

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 13, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, August 13, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
George B. Cole	Member
Dale R. Dukes	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

M 506 02 Amend and Approve Agenda A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by striking "Ocean Outfall Insurance Recommendation" and "Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District, Cedar Neck Road Collection and Conveyance – Contract A"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yea.

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

M 507 02 Approve Minutes A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of August 6, 2002, as distributed.

Motion Adopted: 5 Yea.

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

M 508 02 Adopt Proclamation A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proclamation entitled "PROCLAIMING WEDNESDAY, AUGUST 14, 2002, AS 'SUSSEX COUNTY SAFE KIDS DAY' ".

Motion Adopted: 5 Yea.

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

**Adminis-
trator's
Report**

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

1. Route 24 Planning Study

The Delaware Department of Transportation is holding its last in a series of Public Workshops to present information and solicit public comments regarding transportation planning on Route 54 in Sussex County. This workshop will be held at Roxana Fire Hall in Frankford, Delaware. The public is invited to attend between 4:00 p.m. and 7:00 p.m. The purpose of the study is to develop and evaluate multi-modal improvements that will address transportation needs. The study is in the final phase where specific recommendations will be presented. I would encourage residents of the area to attend this workshop.

2. Summer Recess

The Sussex County Council will not meet on Tuesday, August 20, 2002. The next regularly scheduled Council meeting will be at 10:00 a.m. on Tuesday, August 27, 2002.

3. Leon William Wheatley

I am sorry to inform the Council of the passing of Mr. Wheatley on Friday, August 9, 2002. Mr. Wheatley was a resident of Bridgeville, Delaware, and a current member of the County's Board of Adjustment. Mr. Wheatley had served the County since July 1, 1991.

**Cedar
Neck
Sewer
SRF
Loan
Request**

Mr. Baker provided information regarding a request for additional funding for the Cedar Neck Sewer Project. In January of 2000, the initial financing for this project was arranged; since then, the final design for the project has been completed and one contract has been bid. With more up-to-date information, the County is in the process of finalizing the financing plans.

Mr. Baker advised that the County has requested an additional \$2,205,000 in SRF loan money at 1 1/2 percent for twenty years from the State of Delaware to help with additional costs, if needed. If costs come in below the current estimates, then the County will not need to borrow the additional funds.

Mr. Baker reported that the State's Wastewater Advisory Council will be considering the County's request for additional funds on Wednesday, August 14, 2002. These funds will supplement the current loan and grant financing package. If the State approves the request, the County Council will have to approve the additional loan amount.

The estimated total project cost is \$14,660,085. Projected funding is as follows:

Cedar Neck Sewer SRF Loan Request (continued)	Connection Fees RD Loan SRF Original Loan State Grant County Grants Proposed Additional SRF Loan Total	\$ 742,200 \$6,910,700 \$ 277,100 \$3,600,000 \$ 925,000 \$2,205,000 \$14,660,000
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Old
Business/
C/U
No. 1456

Conditional Use No. 1456 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR REPAIRS TO SMALL BOATS, BOAT TRAILERS, BOAT MOTORS AND SMALL ENGINES, AND RESALE OF BOATS, TRAILERS, AND BOAT MOTORS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.47 ACRES, MORE OR LESS" filed on behalf of Boyd Taylor was discussed.

The Planning and Zoning Commission held a Public Hearing on this application on June 27, 2002; on July 11, 2002 the Commission recommended that the application be denied due to concerns about conditional uses in recorded subdivisions; due to the fact that conditional uses run with the land and not the applicant; and that a precedent could be set.

On July 16, 2002, the County Council held a Public Hearing at which time they deferred action to allow the County Attorney and Director of Planning and Zoning time to examine the recorded plot of the Craigs Mill Heights Subdivision to determine if there are any restrictive covenants which would prevent this conditional use from taking place.

Mr. Bayard stated that the matter has been researched and there are no restrictive covenants.

