



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 2, 2011

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 2, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

#### Call to Order

Mr. Vincent called the meeting to order.

#### M 426 11 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting "Approval of Minutes"; by deleting "Sussex EOC/Airport Solar Energy Installation Project – Change Order No. 3" under Steve Hudson, Director of Technical Engineering"; by deleting "Executive Session – Job Applicants' Qualifications, Personnel, Pending/Potential Litigation, and Land Acquisition pursuant to 29 Del. C. §10004(b)"; and by deleting "Possible Action on Executive Session".

Motion Adopted: 5 Yeas.

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

#### Corre- spondence

Mr. Moore read the following correspondence:

C. CLAUDIA WATERS, BOARD MEMBER, SUSSEX COUNTY COMMUNITY DEVELOPMENT, GEORGETOWN, DELAWARE.

RE: Letter to Governor Jack Markell regarding the cuts in the budget which will affect home repairs for people still in need, many of whom are

**elderly on fixed incomes.**

**CASINIA RICKETTS.**

**RE: Letter in appreciation of the repairs made to her home with funding from the Sussex County Community Development Office.**

**WEST SIDE NEW BEGINNINGS CHILDREN & YOUTH PROGRAM.**

**RE: Letter in appreciation of grant.**

**Delaware  
Transit  
Corporation  
Transportation  
Program/  
Proposed  
Budget  
Request**

Mr. Baker reported that, as per the Delaware Code, the State of Delaware is responsible for establishing a budget for the allocation of State grant monies to various senior agencies in the county that provide transportation services. Over the past few years, DART, a division of DelDOT, has maintained the funding for these programs at a total level of \$796,862.00. In the past, the County has recommended maintaining funding for each agency at the prior year level, consistent with the State's total allocation, with no changes.

For Fiscal 2012, the total State funding remains the same at \$796,862.00. Each agency has requested more than last year's amount, except for the Indian River Senior Center which only receives \$2,100.00, which is the same as the amount they requested. Last year, Easter Seals Rehabilitation Center dropped its request for funds as they no longer offer an in-house transportation program and this resulted in some additional funds for the other agencies; the amounts were allocated based on the transportation mileage that was reported by each agency.

Mr. Baker recommended that the Council consider allocating the budget amounts based on the same level for each agency as last year, as follows:

Nanticoke Senior Center	\$ 44,959.30
Indian River Senior Center	2,100.00
Laurel Senior Center	99,082.94
Lewes Senior Center	27,120.41
Cape Henlopen Senior Center	43,065.65
CHEER, Inc.	<u>580,533.70</u>
Total	\$ 796,862.00

**M 427 11  
Approve  
Transportation  
Program  
Budget**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that the Sussex County Council approves the allocation of State grant funds to various senior agencies within Sussex County at the same level as last year, as presented.

**Motion Adopted: 5 Yeas.**

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

**Letter of Credit/  
Oakwood Village**

Mr. Baker reported that the County is currently holding a Letter of Credit in the amount of \$47,637.00 with Wilmington Trust Company for the Oakwood Village at Lewes project. The purpose of the Letter of Credit, which expires August 8th, is for security for roads and stormwater infrastructure. The top coat on the roads is not complete and it is estimated that it will require all of the funds and possibly more to complete the work.

**Letter of Credit/  
Oakwood Village  
(continued)**

Mr. Baker advised that a call was received on this date from a representative of the Wilmington Trust Company who indicated that the Bank may issue a 60 day extension; however, this has not been received yet. For this reason, Mr. Baker recommended that the Council authorize Administration and the Engineering Department to draw funds on the Letter of Credit to complete construction of the roads and/or stormwater infrastructure in Oakwood Village, assuming that an extension is not received this week. Mr. Baker noted that this request for Council's authorization to call the Letter of Credit is being made since the Council does not meet again until August 9th, the day after the Letter of Credit expires.

**M 428 11  
Authorize  
Drawing  
of Funds/  
Letter of  
Credit/  
Oakwood  
Village**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council approves drawing remaining funds from the Wilmington Trust Company Letter of Credit No. 1-2325B for \$47,637.00 to complete construction of the roads for Oakwood Village at Lewes, unless the County receives an extension of the Letter of Credit.

**Motion Adopted:** 5 Yeas.

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

**Adminis-  
trator's  
Report**

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

**1. Substantial Completion for Americana Bayside – Phase II**

The Engineering Department granted Substantial Completion to Americana Bayside, Phase II, Agreement No. 601-1, on July 28, 2011. The developer is Carl M. Freeman Communities and the project is located on Coneflower Circle – Clematis Road/Wild Rose Circle in the Fenwick Island Sanitary Sewer District, consisting of 33 revised lots. Included with this report is a fact sheet on the project.

