plan review and approval.

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- (4) Although some neighboring properties have been placed in agricultural preservation, the approval of this subdivision will not prevent those neighboring properties from continuing in agricultural preservation and will not prevent the owners of other neighboring properties from placing their properties in agricultural preservation.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea

Mr. Cole – “I’ll vote to support the appeal because I feel that the subdivision is in compliance with the County Ordinance and it meets the minimal requirements of the County Land Use Plan.”

Mr. Phillips – “I vote to support the resolution to grant preliminary approval of Reynolds Pond, L.L.C. We live in a County and a society governed by laws and codes; this subdivision meets or exceeds all the intent of our Code and for that reason, I support it.”

Mr. Jones – “On the last subdivision that came in front of Council, I was one of the No votes, I’m sure everybody knows that...but this particular appeal came in front of the Planning Commission. After looking at the minutes and reviewing everything, I think, as Mr. Phillips and Mr. Cole said, they have met all of the subdivision ordinances that we have and that we are supposed to enforce, so my vote is yes.

Mr. Dukes – “After listening to the appeal, I feel I must be consistent with my vote; I supported the first application. The reason I voted to support it was I felt that it met all of our ordinances which was low density and by allowing some commercial would keep all the traffic off the road. However, this is not the case; this is on the appeal of the second application that came before us. When the first application was turned down 3-2, it was suggested that the commercial was out of character and the Council would look more favorable at an AR-1 cluster. We even gave them, and I believe by unanimous vote, to reapply under that scenario, and be allowed to put it at the top of the agenda so that they would not have to wait almost a year for another hearing. Now we are hearing the appeal of P&Z on a similar application, same site, with a few more units and no commercial. As I recall, this is exactly what the Council suggested when the first application was denied, but now with a few more units, and in my opinion, it still meets all our ordinances and density requirements. Now, if we set the rules

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through ordinance and an application abides with the rules, I find it hard to vote against the application just because people say I don't like it, it's out of character, or any of the other opposition's comments. I recall that their Attorney stated that 26 out of 29 applications since March have been approved, and 8 of them with higher density, also 24 of those were not in the Development District. Out of character seems to be out of order since there are five new subdivisions over there within one mile. The application has 49 percent open space or 361 acres; and are saving 80 percent of the woodland...saying it is not in the State's planning area or the Development District simply tells me that the State is not going to put any of their money for infrastructure or improvements, but the Developer has been put on notice that he still has to pay it all. I've never heard being outside of a district or a certain level means a moratorium on any application. As we all know, Judge Strine recently said because someone doesn't like it is no reason to turn it down. So, with the seventeen findings stated by Mr. Griffin and the eighteen conditions read into the record, my vote is yes."

Mr. Rogers – "It's been a long, sensitive issue since it began on the first application and I was one of the driving forces of the original size of it, from Reynolds Pond, or Isaacs Glen as it originally came into us, as a, I called it - referred to it at that time as a city. It's come a long way from what it was to what it is before us today. Being a property rights advocate, I'm a firm believer that no one can be denied to utilize the equity of their land and this has been a test case from the very beginning of where those rights would lie and where they would end up. And, with the appeal on the site plan review from the original application to today, with the seventeen findings and eighteen conditions...legally we are taking the right step, they have followed the Land Use Plan of the State of Delaware and Sussex County and met all the ordinances on the books. I may not personally like the size of the application, but however, being legally bound by the laws of the land and the ordinances that we put forth, my vote would be yes."

Public  
Hearing/  
Proposed  
Ordinance  
Related to  
Defining a  
Scattered  
Parcel

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XVII §110-110 DEFINING A *SCATTERED PARCEL*". This ordinance amendment enlarges the land area that constitutes a "scattered parcel" in light of the fact the North Bethany area is almost entirely developed and that there is more than ample sewer capacity for the North Bethany Extension of the Bethany Beach Sanitary Sewer District.

Mr. Griffin explained that there is a definition in Section 110-110 of the Sussex County Code that defines a "*Scattered Parcel*" as "Any single parcel of land consisting of less than one-quarter (1/4) of an acre at the time of the enactment of Part 4 and abutted at that time on at least two (2) sides by developed property." He stated that the proposal is to take out the reference to 1/4 acre and increase it to 1 1/2 acres.

Mr. Griffin read a portion of the content of the Proposed Ordinance into

the record:

**WHEREAS, the North Bethany area is almost entirely developed, with only a 1.28 acre parcel and a 1 acre MR parcel undeveloped on the ocean side of Route 1;**

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**WHEREAS, the only remaining undeveloped parcel on the west side of Route 1 in North Bethany is a 19± acre parcel which is the subject of a subdivision application for 47 lots;**

**WHEREAS, the original purpose of the 1987 and 1988 ordinances were to assure sewer capacity for all of the North Bethany area, and from that date to the present, more than 500 acres have been taken off the development rolls and have become State Park land, thereby assuring that more than 2200 EDUs will not be consumed and further assuring more than ample sewer capacity for the North Bethany Extension of the Bethany Beach Sanitary Sewer District.**

**Mr. Izzo, County Engineer, stated that the Proposed Ordinance would only impact two small parcels and it wouldn't create a significant impact on wastewater in the North Bethany District.**