M 509 02
Adopt
Ordinance
No. 1557-A
(C/U
No. 1456)

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1557-A entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR REPAIRS TO SMALL BOATS, BOAT TRAILERS, BOAT MOTORS AND SMALL ENGINES, AND RESALE OF BOATS, TRAILERS, AND BOAT MOTORS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.47 ACRES, MORE OR LESS" (Conditional Use No. 1456) filed on behalf of Boyd Taylor, with the following conditions:

1. Hours of operation shall be from 9:00 a.m. to 5:00 p.m. Monday through Friday and 9:00 a.m. to 2:00 p.m. on Saturday, with no Sunday hours.

**M 509 02
Adopt
Ordinance
No. 1557-A
(C/U
No. 1456)
(continued)**

2. **Maximum number of boats allowed on the site shall not exceed twelve (12).**
3. **Oil and fuel shall be properly stored and disposed of off-site.**
4. **Only directional signs shall be permitted and shall not exceed six (6) square feet.**
5. **A display area for boat sales shall not be permitted.**
6. **One building not exceeding 50 feet x 60 feet shall be constructed by January 1, 2004.**
7. **All boats shall be screened.**
8. **The conditional use permit shall expire on January 1, 2007.**
9. **The site plan shall be reviewed and approved by the Planning and Zoning Commission.**

Motion Adopted: 3 Yea, 2 Nay.

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

**Findings
of Fact**

The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. **The applicant established by substantial evidence that although the proposed use is located in a residential subdivision (which has no restrictive covenants), the use, subject to the nine conditions set forth hereafter, will have no significant adverse impact.**
2. **The proposed use will serve the conveniences of the boating public in the area, consistent with the goals of the Comprehensive Land Use Plan.**

**Wastewater
Facilities**

Mr. Green, Director of Utility Construction, discussed the construction of wastewater facilities.

**M 510 02
The
Village
of Old
Landing/
Beneficial
Acceptance**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 255, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in The Villages of Old Landing – Phase IV, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

**M 510 02
(continued)**

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

**M 511 02
Bayville
Shore/
Beneficial
Acceptance**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 242, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Bayville Shore – Phase IIA, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 4 Yea, 1 Abstention.

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

**M 512 02
Canal
Landing/
Beneficial
Acceptance**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 172, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Canal Landing, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

**M 513 02
Youth
Activity
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,250.00, \$250.00 from each Youth Activity Account, to the Boy Scouts of America for their annual fundraising campaign.

Motion Adopted: 5 Yea.

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

**M 514 02
Youth
Activity
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00, \$500.00 each from Mr. Phillips' and Mr. Cole's Youth Activity Accounts, to the Lower Sussex Little League to help cover traveling expenses.

Motion Adopted: 5 Yea.

**M 514 02
(continued)**

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

**Funding
Request**

Action on the funding request from New Life Family Ministries was deferred.

**M 515 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 from Mr. Phillips' Councilmanic Account to the Millsboro Fire Company for the remodeling and expansion project.

Motion Adopted: 5 Yea.

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

**M 516 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$200.00 from Mr. Phillips' Councilmanic Account to the Dagsboro Church of God for a community youth center.

Motion Adopted: 5 Yea.

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

**Funding
Request**

Action on the funding request from Bad Company Softball Team was deferred.

**Proposed
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PLAYING AREA FOR PAINTBALL GAMES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.26 ACRES, MORE OR LESS, OF A 163 ACRE TRACT" (Conditional Use No. 1468) filed on behalf of Lane N. Brasure. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EMBROIDERY BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.75 ACRE, MORE OR LESS" (Conditional Use No. 1469) filed on behalf of Gregory S. Heishman. The Proposed Ordinance will be advertised for Public Hearing.

Proposed Ordinance Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4467 ACRES, MORE OR LESS” (Conditional Use No. 1470) filed on behalf of Jonathan Gruzenski. The Proposed Ordinance will be advertised for Public Hearing.