**2. Little League World Series**

The 2011 Senior League Softball World Series will be held beginning this coming Sunday, August 7, 2011, at the Lower Sussex Little League Complex in Roxana. The games will be held throughout the

week at this location. As noted last week by Martin Donovan, Director of the Senior League Softball World Series, teams are expected from Italy, the Phillipines, Puerto Rico, as well as, of course, the United States. The host team this year is Laurel, representing Sussex County (District III). The final game will be televised from Roxana on ESPNU on August 13th at 2:00 p.m. This event, as well as each game, is open to the public.

### **3. County Taxes**

Adminis-  
trator's  
Report  
(continued)

County property tax bills are now being sent to property owners. The new billing period covers through June 30, 2012, matching our fiscal year. The bills include school taxes, which represent 86.5 percent – 89.8 percent of the total tax bill, depending on the district. As noted on the attached insert, the County has waived its capitation tax, which means a \$3.00 per person tax savings for each County resident. Also included again is Property Tax Assistance Program information for our residents. Information numbers are included on the bill to contact the County. Payments can be made on the County's website via credit card, although there is a charge by the credit card company. A total of \$104.8 million will be billed. Payments are due by September 30, 2011.

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

New  
Deposit  
Accounts

Mrs. Webb recommended Proposed Resolutions to authorize deposit accounts at M&T Bank, which are required as a result of M&T Bank buying Wilmington Trust Company.

M 429 11  
Adopt  
R 016 11

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Resolution No. R 016 11 entitled "AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE M & T BANK BEARING THE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; SAMUEL R. WILSON, JR., 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. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea

M 430 11  
Adopt  
R 017 11

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Resolution No. R 017 11 entitled "AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE M & T BANK BEARING THE FACSIMILE SIGNATURES OF ANY TWO OF MICHAEL H. VINCENT, PRESIDENT; SAMUEL R.

**WILSON, JR., VICE PRESIDENT; OR SUSAN M. WEBB, FINANCE DIRECTOR”.**

**Motion Adopted: 5 Yeas.**

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

**M 431 11 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt  
Adopt Resolution No. R 018 11 entitled “CASH MANAGEMENT ACCOUNT  
R 018 11 RESOLUTION”.**

**Motion Adopted: 5 Yeas.**

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

**Local  
Law  
Enforce-  
ment  
Revenue  
Sharing  
Grant  
Program**

**Hal Godwin, Deputy County Administrator, explained that, per the FY 2006 Budget, the Local Law Enforcement Revenue Sharing Grant program was developed to “help offset some costs that local departments experience by assisting the state police outside their municipal jurisdictions”. It has been the goal of the County Council that the funding be used to help meet the extra demands placed on local law enforcement and security operations. These funds are to be used to compliment the funds already provided by the municipalities’ General Fund. Under the current guidelines, the funds are to be used to cover normal day to day expenses that are incurred due to police or security related operations. These funds may be used for the replacement of outdated capital items that are used in the department’s daily operations or to purchase capital items which enhance operations. The funds may be used for salary expenses, including budget base salaries and overtime; however, the funds may not be used for the payment of bonuses.**

**Mr. Godwin noted that concerns were expressed by Council members during the Fiscal 2012 budget process regarding the use of the funds, restrictions on the use of the funds, and the municipalities’ application approval requirements.**

**Mr. Godwin reported that he, along with Louise Thompson, Account Analyst, met with several of the police chiefs to gather their input as to the proper use of the funds and questioned if they thought there should be any restrictions placed on the funding by the County. After the discussion, it was determined that some of the chiefs from larger departments were in favor of re-implementing a 100 percent capital requirement to the grant and many of the chiefs from the smaller departments strongly opposed reinstituting this requirement. Due to the current economic environment, many of them use the funds to help offset the costs of operating their**

departments. There is concern that a limitation to capital-only could generate “wasteful” spending.

Mr. Godwin stated that it is also recommended that a grant application be signed by the following: Police Chief, Mayor and Town Manager. This would ensure that all parties involved in the spending of the funds are on the same page before they get the check. This recommendation is also being made in order to have the County remain an impartial grantor and to avoid intra-town debates.

Local  
Law  
Enforce-  
ment  
Revenue  
Sharing  
Grant  
Program  
(continued)

Mr. Godwin reported that another area discussed with the police chiefs was price changes that sometimes occur during the time an application is submitted to the County and funds are disbursed. For this reason, Mr. Godwin stated that it is recommended that price changes of \$500 or more require the submittal of a change of request which also has the signature of the Police Chief, Mayor, and Town Manager.