**Eugene Bayard was present on behalf of Bethany Court. He stated that the Proposed Ordinance is a water and sewer ordinance; that it is a sewer capacity issue; and that it is a small amendment to an ordinance that has served its purpose. Mr. Bayard referred to Bethany Court's application for conditional use seeking 6 units on 1.2 acres, a density of 4.7. He noted that other developments in the area have densities of 15-20 units per acre. Mr. Bayard stated that at issue is the availability of one (1) additional EDU to serve a 6 unit project on 1.2 acres and that the effect of the proposed amendment is to authorize the increase in size of scattered parcels from 1/4 acre to 1 1/2 acres. He stated that density was never a concern under the ordinance for smaller scattered parcels.**

**Mr. Cole expressed concern that the scattered parcel referred to by Mr. Bayard is located in an Environmentally Sensitive Development Area with wetlands behind the dunes and that it is surrounded by State Park lands on two sides.**

**Mr. Bayard responded that the buffers are more than adequate to protect the State Park lands.**

**Dan Kramer questioned the amount of acreage involved and he stated that if there is sewer capacity, why not use it and why not pile it high.**

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

<b>M 476 06 Adopt Ordinance No. 1859/ Scattered Parcel Ordinance</b>	<p><b>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1859 entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XVII §110-110 DEFINING A <i>SCATTERED PARCEL</i>”.</b></p> <p><b>Motion Adopted:     4 Yea, 1 Nay.</b></p>
<b>M 476 06 (continued)</b>	<p><b>Vote by Roll Call:     Mr. Cole, Nay; Mr. Phillips, Yea;                                  Mr. Dukes, Yea; Mr. Jones, Yea;                                  Mr. Rogers, Yea</b></p>
<b>Compre- hensive Land Use Plan Review Consultant Selection Process</b>	<p><b>Mr. Godwin advised that the County is in the process of finding a Land Use Consultant to assist with the review and update of the 2007 Comprehensive Land Use Plan. He reported that on June 26, 2006, Sussex County’s Planning Consultant Selection Committee (consisting of Lawrence Lank, Richard Kautz, Vince Robertson, Robert Wheatley, Russell Archut and Hal Godwin) interviewed and ranked four firms who have applied for this contract, as follows:</b></p> <ol style="list-style-type: none"><li><b>1. Johnson, Mirmiran &amp; Thompson</b></li><li><b>2. Urban Research &amp; Development Corporation</b></li><li><b>3. Whitman, Requardt &amp; Associates</b></li><li><b>4. URS Corporation</b></li></ol> <p><b>Mr. Godwin stated that the Committee recommends the Council’s approval of their ranking and that the Committee seeks the Council’s approval to proceed with final price negotiations and scope of services with Johnson, Mirmiran &amp; Thompson, in order to forge an agreement for final approval.</b></p>
<b>M 477 06 Approve the Ranking of Consultants for the Compre- hensive Land Use Plan</b>	<p><b>A Motion was made by Mr. Jones, based upon the recommendation of Sussex County’s Planning Consultant Selection Committee, that the Sussex County Council approves the ranking of consultants for the 2007 Comprehensive Land Use Plan review and update and that Sussex County’s Planning Consultant Selection Committee is directed to negotiate a contract of fees, rates, and scope of services with the highest ranking firm, Johnson, Mirmiran &amp; Thompson, in accordance with Title 9, Chapter 69, of the Delaware Code, to provide consulting services for the 2007 Comprehensive Land Use Plan review and update.</b></p>
<b>Request to Defer MOTION WITH- DRAWN</b>	<p><b>Mr. Phillips stated that he would like a week to review the qualifications of Johnson, Mirmiran &amp; Thompson.</b></p> <p><b>It was agreed to defer the matter for one week and Mr. Jones withdrew his Motion.</b></p>
<b>Source Water Protection</b>	<p><b>Mr. Godwin reported that a letter from the Sussex County Association of Towns (SCAT) was forwarded to the Council wherein SCAT requested that the County Council appoint a representative from the Delaware Rural</b></p>

**Advisory Committee/ Request from SCAT for Representative from DRWA**

**Source Water Protection Advisory Committee/ Request (continued)**

Water Association (DRWA) to the County's Source Water Protection Citizen and Technical Advisory Committee. Mr. Godwin explained that the Committee currently consists of ten people (2 people were appointed from each Councilmanic District). The Committee's purpose is to help with the development of the wellhead recharge portion of the Comprehensive Land Use Plan. Mr. Godwin explained that SCAT is concerned because many of the towns in the County draw public drinking water from outside the boundaries of their towns. Having a representative from DRWA on this Committee would allow representation from not only Sussex municipalities but also from a number of community water systems that will be impacted by the County's Source Water Protection Plan. Currently, DRWA is charged with assisting in the development of source water protection plans for its members. SCAT believes that having DRWA participate on the Committee will prove beneficial due to their professional and technical experiences and in coordinating the numerous municipal plans with the County's.

**M 478 06 Motion to Appoint DRWA Representative to Source Water Protection Advisory Committee**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council approves the appointment of an additional member to the County's Source Water Protection Citizen and Technical and Advisory Committee; said committee member to be a representative of the Delaware Rural Water Association (DRWA) who will bring input from Sussex County's cities and towns as well as a number of the community water systems, and further, that Richard A. Duncan, Jr., Chief Staff Officer of the DRWA, or his designee, will serve in this capacity.