Public Comments Mr. Dan Kramer questioned when property tax bills were mailed and questioned why a specific tax bill did not contain a capitation tax.

M 517 02 Recess At 10:50 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene Mr. Jones called Council back into session at 1:30 p.m.

Public Hearing (C/U No. 1459) 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 MEDICAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.16 ACRES, MORE OR LESS” (Conditional Use No. 1459) filed on behalf of Center for Neurology, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on July 25, 2002 at which time action was deferred. As of this date, no action has been taken. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. Lank reported that one letter of opposition was received just prior to this Public Hearing expressing similar concerns as the letters described in the record of the Planning and Zoning Commission. The letter was sent by Mark Trotter.

The Council found that Dr. Robert Varipapa, Dr. Paul Peet, and Dr. Jay Fried, Applicants, and Rob Immett of Charles D. Murphy Associates, Inc. were present on behalf of the application and stated in their presentations and in response to questions raised by Council that they have been working on getting a new office built in Sussex County for a number of years due to the number of patients that they have that live in the area; that they have five physicians that reside in the area; that originally two (2) office buildings were proposed (a two-story 4,032 square foot structure and a 2,976 square foot structure); that 78 parking spaces would be required and that they originally proposed to provide 80 parking spaces; that a joint entrance is proposed with the existing glass blowing facility on the adjoining parcel; and that an MRI trailer will be on the site for approximately 8 hours per week.

**Public
Hearing
(C/U
No. 1459)
(continued)**

Dr. Varipapa stated that based on the neighborhood's concerns, they are proposing to reduce the number of parking lot spaces to 59 (a 25% reduction) and to take the front building off of the site plan. Dr. Varipapa clarified that they are now looking for approval of the rear building plus 59 parking spaces.

Dr. Varipapa noted that their contract with the owner of the property has expired and he is unsure as to whether she will extend the contract or not.

Public comments were heard.

Miss JoAnn Cassidy, one of the current owners of the site, spoke in support of the application.

The Council found that Eugene Bookhammer, Deborah Appleby, and Curtis Wright spoke in opposition to the application and expressed concerns about traffic; the size of the facility and the parking lot; parking of the MRI trailer and noise produced by the MRI trailer; the negative impact on property values; that the other business uses in the area are low traffic generators; that the glass blowing studio was built to resemble a barn to blend in with the community; and the possible precedent that this application might set.

Six letters from residents of Briarwood were entered into the record in opposition to the application.

There were no further public comments.

Mr. Cole recommended that action be deferred to allow the applicant time to submit a revised drawing incorporating a landscaping plan including trees within the parking lot area; sound and visual buffering for the MRI trailer; a more residential character for the building; and relocating the dumpster away from the property line.

(It was noted that this information cannot be submitted to the Planning and Zoning Commission.)

Mr. Dukes expressed concern over causing the applicant additional expenses with no assurance that the application will be approved.

Mr. Lank, Director of Planning and Zoning, reviewed the concerns expressed by some of the Councilmembers: buffers, setbacks, elimination of the front building, screening of the MRI trailer, dumpster location, reducing parking, and landscaping the parking area.

**M 518 02
Defer
Action on
C/U #1459**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1459, an application of the Center for Neurology, L.L.C. , until the close of business on August 27, 2002 for the submission of a revised site plan by the applicant and to further defer action until the

**M 518 02
(continued)**

close of business on September 10, 2002 for public comments on the revised site plan.

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. 1460)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-2 AGRICULTURAL RESIDENTIAL DISTRICT FOR PLACEMENT OF A MANUFACTURED HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15,038 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1460) filed on behalf of D. Angley Rummel.

It was noted that, more specifically, the conditional use is for the placement of a manufactured home on Lot 17, Conley Chapel Subdivision, Lewes, Delaware.

The Planning and Zoning Commission held a Public Hearing on this application on July 25, 2002 at which time action was deferred. As of this date, no action has been taken.