Mr. Godwin reported that another area discussed was the process of requesting the funds from the County; some police chiefs expressed concern that, due to timing of Council meetings, meeting holidays can result in an application waiting three or four weeks before being approved by the Council. Mr. Godwin stated that, since the grant funding is approved in the annual budget, it is being recommended that the County discontinue the practice of taking applications before Council for a second approval of each disbursement. This would be the same manner that the disbursements for the fire companies are handled. Louise Thompson would review the application and process the payment and then submit the documentation for approval by the Budget and Cost Manager. Finally, the Finance Director would review the documentation prior to signing the check. This would provide three checks to the validity of an application.

It was noted that municipalities that have a police department can receive \$22,500 in Fiscal 2012 and each unincorporated town that does not have a police department can receive \$11,250 in Fiscal 2012 (funding for security services).

M 432 11  
Adopt  
Changes  
to Policy/  
Local  
Law  
Enforce-  
ment  
Revenue  
Sharing  
Grant  
Program

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that the Sussex County Council adopts the following policy regarding the use of municipal police grant funds:

- funds will continue to be used for capital and/or operations expenses related to police or security operations with the exception of bonuses
- applications must be signed by the Chief, Mayor and Town Manager and applications for security grants would require the signatures of the Mayor and Town Manager
- changes of \$500 or more must be submitted in writing and signed by those who signed the initial application
- grants would be disbursed without presentation to Council.

Motion Adopted: 5 Yeas.

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

**Grant  
Requests**

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

**M 433 11  
Community  
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$1,000 from Mrs. Deaver's Community Grant Account to the Delmarva Clergy United in Social Action Foundation for operating expenses for The Griffin Place program.

**Motion Adopted:** 3 Yeas, 2 Abstentions.

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

**M 434 11  
Community  
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$750 from Mrs. Deaver's Community Grant Account to Delaware Shore Field Hockey for travel expenses.

**Motion Adopted:** 5 Yeas.

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

**Introduction  
of Proposed  
Ordinances**

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.13 ACRES, MORE OR LESS" (Change of Zone No. 1709) filed on behalf of Daniel T. and Dale S. Boines.

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.38 ACRES, MORE OR LESS" (Change of Zone No. 1710) filed on behalf of Robert Browning and Bradley Davis.

The Proposed Ordinances will be advertised for Public Hearing.

**Additional Business** Under Additional Business, Mrs. Deaver raised two issues: (1) complaints regarding pigs and cows being kept on a parcel in a subdivision located on Route 9 and (2) suggestions that the County should have homeowners association regulations.

**M 435 11 Recess** At 10:47 a.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess until 1:30 p.m.

**M 435 11 (continued)** Motion Adopted: 5 Yeas.  
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea

\*\*\*

**M 436 11 Reconvene** At 1:33 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to reconvene.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public Hearing/  
C/U  
No. 1896** 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 MULCH STORAGE, PROCESSING AND SALES, AND BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.729 ACRES, MORE OR LESS” (Conditional Use No. 1896) filed on behalf of Timothy S. Miller.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 14, 2011 at which time the Commission deferred action; on July 28, 2011, the Commission recommended partial approval of the application with the following conditions:

- A. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps, or construction waste shall be accepted at the site.
- B. The Applicant shall install a 6-foot tall solid fence along the boundaries of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan. No fencing shall be required along other properties owned by the Applicant or his family.
- C. Grinding and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No



Public  
Hearing/  
C/U  
No. 1896  
(continued)

- Sunday hours shall be permitted.**
- D. There shall be no grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for grinding and processing shall be shown on the Final Site Plan.**
  - E. The areas set aside for mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.**
  - F. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday. The site shall be gated so that after-hours deliveries or dumping do not occur.**
  - G. Sales and delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday with no Sunday hours.**
  - H. Water shall be available to control dust and for fire prevention within the site.**
  - I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated July 14 and 28, 2011.)

Mr. Lank read a summary of the Commission's Public Hearing.

The Council found that Timothy Miller was present on behalf of his application and he reviewed his proposed site plan and stated that the parcel of land is west of Route 1 and south of Route 26; that the area is rural and surrounded by up and coming developments; that he proposes to provide a service to the community with mulch sales and boat and RV storage; that the boat and RV storage should be beneficial to area residents that live in restricted communities that do not permit parking of boats and RVs at their residences; that the location is a minimum of 300 feet from neighboring properties; that the site is surrounded by substantial woodlands; that the wooded area would prevent any visual line of sight to the boat storage area or the mulching; that he is proposing the storage of mulch for sales, not composting; that he would like some signage along an existing vinyl fence that separates the land surveying office from the property to the north; that there would be specific restrictions regarding the boat and RV storage including hours of pickup and drop off; that in regards to fencing and security, it is an expensive endeavor to erect a nice looking fence; that he intends to provide the fencing but it would be done incrementally; that in the future, he would like to move into the processing aspect of mulching; that a mulch grinder will be utilized (a roto-chopper); that he does propose the dyeing of the mulch; and that the business will employ one person.