**Motion Adopted:** 5 Yea.

**Vote by Roll Call:** Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Yea; Mr. Jones, Yea;  
Mr. Rogers, Yea

**Local Law Enforcement Grant Program Requests**

Mr. Godwin presented requests for funding through the Revenue Sharing for Local Law Enforcement Grant Program:

Georgetown	\$ 746.06	Tazers
Selbyville	\$ 348.80	ID Tags
Lewes	\$1,215.15	Police Bicycle and Equipment
Dagsboro	\$4,060.36	Storage Shed for Police Records
Ocean View	\$1,966.82	Cuff Man Training Dummy

**M 479 06 Approve Local Law Enforcement**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to approve the Local Law Enforcement Grants for Georgetown, Selbyville, Lewes, Dagsboro and Ocean View, as presented.

**ment  
Grants**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea**

**Airport  
Economic  
Impact  
Presen-  
tation**

**Randall Wiedemann of R.A. Wiedemann & Associates, Inc.; Bobbie Geier of DelDOT; and Steve Masten, Sussex County Economic Development Office, were in attendance to report on an economic impact study of the County's Airport and Industrial Park. Mrs. Geier explained that the study is part of the business plan for the Sussex County Airpark.**

**Mr. Wiedemann discussed the economic impact component of the business plan, which was funded by the FAA and the State. He stated that the importance of the Airport to the area commerce is underscored by its business clientele. Companies and organizations that rely upon the Sussex County Airport include PATS/DeCrane, Inc., local fixed base operators, the Delaware State Police, and numerous private companies and individual aircraft owners. The Airport has a regional economic impact that supports the following: 1,021 jobs, \$55.4 million in income, \$151.0 million in total economic output, and \$7.6 million in State and local taxes. Survey information concerning the employment and expenditures of the various tenants within the Industrial Airpark resulted in the following economic impact findings: 625 jobs, \$10.6 million in income; \$42.3 million in total economic output; and \$2.4 million in State and local taxes. Mr. Weidemann distributed a pamphlet containing this information along with other information which would be helpful in marketing the Airport.**

**Mr. Weidmann reported that three strategic initiatives were developed for the Business Plan: (1) to retain existing clientele at the airport, (2) to continue to develop hangars as a revenue base, and (3) to add airport staff to implement and help with the growth. The recommended plan showed a decline in the deficit at the airport over the next five years.**

**South  
Ocean  
View  
SSD/  
Project  
Bid Award**

**Mr. Izzo, County Engineer, reported on the bid results for Sussex County Project No. 02-06, South Ocean View Sanitary Sewer District Collection and Conveyance”:**

<u>Bidder</u>	<u>Base Bid</u>	<u>Alternate Bid</u>	<u>Difference</u>
Ed McGinn Contractors	\$4,227,115.00	\$4,196,315.00	\$30,800.00
Underground Utilities Corp.	\$4,571,768.10	\$4,571,768.10	-0-
Metra Industries	\$4,723,935.00	\$4,673,935.00	\$50,000.00
Teal Construction	\$4,932, 239.00	\$4,858,858.00	\$73,381.00
R.E. Pierson Construction	\$4,889,545.00	\$4,889,545.00	-0-



American Paving Corp.	\$5,500,000.00	\$5,500,000.00	-0-
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Mr. Izzo noted that the project was bid in two ways: (1) the asphalt price would be established on bid day and (2) the asphalt price would be established at the time it would be needed (asphalt index) – normally at the end of the project.

**Bid Award  
(continued)**

Mr. Izzo stated that due to the significant amount of the difference between the Base Bid and the Bid Alternate (\$30,800.00), the Engineering Department is recommending that the bid be awarded with the asphalt index.

**M 480 06  
Award  
Bid for  
South  
Ocean  
View  
SSD  
Project**

A Motion was made by Mr. Jones, seconded by Mr. Cole, based upon the recommendation of the Engineering Consultants, Whitman, Requardt & Associates, LLP and the Engineering Department, that Sussex County Project No. 02-06, South Ocean View Sanitary Sewer District Collection and Conveyance, be awarded to Edward McGinn General Contracting of West Chester, Pennsylvania, at the Alternate Bid amount of \$4,196,315.00, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and/or Rural Utility Service.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea**

**Public  
Hearing/  
C/U  
No. 1658**

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 AUTOMOTIVE REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS” (Conditional Use No. 1658) filed on behalf of Bart and Brenda Donaway.

The Planning and Zoning Commission held a Public Hearing on this application on June 22, 2006 at which time the Commission found that no one was present on behalf of the application. The Commission recommended that the application be denied for the lack of a record of support.

Mr. Lank, Director of Planning and Zoning, stated that the Applicants were made aware of both Public Hearings and the fact that they were required to attend both meetings.

The Council found that no one was present on behalf of the application and the Public Hearing was closed.