In response to questions regarding the conditions recommended by the Planning and Zoning Commission, Mr. Miller stated that he would like approval for mulch sales on Sunday and that he would like the hours for

**sales to be 9:00 a.m. to 6:00 p.m. seven days per week.**

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

**M 437 11**  
**Amend**  
**Conditions/**  
**C/U**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend the conditions on Conditional Use No. 1896 as recommended by the Planning and Zoning Commission, as follows:**

**No. 1896**

**M 437 11**  
**Amend**  
**Conditions/**  
**C/U**

**(Conditions A through F, and Condition H and Condition I would remain the same.)**

**Amend Condition G to read as follows: Delivery hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to Noon on Saturday, with no Sunday hours.**

**No. 1896**

**(continued)**

**Add Condition J to read as follows: Any dyeing process shall be subject to the review and approval by DNREC and/or appropriate agencies.**

**Add Condition K to read as follows: Sales will be permitted 9:00 a.m. to 6:00 p.m. seven days per week.**

**Motion Adopted: 5 Yeas.**

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

**M 438 11**  
**Adopt**  
**Ordinance**  
**No. 2206**  
**(C/U**  
**No. 1896)**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2206 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULCH STORAGE, PROCESSING AND SALES, AND BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.729 ACRES, MORE OR LESS” (Conditional Use No. 1896) filed on behalf of Timothy S. Miller, with the following conditions, as amended:**

- A. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps, or construction waste shall be accepted at the site.**
- B. The Applicant shall install a 6-foot tall solid fence along the boundaries of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan. No fencing shall be required along other properties owned by the Applicant or his family.**
- C. Grinding and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No Sunday hours shall be permitted.**

- M 438 11  
(continued)**
- D. There shall be no grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for grinding and processing shall be shown on the Final Site Plan.**
  - E. The areas set aside for mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.**
  - F. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday. The site shall be gated so that after-hours deliveries or dumping do not occur.**
  - G. Delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday, with no Sunday hours.**
  - H. Water shall be available to control dust and for fire prevention within the site.**
  - I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
  - J. Any dyeing process shall be subject to the review and approval by DNREC and/or appropriate agencies.**
  - K. Sales will be permitted 9:00 a.m. to 6:00 p.m. seven days per week.**
- M 439 11  
Amend  
Motion  
M 438 11**
- A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to amend Mr. Cole's Motion to include the boat storage use.**
- Mr. Cole and Mrs. Deaver stated that they did not want to withdraw their Motions.**
- Mr. Vincent read into the record the Planning and Zoning Commission's reasons for not recommending approval of the RV and boat storage: (a) it is inconsistent with the underlying zoning; (b) it is not consistent with the surrounding approved and existing residential uses; (c) the Applicant could not provide sufficient details about his plans for the storage, the area where it would be located, or how it would affect neighboring properties and uses; and (d) the Applicant generally failed to make a sufficient record in support of the RV and boat storage part of his application.**
- Vote on  
M 439 11/  
Motion  
Denied**
- A vote was called on Mr. Phillips' Motion (M 439 11).**
- Motion Denied:           3 Nays, 2 Yeas.**
- Vote by Roll Call:       Mrs. Deaver, Nay; Mr. Cole, Nay;  
                                  Mr. Phillips, Yea; Mr. Wilson, Yea;  
                                  Mr. Vincent, Nay**
- Vote on  
M 440 11  
Adopt  
Ordinance  
No. 2206**
- A vote was called on Mr. Cole's Motion (Motion No. M 438 11), seconded by Mrs. Deaver, to Adopt Ordinance No. 2206 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULCH STORAGE, PROCESSING AND SALES, AND BOAT AND RV STORAGE TO BE**

(C/U  
No. 1896)

**LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.729 ACRES, MORE OR LESS” (Conditional Use No. 1896) filed on behalf of Timothy S. Miller, with the following conditions, as amended:**

**M 440 11  
Adopt  
Ordinance  
No. 2206  
(C/U  
No. 1896)  
(continued)**

- A. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps, or construction waste shall be accepted at the site.**
- B. The Applicant shall install a 6-foot tall solid fence along the boundaries of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan. No fencing shall be required along other properties owned by the Applicant or his family.**
- C. Grinding and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No Sunday hours shall be permitted.**
- D. There shall be no grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for grinding and processing shall be shown on the Final Site Plan.**
- E. The areas set aside for mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.**
- F. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday. The site shall be gated so that after-hours deliveries or dumping do not occur.**
- G. Delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday, with no Sunday hours.**
- H. Water shall be available to control dust and for fire prevention within the site.**
- I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
- J. Any dyeing process shall be subject to the review and approval by DNREC and/or appropriate agencies.**
- K. Sales will be permitted 9:00 a.m. to 6:00 p.m. seven days per week.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/U  
No. 1903**

**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 COMMERCIAL SUNROOM DISPLAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 10.22 ACRES, MORE OR**

**LESS” (Conditional Use No. 1903) filed on behalf of Terri L. Martin.**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 14, 2011 at which time the Commission deferred action; on July 28, 2011, the Commission recommended approval with the following conditions:**

**Public  
Hearing/  
C/U  
No. 1903  
(continued)**

- A. The use shall be limited to the display of a sample sunroom only. No retail or wholesale sales shall occur on the site.**
- B. The sample sunroom must be located outside of the front and side yard setbacks.**
- C. One lighted sign, not to exceed the size of the 12 square foot current sign shall be permitted. Its location shall be in accordance with County regulations.**
- D. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated July 14 and 28, 2011.)**

**Mr. Lank read a summary of the Commission’s Public Hearing.**

**It was noted that Condition No. B recommended by the Commission should state that “The sample sunroom must be located within the front and side yard setbacks.”**

**The Council found that Terri Martin was present on behalf of her application and she stated that she is trying to find a way to make additional income and that an acquaintance in the sunroom business asked if he could display a sign and a portable sunroom on her property.**

**It was noted that if the display is any closer to the road than 40 feet, a variance approval would be required from the Board of Adjustment.**

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

**M 441 11  
Adopt  
Ordinance  
No. 2207/  
C/U  
No. 1903**

**A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2207 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL SUNROOM DISPLAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 10.22 ACRES, MORE OR LESS” (Conditional Use No. 1903) filed on behalf of Terri L. Martin, with the following conditions:**

- A. The use shall be limited to the display of a sample sunroom only. No retail or wholesale sales shall occur on the site.**
- B. The sample sunroom must be located within the front and side yard setbacks.**

- C. One lighted sign, not to exceed the size of the 12 square foot current sign shall be permitted. Its location shall be in accordance with County regulations.
- D. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**Motion Adopted: 5 Yeas.**

**M 441 11  
(continued)**

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

**Public  
Hearing/  
C/U  
No. 1904**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR PARKING, STORAGE AND MAINTENANCE OF EQUIPMENT WITH AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.28 ACRES, MORE OR LESS” (Conditional Use No. 1904) filed on behalf of Joseph Mocci.**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 14, 2011 at which time the Commission deferred action; on July 28, 2011, the Commission recommended approval with the following conditions:**

- A. The use shall be limited to parking, storage and maintenance of equipment for the Applicant’s business with an office. No excavation or construction activities shall occur on site.
- B. Any security lighting on site shall be downward screened so that the lights do not shine on neighboring properties or roadways.
- C. The entrances shall be secured at all times with gates and fencing.
- D. Per the Applicant, no additional buildings shall be constructed on the site.
- E. No junked or inoperable construction vehicles shall be stored on the site. Only vehicles and equipment utilized in the excavation business are to be stored and maintained on the site.
- F. Regular hours of operation shall be from 7:00 a.m. to 6:00 p.m. with additional hours as needed to address snow removal operations in Sussex County.
- G. The Applicant shall comply with DelDOT requirements for the site. The Final Site Plan shall confirm the entrance approved by DelDOT for the property.
- H. Planted vegetative buffers shall be provided around the perimeter of the property utilizing native species as recommended by the State Forestry Office. Six (6) foot high stockade fencing shall be erected along Oakwood Village as each phase is developed.
- I. The Final Site Plan shall show all areas designated for the storage of

vehicles and equipment as well as the vegetative buffer and fencing.

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

(See the minutes of the meeting of the Planning and Zoning Commission dated July 14 and 28, 2011.)

Mr. Lank read a summary of the Commission's Public Hearing.

Public  
Hearing/  
C/U  
No. 1904  
(continued)

Mr. Lank reported that emails were received on this date from Adrienne and Edward Ponzini and Fred Oeffner in support of the application.