A Motion was made by Mr. Dukes, seconded by Mr. Jones, to Adopt the

**M 481 06**  
**Adopt**  
**Proposed**  
**Ordinance**  
**(C/U**  
**No. 1658)**  
**(DENIED)**

**Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO-MOTIVE REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS” (Conditional Use No. 1658) filed on behalf of Bart and Brenda Donaway.**  
**Motion Denied: 4 Nay, 1 Absent.**

**M 481 06**  
**(continued)**

**Vote by Roll Call: Mr. Phillips, Absent; Mr. Cole, Nay;  
Mr. Dukes, Nay; Mr. Rogers, Nay;  
Mr. Jones, Nay**

**(Mr. Phillips was out of the room during the vote.)**

**Reason**  
**for Denial**

**The Council denied the application due to the lack of a record of support.**

**Conflict**  
**of Interest**

**Mr. Rogers stated that he would not be participating in the next Public Hearing due to a possible conflict of interest.**

**Mr. Dukes presided over the meeting.**

**Public**  
**Hearing/**  
**C/U**  
**No. 1659**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL WINDOW TREATMENT BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.709 ACRE, MORE OR LESS” (Conditional Use No. 1659) filed on behalf of Robin R. May.**

**The Planning and Zoning Commission held a Public Hearing on this application on June 22, 2006 at which time they recommended that the application be approved, with the following conditions:**

- 1. Business hours shall be limited to 9:00 a.m. to 5:00 p.m. Monday through Friday and 10:00 a.m. to 3:00 p.m. on Saturdays. There shall be no Sunday hours.**
- 2. There shall be no parking within the front yard setback.**
- 3. One on-premise ground sign, not exceeding 32 square feet per side or facing may be permitted. Any lighting of the sign shall be screened from impacting neighbors or traveling motorists.**
- 4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated June 22, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission’s recommendation of approval.)**

**Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.**

**Mr. Lank reported that letters in support of the application were received from Stephen and Susan Brinck, J. G. Townsend, and Jeffrey Ganes.**

**Mr. Griffin questioned if the proposed sign would meet the 32 square feet requirement.**

**Public  
Hearing/  
C/U  
No. 1659  
(continued)**

**In response, Mr. Lank stated that the proposed sign is 6 feet by 8 feet (48 square feet); that the recommendation of the Commission was that the sign should not exceed 32 square feet; that 32 square feet is the standard size for conditional uses; and that the ordinance does allow signs up to 150 square feet for special use exceptions, conditional uses, and non-conforming businesses.**

**Robin May was present with James F. Waehler, Attorney. Mr. Waehler stated that Ms. May proposes to utilize the existing residential structure to conduct a retail establishment to sell blinds, shades, lights, and accessories; that her business is presently located on Route One; that her business has outgrown its current facility; that there are other commercial uses in the immediate vicinity; that the site is located in an Environmentally Sensitive Development Area; that the Comprehensive Land Use Plan Update does state that additional commercial uses will be needed to serve the growing population; that DelDOT did not require a Traffic Impact Study and that the Commission found that there would be no change in traffic; that customer traffic would be light with only five to seven customers per day; that she does a lot of her business off-site at customers' homes; that Ms. May does not object to the 32 square feet sign limitation; that she is concerned about the Commission's proposed condition that "There shall be no parking within the front yard setback."; that the requirement for six parking spaces (5 parking spaces for customers and 1 parking space for employees); that the one employee parking space and two customer parking spaces are not a problem since they could be located to the left of the structure and can be set outside the setback area; that the three other customer parking spaces would intrude on the setback area since they would be proposed to be located in front of the structure; that the only other alternative for her would be to move the parking spaces to the right of the structure but that would require the removal of several large trees and the septic system is located there; that the residential structure was previously used for a residence with a circular driveway and there was vehicle parking and traffic in the setback area; that there are other businesses in the area that have parking and traffic in the setback area; that it is unlikely that five customer spaces would be filled all at one time; that when central sewer comes to the area, it would eliminate the problem; and that if all parking was required outside the setback area, it would be a hardship to Ms. May.**

Ms. May discussed her business and her concerns about parking spaces. Ms. May submitted drawings of the existing setbacks and proposed parking. She stated that, if necessary, she would take out trees to accommodate the parking but that she would prefer not to.

In response to concerns expressed by the Council, Ms. May stated that, if DelDOT decides to widen Route 24, she would relocate the parking to the rear of the property.

**Public  
Hearing  
(continued)**

Public comments were heard.

Joan Deaver spoke in support of the application. She stated that the business would be an asset to the community.

The Public Hearing was closed.

**M 482 06  
Adopt  
Ordinance  
No. 1860  
(C/U  
No. 1659)**

A Motion was made by Mr. Jones, seconded by Mr. Cole, to Adopt Ordinance No. 1860 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL WINDOW TREATMENT BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.709 ACRE, MORE OR LESS” (Conditional Use No. 1659) filed on behalf of Robin R. May, with the following conditions:

1. Business hours shall be limited to 9:00 a.m. to 5:00 p.m. Monday through Friday and 10:00 a.m. to 3:00 p.m. on Saturdays. There shall be no Sunday hours.
2. Parking shall be permitted within the front yard setback area to prevent the removal of mature trees and to avoid the relocation of the existing septic system, provided that if Route 24 should be widened, if necessary, the Applicant would relocate the parking in the setback area to the rear of the structure.
3. One on-premise ground sign, not exceeding 32 square feet per side or facing, may be permitted. Any lighting of the sign shall be screened from impacting neighbors or traveling motorists.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Adopted: 4 Yea, 1 Absent.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Absent;  
Mr. Jones, Yea

Mr. Rogers returned and presided over the meeting.

A Public Hearing was held on the Proposed Ordinances entitled “AN

**Public  
Hearing/  
C/U  
No. 1660  
and  
C/U  
No. 1661**

**ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1373, 1399, AND 1498 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 88.0 ACRES, MORE OR LESS” (Conditional Use No. 1660) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1372, 1400, AND 1499 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 220 ACRES, MORE OR LESS” (Conditional Use No. 1661) filed on behalf of Synagro-WWT, Inc.**

**Public  
Hearing/  
C/U  
No. 1660  
and  
C/U  
No. 1661  
(continued)**

**There was a consensus of the Council to consider Conditional Use No. 1660 and Conditional Use No. 1661 together since the applications were basically the same.**

**The Planning and Zoning Commission held a Public Hearing on these applications on June 22, 2006 at which time they deferred action. On July 6th, the Commission recommended that the applications be approved with conditions.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated June 22 and July 6, 2006 for additional information on the applications, correspondence received, the Public Hearings before the Commission and the Commission’s recommendation of approval.)**

**Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearings. The summary was admitted as part of the Council’s record.**

**In response to questions from the Council, Mr. Lank stated that no complaints have been received in regards to the hours of operation or noise.**

**Doug Bennett was present on behalf of Synagro-WWT, Inc. He stated that the bio-solids will be applied to the farms as an agricultural fertilizer as allowed by DNREC; that approved bio-solid sources are Vlastic Foods, the Town of Harrington, the Town of Laurel, the Town of Georgetown, the Town of Selbyville and Mountaire; that they have been applying bio-solids to these farms for over 15 years; that the primary source of bio-solids is Vlastic Foods; that DNREC permits must be renewed every five years; and that they would like to have the County eliminate the need to come back every five years since the DNREC permit has to be renewed ever five years.**

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

**M 483 06**  
**Adopt**  
**Ordinance**  
**No. 1861**  
**(C/U**  
**No. 1660)**

**M 483 06**  
**Adopt**  
**Ordinance**  
**No. 1861**  
**(C/U**  
**No. 1660)**  
**(continued)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1861 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1373, 1399, AND 1498 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 88.0 ACRES, MORE OR LESS” (Conditional Use No. 1660) filed on behalf of Synagro-WWT, Inc, with the Conditional Use subject to the same or similar conditions that were imposed on Conditional Use Nos. 1373, 1399 and 1498, as follows:

1. The sludge application is subject to DNREC approval and will only be valid as long as the DNREC permit for land application remains current.
2. Sludge shall be limited to biosolids from Vlastic Foods, the Town of Georgetown, the Town of Selbyville, the Town of Laurel, the Town of Harrington and Mountaire. There will be no stockpiling of sludge materials on the land.
3. The maximum number of applications per year shall be as determined and limited by the DNREC permit.
4. The conditional uses referred to above shall be amended to state that they will remain in effect for as long as a valid DNREC permit exists for the application of biosolids and shall automatically terminate in the event the DNREC permit lapses, is terminated or expires.
5. The application of biosolids shall be limited to the hours of 6:00 a.m. to 9:00 p.m. Monday through Saturday.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**M 484 06**  
**Adopt**  
**Ordinance**  
**No. 1862**  
**(C/U**  
**No. 1661)**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to Adopt Ordinance No. 1862 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF DNREC-APPROVED BIOSOLIDS AS FERTILIZER AND AS AN AMENDMENT TO CONDITIONAL USE NOS. 1372, 1400, AND 1499 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 220 ACRES, MORE OR LESS” (Conditional Use No. 1661) filed on behalf of Synagro-WWT, Inc, with the Conditional Use subject to the same or similar conditions that were imposed on Conditional Use Nos. 1372, 1400 and 1499, as follows:

1. The sludge application is subject to DNREC approval and will only

**M 484 06  
Adopt  
Ordinance  
No. 1862  
(C/U  
No. 1661)  
(continued)**

be valid as long as the DNREC permit for land acquisition remains current.

2. Sludge shall be limited to biosolids from Vlastic Foods, the Town of Georgetown, the Town of Selbyville, the Town of Laurel, the Town of Harrington and Mountaire. There will be no stockpiling of sludge materials on the land.
3. The maximum number of applications per year shall be as determined and limited by the DNREC permit.
4. The conditional uses referred to above shall be amended to state that they will remain in effect for as long as a valid DNREC permit exists for the application of biosolids and shall automatically terminate in the event the DNREC permit lapses, is terminated, or expires.
5. The application of biosolids shall be limited to the hours of 6:00 a.m. to 9:00 p.m. Monday through Saturday.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea**

**Public  
Hearing/  
C/U  
No. 1662**

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 THE SALE OF CRAFTS AND GARDEN RELATED SUPPLIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS” (Conditional Use No. 1662) filed on behalf of Kimberly Elliott.

The Planning and Zoning Commission held a Public Hearing on this application on June 22, 2006 at which time recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 22, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission’s recommendation of approval.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

The Council found that Kimberly Elliott was present on behalf her application. She stated that she had previously received approval from the Board of Adjustment for a commercial greenhouse and small nursery on the site; that a nursery already exists on the site; that the conditional use application is for the sale of other things related to the nursery, i.e. pottery, crafts, etc.; and that she agrees to the conditions recommended by the Commission.