The Council found that Joseph Mocci was present on behalf of his application and he stated that he is a self-employed excavating contractor with 29 years experience; that he is a sub-contractor to builders and home owners; that all work is done off premises; that his yard is and always has been a storage and maintenance facility; that his truck goes out in the morning, possibly with machinery in tow, and typically does not return until the evening; that most of the time, his machinery does not come back to the site as it is moved from job to job; that all maintenance is performed inside of his shop; that his typical hours of operation are 7:00 a.m. to 5:00 p.m.; that he may need to leave earlier than 7:00 a.m. on occasion, but not at 3:00 a.m. or 4:00 a.m. as stated by the opposition; that when he moved to the site, Chapel Green was just a field and his yard and business were well established prior to the construction of homes; that when he moved to the site, he took all proper and professional steps to legalize his operation before moving equipment onto the site; that the shop is 300 feet from the nearest residence with a 70 foot wooded buffer along the road; that the County approved the use in 1998; that the County's records do not show any complaints in regards to the use; that there are no loud activities taking place on the site; that he is the only employee although his father and/or son help occasionally; that he has had to sell equipment due to the economy and his business has been downsized, not getting bigger, as the opposition has stated; that his property is maintained in impeccable condition as it has been for 12 years; that he continues to respect and help his neighbors; and that many of the comments made by the opposition at the Public Hearing before the Planning and Zoning Commission were unfounded accusations.

Mr. Mocci stated that, at the Public Hearing before the Planning and Zoning Commission, he was asked whether or not he intends to construct more buildings. He stated that the existing two buildings are sufficient at this time; however, he is unsure what his needs will be in the future. Mr. Mocci was advised that, if the application is approved with the conditions as recommended by the Commission, he would have to reapply to the County if and when he decides to erect additional buildings.

Mr. Mocci distributed various pictures of the site.

In regards to the conditions proposed by the Planning and Zoning

Commission, Mr. Mocci asked that the following hours of operation be permitted: 6:00 a.m. to 6:00 p.m. (with a clause for emergency hours/snow removal services).

Mr. Mocci referenced a recent article in the Cape Gazette written by Ron MacArthur and he noted that the information that was contained in the article is erroneous.

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Hearing/  
C/U  
No. 1904  
(continued)

Mr. Mocci read a letter from a resident of Chapel Green who wrote in support of the application but wished to remain anonymous out of fear of reprisal.

Public comments were heard.

The following individuals spoke in support of the application: Richard Delduco, Roy Perdue, Lewis Means, Diane Delduco, Thomas Engell, John Edwards, Scott Edwards, Mark Riley, David Cannon, Ted Dabbs, and Marie Dispoto. They stated that they support the Conditional Use application; that Mr. Mocci is a good neighbor and businessman; that he maintains a neat site and clean buildings and equipment; that his trucks travel slow in the area; that he is never disruptive; that there are no noise problems; that he does not work nor is he on the road at 3:00 or 4:00 a.m.; that his trucks come and go between 7:00 a.m. to 8:00 a.m. and 5:00 p.m. to 6:00 p.m.; that his property is gated and well maintained; that his business/shop cannot be seen from the roadway; that there is not a lot of truck traffic; that he operates his business in a professional manner; that it seems this is not a zoning issue but a personal vendetta against Mr. Mocci; and that the comments in the Cape Gazette article are erroneous.

The following individuals spoke in opposition to the application: Victoria Gillingham, William Gillingham, Robert Frost, Tony Celani, and Jay Robert Woods. They stated that Mr. Mocci does not live on the subject site; that his trucks are operating before 6:00 a.m.; that he has diesel trucks and they are loud; that there is noisy partying on the property on occasion; that the Applicant has lit bonfires and burned job site debris on this site; that other applications have been denied in the area; that the request should be denied or at the least, a lot of restrictions should be placed on the approval; that there have been confrontations between the neighbors and the Applicant; that the Applicant was not in business prior to the development of Chapel Green; that the approval would set a precedent; that there are 19 excavating companies in the County and another one is not needed; that the DelDOT report is deficient; that there was no mention of heavy trucking in the DelDOT report; that DelDOT should consider the need for acceleration, deceleration and turning lanes prior to this application being considered; that the use is synonymous with auto repair; that the site is located in a low density area surrounded by residential development; that according to the County's Comprehensive Plan, more intense commercial uses should be avoided in areas such as this site is located; that this application is at odds



**Public  
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C/U  
No. 1904  
(continued)**

with the Comprehensive Plan; that the proposed use is inconsistent with the area and is not desirable; that the shop can be seen during the winter months; that property values in the area will be negatively impacted by a commercial enterprise; and that approval of the application will result in future commercial encroachment on the area. The individuals in opposition to the application questioned if the applicant should be required to pay back taxes for the commercial use of the property in the past; questioned how the business can be considered public or semi-public in character; questioned how much of the business can be labeled as essential and desirable; questioned if the use will apply to the entire 4.28 acres; questioned if the use could be restricted to half of the site where the commercial business is currently located; questioned if the property is sold, would the use transfer to a new owner; questioned if the business will outgrow the property; and questioned why the Applicant is just now submitting an application for a Conditional Use when he has been operating the business for the past 12 years.