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

**M 485 06  
Adopt  
Ordinance  
No. 1863  
M 485 06  
Adopt  
Ordinance  
No. 1863  
(C/U  
No. 1662)  
(continued)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1863 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE SALE OF CRAFTS AND GARDEN RELATED SUPPLIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.29 ACRES, MORE OR LESS” (Conditional Use No. 1662) filed on behalf of Kimberly Elliott, with the following conditions:

1. The hours of operation will be from 9:00 a.m. to 6:00 p.m. Monday through Sunday.
2. The months of operation shall be from April 1st through November 15th.
3. No lighting shall shine on neighboring homes or on Route 54.
4. The operation shall be for the sale of crafts and garden and landscape related supplies, including produce.
5. The final site plan shall be subject to review and approval by the Planning and Zoning Commission.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea**

**Public  
Hearing/  
C/U  
No. 1691**

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 AMENDMENT TO CONDITIONS OF APPROVAL OF CONDITIONAL USE NO. 1314 FOR A MICRO-NUTRIENT PLANT WITH RELATED TRUCK ENTRANCE AND RAIL SPUR FOR THE PROCESSING AND HANDLING OF POULTRY LITTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS” (Conditional Use No. 1691) filed on behalf of Perdue Farms Agri-Recycle, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on June 22, 2006 at which time they deferred action. On July 6th, the Commission recommended approval of Conditional Use No. 1691 for a micro-nutrient plant for the processing and handling of poultry litter based upon the record and for the following reasons:

- 1) This is an existing Conditional Use that was approved by the County Council in 1999. This application will not materially change the use



Public  
Hearing/  
C/U  
No. 1691  
(continued)

- that is permitted upon the property.
- 2) The Applicant is requesting reasonable changes to the existing Conditional Use permit to meet its' needs for the recycling of poultry manure and marketing of the pelletized micro-nutrients.
  - 3) The use has proven to be a benefit for the family farm and agricultural industry in Sussex County. It has also proven to be a good way to eliminate a potential source of excess nitrates and phosphates from Sussex County soils.
  - 4) The Applicant has requested the deletion of the 4<sup>th</sup> condition of its' Conditional Use to allow the movement and drop-off and pick-up of rail cars within the site at any time. It is recommended that the 4<sup>th</sup> condition be deleted.
  - 5) The Applicant has requested that the 7<sup>th</sup> condition be deleted to allow truck travel to the site at any time. It is recommended that the 7<sup>th</sup> condition be deleted; by allowing truck travel to the site at any time, the plant can operate more efficiently and fuel costs would be reduced.
  - 6) The Applicant has requested an amendment to the 9<sup>th</sup> condition to allow outside storage in watertight containers. The material will be stored in a neat and orderly fashion if it is inside watertight containers. This will also allow the plant to operate more efficiently. It is recommended that the 9<sup>th</sup> condition be modified to state "all activities involving raw litter shall be inside of the building. The loading, unloading and processing of raw material/litter shall be within the negative air section of the building. Storage of finished product, both pellets and granulated, may be stored outside in watertight containers. The loading of the finished product onto transport vehicles shall be under roof."
  - 7) The Applicant has requested that the 18<sup>th</sup> condition be amended to allow Sunday operations on an emergency basis. This is a reasonable request. There is confusion as to what the word "operate" means. It is recommended that the 18<sup>th</sup> condition be amended to state that "the facility shall not be operated to convert poultry waste into micro-nutrient on Sundays, unless an emergency basis exists. The Applicant shall notify the Office of Planning and Zoning if it believes that a sufficient emergency exists to require Sunday operation and shall provide the Office of Planning and Zoning with its basis for the request. The Office of Planning and Zoning may, in appropriate circumstances, authorize Sunday operation after finding that a valid emergency exists".
  - 8) The Applicant has operated the facility very well during the past five years. Even with these recommended amendments to the existing Conditional Use, the noise, odor, or other effects of the operations are no different than other agricultural uses that exist all over Sussex County.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 22 and July 6, 2006 for additional information on the application, correspondence received, the Public Hearing before the

Commission and the Commission's recommendation of approval.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

Public  
Hearing/  
C/U  
No. 1691  
(continued)

Mr. Griffin questioned whether a condition should be imposed in regards to Sunday operations, i.e. number of days that a request must be submitted and how long operations can occur.

Wayne Hudson was present on behalf of Perdue AgriRecycle, LLC. He stated that the history of their business has changed since they applied in 1999; that their product is used by the agricultural community, the lawn and garden industry, and the golf course industry; that due to this increased interest, they make a finer, granulated product than the original pelletized product that can be more evenly distributed on the fields; that the majority (75%) of their product is moved during the months of March, April and May; that the reason they are requesting a change to Condition No. 4 is that their load dock capabilities limit them to only loading to rail cars or trucks and they cannot be loaded at the same time; that rail service is restricted to daylight hours; that the availability of trucking services are limited due to fuel costs; that the load docks need to be available when trucks show up; that they need to accommodate the trucks and that they hope to load trucks at other times than daylight hours; that their DNREC permit limits their number of hours and the total number of tons they are allowed to produce; that based on emission levels, they are regulated by DNREC on the total through-put that can be put through the plant on a weekly basis; that they are limited to how many tons per hour they can operate; that they want to be able to store the material outside in watertight containers to get ready for the fertilizer season; that they store large volumes of extra material; that they are requesting permission to store one-ton waterproof totes outside of the building on pallets; that they would like Condition No. 9 to be amended to allow them to store the one-ton totes outside; that there has been a lot of discussion on their ability to operate on Sundays and the definition of operating; that their definition of operating is "when you have through-put of product running through your processing - you are actually manufacturing and producing a product"; that their plan is to operate Monday through Friday; that he proposes the omission of Condition No. 18 requiring any notice requirements for Sunday operations.