Mr. Lank responded that the use started in the nature of a home occupation approximately 12 years ago and has expanded to the point that a Conditional Use is now required.

Mr. Mocci was questioned regarding the existing dwelling on the site and he stated that he owns the dwelling and that he stays in it occasionally as do some of his family members. Mr. Mocci stated that he owns several residences and he acknowledged that his principal residence is located in Wolfe Run in Lewes, Delaware.

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

**M 442 11  
Defer  
Action  
on  
C/U  
No. 1904  
(continued)**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1904 filed on behalf of Joseph Mocci.

**Motion Adopted:     5 Yeas.**

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

Mr. Vincent declared a 5 minute recess.

Mr. Vincent called the Council back into session.

**Public  
Hearing/  
C/U  
No. 1905**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 6,986.70

**SQUARE FEET, MORE OR LESS” (Conditional Use No. 1905) filed on behalf of West Rehoboth Community Land Trust.**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on July 14, 2011 at which time the Commission deferred action; on July 28, 2011, the Commission deferred action again.**

**Public  
Hearing/  
C/U**

**(See the minutes of the meeting of the Planning and Zoning Commission dated July 14 and 28, 2011.)**

**No. 1905  
(continued)**

**Mr. Lank read a summary of the Commission’s Public Hearing.**

**Mr. Lank reported that, as of this date, 24 letters have been received in support of the application and 35 letters have been received in opposition to the application. The letters were made a part of the record and distributed to the Council for review.**

**The Council found that Heidi Gilmore, Attorney, was present with Beth Doty and Kevin McKinney on behalf of the Applicant, West Rehoboth Community Land Trust (WRCLT).**

**Mrs. Gilmore stated that the lot (Lot 90) is almost 70 square feet and fronts on Dunbar Street and Hebron Street; that the entrance and exit to the property is on Dunbar Street; that a multi-family structure is a permitted use in a GR zone, which is what the application is for; that they propose to construct a duplex on the site; that the mission of the WRCLT is to preserve, revitalize and protect the future of the community of West Rehoboth; that the Sussex County Council has recognized the WRCLT in the Comprehensive Plan as a cooperating partner which is essential for affordable housing; that the purpose of this application is to offer affordable housing; that this lot is an ideal location for a residence; that parking will be off of Dunbar Street; that water and sewer is available to the site; that whether the units are rented or sold, the WRCLT would be actively involved through a Homeowners Association to manage the site and help the homeowners; that the site is located in the Environmentally Sensitive Developing Growth Area which is a desirable location for new housing; that the surrounding lots in the immediate area are residential; that the lot is currently vacant; that the site used to have two manufactured homes on it; that there would be no adverse impact on surrounding property values; that West Rehoboth is in need of housing; that many of the people in need of housing are living in squalid conditions; that West Rehoboth is essentially walled in by other higher priced housing and commercial properties; and that the approval of this Conditional Use is for the general convenience and welfare of the inhabitants of Sussex County.**

**Beth Doty, WRCLT Board Member, spoke in support of the application and stated that there was misinformation put forth by some speakers at the**

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Hearing/  
C/U  
No. 1905  
(continued)

Planning and Zoning Commission meeting who live outside the community and have not worked with the residents to help improve housing and living conditions within the community. Ms. Doty explained the mission of the WRCLT and the efforts that have taken place to improve the housing and to improve living conditions for the people living in the community. Ms. Doty stated that the purpose of building two units on one lot is that the land in this community is expensive and in order to keep the housing affordable, it requires the construction of the two units. Ms. Doty stated that West Rehoboth is not a Section 8 housing community and that many families have inherited property in West Rehoboth, property that has been in their families for generations; and that this is their community and their hope and vision is that it will remain their community. Ms. Doty stated that it is her hope that the money for this project will come from Foundations and individual donations and possibly, a grant request will be submitted to the County.