Jerry Taylor spoke in support of the application. He stated that he originally opposed the previous application; that he now believes it was a good decision to approve it; that he would rather see fertilizer going through the business instead of on the ground; that they have lived up to every thing they have committed; and, that they are a good neighbor.

Bill Satterfield, Executive Director of the Delmarva Poultry Industry, stated that, due to increased development, more and more agricultural land is

taken out of use and there is less land available for the application of manure on the farms; that, for this reason, there is ample justification for this application to be approved; and that DPI encourages the Council's support.

Public  
Hearing/  
C/U  
No. 1691  
(continued)

Russell Ebron was present in opposition to the application. He referred to a letter he found in the file from Perdue Farms, Inc., dated March 15, 2006, (the day of their alleged fire/smoke incident) to the Planning and Zoning Department. He questioned the purpose of the letter and stated that he did not detect any sense of urgency in the letter nor did it state that they needed more time; that it was basically a matter of fact. He stated that on March 16, 2006 a letter was sent by Robert Stickels, County Administrator, giving approval to allow the facility to operate on Sunday hours for a maximum of 90 days commencing on March 19, 2006 due to the recent fire. Mr. Ebron emphasized that the letter did not request permission to operate on Sundays. He stated that he believes there must be a missing document. He stated that his concern is that he didn't get to see all the documentation in the file.

Mr. Ebron submitted a list of complaints that he filed with DNREC in reference to the project and he stated that he filed multiple complaints in reference to emissions and operating with doors open, Sunday operating hours, odors, lighting and noise; that the Delaware Economic Development Office letter states that they understand that the Applicant has proven to be a good neighbor and that the Sunday production schedule has not diminished the quality of life for the adjacent property owners, but it does not state that they know for a fact that the Applicant has been a good neighbor; that the lights on the rear of the building are directed toward his home; that he opposes any Sunday hours; that some DNREC citations were issued in reference to violations of their permit; that they are proposing to expand the plant and that he bases this information on articles he has read; that the woodland buffer is not buffering the site from his view; that there are no noise ordinances for commercial uses in residential areas; that according to their testimony, the facility should not be visible to passing motorists and that this did not happen; that he knows for a fact that they have sold their product to local farmers which is in violation of their original application; that they are violating the original conditional use in many respects; and that Council should consider revoking the current permit.

Mr. Dukes stated that he and Mr. Hudson would meet with Mr. Ebron at his residence to look at his complaint regarding the light. Mr. Dukes assured Mr. Ebron that if there is a violation, Perdue Farms AgriRecycle would take care of it.

Mr. Dukes stated that he is not aware of any condition that stipulates that Perdue AgriRecycle cannot sell the product locally.

The Public Hearing was closed.

**M 486 06**  
**Defer**  
**Action on**  
**C/U**  
**No. 1691**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Conditional Use No. 1691, an application of Perdue Farms Agri-Recycle, L.L.C.

**Motion Adopted: 5 Yea.**

**M 486 06**  
**(continued)**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**Public**  
**Hearing/**  
**C/Z**  
**No. 1598**

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 LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 31.2267 ACRES, MORE OR LESS” (Change of Zone No. 1598) filed on behalf of Elton Ray Beauchamp.

The Planning and Zoning Commission held a Public Hearing on this application on June 22, 2006 at which time they deferred action. On July 6, 2006, the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated June 22 and July 6, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission’s recommendation of approval.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

Mr. Lank distributed photographs of the site and the area, a memo from the Town of Delmar, a Current Land Use Map of the general area from the Town of Delmar’s 2005 Comprehensive Land Use Plan, and a memo from DelDOT. The memo from the Town of Delmar indicated that the site is within the Town of Delmar’s Planning Area and is located within the Town’s five-year growth areas and that annexation is anticipated within that time frame.

The Council found that no one was present on behalf of the application.

Mr. Lank, Director of Planning and Zoning, stated that the Applicant was made aware of both Public Hearings and the fact that he was required to attend both meetings.

Linda Skelley was present in opposition to the application. She stated that they the proposed use would be out of character with the area since it has a

trend for residential uses.

The Public Hearing was closed.

M 487 06  
Adopt  
C/Z 1598  
M 487 06  
Adopt  
C/Z  
No. 1598  
(continued)  
(DENIED)

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 31.2267 ACRES, MORE OR LESS” (Change of Zone No. 1598) filed on behalf of Elton Ray Beauchamp.

Motion Denied: 5 Nay.

Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Nay;  
Mr. Dukes, Nay; Mr. Rogers, Nay;  
Mr. Jones, Nay

The Council denied the application due to the lack of a record of support.

Mr. Stickels read the following information in his Administrator’s Report:

Adminis-  
trator’s  
Report

1. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance on July 14, 2006, to Ocean Mist, Agreement No. 413. The developer is Acri-Burnori, LLC, and the project is located on the south side of Route 26, west side of the Assawoman Canal, and west of private road E. Riga Drive in the Ocean View Sanitary Sewer District, consisting of a 22-unit multi-family housing project. Included with this report is a fact sheet on the project.

2. Milton Building Inspections

Effective July 17, 2006, the Sussex County Building Code Department will no longer be doing inspections for the Town of Milton. George Dickerson, Town Manager, has notified the County that they will be contracting directly with First State Inspection Agency to do all of their plan review and on-site inspections. For your convenience, I have included a copy of the letter sent by Mr. Dickerson.