Kevin McKinney, WRCLT Board Member and employee of the Coalition for the Revitalization. He stated that he was hired to work on the Revitalization Plan to try and implement the housing aspect and other aspects of the plan, i.e. community center improvements, youth programs, playgrounds, and crime prevention. He stated that there is a definite need for housing in West Rehoboth; that 12 applications have been made for the duplex housing; that of the 12 applications, 8 of them could qualify under certain programs where they could purchase the units; that people moving into the duplexes will most likely come from the neighborhood; that the unit will look like a two-story home; that they have received a \$15,000 grant from Criminal Justice to install cameras so that everyone coming into the community will be identified; that they received an additional \$24,000 grant from Criminal Justice to help with their teen programs; that the community is pro-active and is fighting crime; that they have taken care of their trash problem; that there are 2-story homes in the neighborhood and the new unit will look like a 2-story home; that the County Council has approved high density multi-family neighborhoods in the area; that the area is a mixture of housing and includes an umbrella storage facility and a church; and that property values will not be affected by a single duplex.

Public comments were heard.

The following individuals spoke in support of the application: Eleanor Whaley, Latina Waples, Moselle Matthews, Nettie Green, Randy Taylor, Helen Burrows, Joseph Reed and Mable Granke. They stated that everyone is entitled to a decent place to live; that no one should have to live in the mobile homes in West Rehoboth due to the conditions; that the landlords threaten eviction when requests are made for repairs; that affordable housing is needed in West Rehoboth; that it is time for a change in West Rehoboth; that this community deserves to survive; that it is a win-win situation for the community and the surrounding communities; that the proposed use will improve property values; that the proposed use will offer pride in home ownership; that the proposal is for the purpose of benefitting

people and not for the profit of the Land Trust; that the duplex will provide affordable housing for working people; that they did have a Conditional Use approval on Burton Road but unfortunately because of the price of the land, they were not able to construct an affordable home at the time; and that in other jurisdictions, a duplex is considered single family housing.

Public  
Hearing/  
C/U  
No. 1905  
(continued)

Gina Miserendino, Facilitator of the Sussex Housing Group, also spoke in support of the application. She stated that the Sussex Housing Group supports the application; that properties are being taken from people in West Rehoboth because property values are so high that some people are tempted to sell; that the community needs to be saved; that the strength of the Community Land Trust, a model that is successfully working throughout the country, is the perpetual affordability of the housing; that the model is working in many areas around the country; that the reason the WRCLT hasn't purchased land until now is because of exorbitant land prices; that affordable housing in Sussex County remains a challenge; that implications that building a few duplexes is tantamount to high density poverty housing which will lure outsiders is neither helpful nor accurate; and that this application affords the County an excellent opportunity to further address its need for decent affordable housing and to further fair housing choice.

The following individuals spoke in opposition to the application: Frank Bruffey, Burnell Brittingham, Robert Paul, Jason Abela, Douglas Earp, Norman Steward, Tim Waters, Stephanie Shelton and Helen Earp. They stated that trying to provide affordable housing and other well meaning assistance to West Rehoboth residents in an ad hoc manner is not the right thing to do; that allowing this Conditional Use will have a serious negative impact on any effort by any interested party, including WRCLT, to improve West Rehoboth; that there is a question regarding whether the duplex units will be rented or purchased; that the lot size is not correct; that all property owners in West Rehoboth should be able to build a multi-family unit on their properties; that the way this is being applied as a business model is out of sync with reality; that they are not opposed to single family housing; that helping a few will disenfranchise many; that the streets are narrow in the community, with no curbs or sidewalks, so children and adults walk the streets to get from place to place; that the neighborhood cannot take duplex housing on these small narrow lots; that people are already parking on other people's properties; that there is not enough room for parking and turning cars around on the street; that the street is a dead-end street and is inadequate; that the condition of the street is poor; that Sussex County should embrace the integration of communities; that increasing the density of the area will result in an increase in crime; that there is a volume of crimes in the area now; that the streets need to be cleaned up and maintained; that they question where the money is coming from to pay for the construction of the duplex; that grant money should help the entire community, not just a lucky few; that putting a duplex on a single family lot would not be in keeping with the character of the community which is now made up of small one story cottages; that granting the Conditional Use

would set a precedent; that the children in the community are a concern; and that the higher density of the project will result in a negative effect on property values, more people, more noise, more cars, higher crime and more trash.

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

**M 443 11**  
**Defer**  
**Action on**  
**C/U**  
**No. 1905**      **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1905 filed on behalf of West Rehoboth Community Land Trust.**

**Motion Adopted:      5 Yeas.**

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

**M 444 11**  
**Adjourn**      **At 5:42 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to adjourn.**

**Motion Adopted:      5 Yeas.**

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

**Respectfully submitted,**

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