3. Sussex County Declared Disaster Area

The U.S. Small Business Administration (SBA) has announced that Sussex County has been declared a disaster area as a result of severe storms and flooding that occurred June 25, 2006. As a result of this declaration, low-interest loans are available to homeowners, renters,

and businesses that sustained damages from the storms and flooding. Victims of this incident are eligible to apply for assistance.

SBA opened a temporary Disaster Loan Assistance Center on Monday, July 17. The Center will remain open Monday through Friday from

9:00 a.m. to 6:00 p.m. until further notice, and for one Saturday only, July 22, from 10:00 a.m. to 2:00 p.m. The Center is located at the Seaford Fire Hall, King and Cannon Streets, Seaford, Delaware.

SBA offers loans up to \$40,000 for renters and homeowners to repair or replace disaster damaged personal property such as furniture and clothing. Homeowners are eligible for loans up to \$200,000 to repair disaster damaged primary residences. Loans to businesses of all sizes and nonprofit organizations are available up to \$1.5 Million to repair damage to real estate, machinery, equipment, and inventory. Interest rates are as low as 2.937 percent for renters and homeowners and 4.000 percent for businesses, with terms up to 30 years.

Adminis-  
trator's  
Report  
(continued)

New  
Checking  
Accounts

Mr. Baker proposed the opening of three new checking accounts at Delaware National Bank for HPG-06, CDBG-06, and HOME-06. These accounts would replace three similar accounts at Delaware National Bank.

M 488 06  
Adopt  
Resolution  
No.  
R 014 06

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Resolution No. R 014 06 entitled "AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE DELAWARE NATIONAL BANK BEARING THE SIGNATURES OF ANY TWO OF LYNN J. ROGERS, PRESIDENT; DALE R. DUKES, VICE PRESIDENT; OR D. B. BAKER, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL".

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea

Requests

Mr. Baker presented grant requests for the Council's consideration.

M 489 06  
Council-  
manic  
Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$600.00 from Mr. Jones' Councilmanic Grant Account to Kent Sussex Industries (KSI) for their golf tournament benefit.

Motion Adopted: 5 Yea.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea

- M 490 06  
Community  
Investment  
& Council-  
manic  
Grant  
M 490 06  
(continued)**
- A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$1,200.00 (\$1,000.00 from Mr. Jones Community Investment Grant Account and \$200.00 from Mr. Phillips' Councilmanic Grant Account) to the Bridgeville Apple-Scrapple Festival for festival operating expenses.
- Motion Adopted: 5 Yea.  
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea
- M 491 06  
Community  
Investment  
Grant**
- A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$5,000.00 from Mr. Phillips' Community Investment Grant Account to the Town of Selbyville for baseball field improvements.
- Motion Adopted: 5 Yea.  
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea
- M 492 06  
Youth  
Activity  
Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 from Mr. Cole's Youth Activity Grant Account to the Rehoboth Summer Children's Theatre for performances, programs and workshops.
- Motion Adopted: 5 Yea.  
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea
- M 493 06  
Community  
Investment  
Grant**
- A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$3,000.00 from Mr. Phillips' Community Investment Grant Account to the Indian River School District for the Hosts Reading Program.
- Motion Adopted: 5 Yea.  
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea
- M 494 06  
Community  
Investment  
Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$2,500.00 from Mr. Cole's Community Investment Grant Account to the Boys & Girls Club of Oak Orchard/Riverdale for program expenses.
- Motion Adopted: 5 Yea.  
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Dukes, Yea; Mr. Rogers, Yea;

**Mr. Jones, Yea**

**M 495 06**  
**Council-**  
**manic**  
**Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 from Mr. Cole's Councilmanic Grant Account to the Rehoboth Beach Film Society for the Film Festival.**

**M 495 06**  
**(continued)**      **Motion Adopted:      5 Yea.**  
                         **Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                         **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
                         **Mr. Jones, Yea**

**Defer**  
**Action**      **The request from the American Red Cross (Delmarva Peninsula) was deferred for additional information.**

**M 496 06**  
**Council-**  
**manic**  
**Grant**      **A Motion was made by Mr. Dukes, seconded by Mr. Jones, to give \$250.00 from Mr. Rogers' Councilmanic Grant Account to Dry Dock, Inc. for their golf tournament benefit.**

**Motion Adopted:      5 Yea.**  
  
**Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                         **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
                         **Mr. Jones, Yea**

**M 497 06**  
**County**  
**Council**  
**Grants**      **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,500.00 from County Council Grants to the Delaware Aviation Museum for the 3rd Annual Wings & Wheels Fly-in and Car Show.**

**Motion Adopted:      5 Yea.**  
  
**Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                         **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
                         **Mr. Jones, Yea**

**Delete**  
**Items**      **The items "Personnel Appointment" and "Executive Session" were deleted from the Agenda.**

**Sign**  
**Regulations**      **Mr. Cole stated that the Council needs to address sign regulations. He stated that the County cannot rely on complaint-driven enforcement in regards to signs. It was the consensus of the Council to move forward on this issue.**

**M 498 06**  
**Adjourn**      **A Motion was made by Mr. Jones, seconded by Mr. Dukes, to adjourn at 10:30 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**



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