The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

It was noted that a packet of information was provided to each Councilmember prior to the meeting containing a settlement sheet, a copy of the deed, a plot, a location survey, an appraisal, a memo from the Assessment Division, a copy of a request for a variance, a letter from Richard E. Berl, Jr., Assistant County Attorney, to the Planning and Zoning Department, a letter from the Planning and Zoning Department to Fuqua & Yori, P. A., a reference to C-Grading of a manufactured home, a memo from the Assessment Division to James A. Yori, Attorney, a copy of a Pawnee Homes, Inc. Standard Specifications, a cross section of the applicant's home, a landscaping plan for the site, a copy of Section 115-IV of the Sussex County Code, a copy of a letter from John W. Davidson to the applicant, and three pages of pictures of homes in the subdivision.

It was noted that a violation notice was sent to the applicant on February 7, 2002.

It was noted that a petition in opposition to the application was received from the homeowners within the Conley Chapel Village Subdivision. It was further noted that 100 percent of the homeowners are opposed to the application.

**Public
Hearing
(C/U
No. 1460)
(continued)**

Mr. Lank noted that this is the first time an application for the placement of a manufactured home has fallen into the conditional use category.

Mr. Bayard stated that he agrees with an opinion from Rick Berl, Assistant County Attorney, that this situation is not appropriate for a variance since it would be considered a “use” variance and not an “area” variance.

The Council found that D. Angley Rummel and James A. Yori, Attorney, were in attendance and presented similar information stated in the record of the Planning and Zoning Commission.

Mr. Rogers asked that it be clarified for the record that a permit was not obtained for the foundation; that a permit was not obtained from the County to move the home; that the home is now sitting on steel beams on the lot; that the home can be classified as a Class C; and that the home is a Pawnee Home (a manufactured home).

Mr. Stickels and Mr. Van Milligan, Building Code Supervisor, stated that the house does not meet the Sussex County Building Code.

Mr. Yori stated that the Conley Chapel Village Subdivision has no restrictions other than the homeowners association will maintain the roads. He stated that the County’s Ordinance states that a mobile home (a house trailer) cannot be put in a major subdivision and that the Ordinance is silent as to a manufactured home in a subdivision. Mr. Yori referred to the Ordinance as it defines mobile homes and manufactured homes.

Mr. Bayard stated that the principal purposes of a Class C designation is to enable a person buying a home to obtain conventional mortgage financing.

Mr. Rogers stated that the lot size requirement for a manufactured home is 3/4 of an acre and that Lot 17 is 1/3 of an acre, which is considerably less than the 3/4ths acre required.

Mr. Lank stated that, for reference, historically in the 1950’s and 1960’s, what is now called a manufactured home was called a trailer/house trailer; that in the 1970’s and 1980’s, they were called mobile homes; and that in the late 1980’s and 1990’s, they were called manufactured homes. The County has not changed its ordinance to reference manufactured homes.

Mr. Yori presented the following suggested conditions:

1. The metal chassis shall be removed from the house.
2. The house shall be placed on a block foundation pursuant to Sussex County Building Code.

**Public
Hearing
(C/U
No. 1460)
(continued)**

3. The applicant shall surrender the title to her home to the Department of Motor Vehicles pursuant to the Sussex County Assessment Division – C-Grading for Manufactured Homes.

Public comments were heard in support of the application. Comments referred to the fact that the applicant is now homeless and has to live with friends; that the process has created an emotional and financial hardship on the applicant; and that her home is attractive and would not cause depreciation of other properties in the neighborhood.

Public comments and letters received were heard in opposition to the application. Comments referred to concerns that the Zoning Code provides for certain uses in subdivisions and that a manufactured home is not a permitted use; that the opposition's petition voices the opinion of all of the lot owners; that the unit has a title and was designed and built as a manufactured home; that removing the I-beams does not change the unit; that the unit will devalue property in the subdivision; that moving the unit into the subdivision is in violation of the law; that permitting the unit in the subdivision will set a precedent; and that the parcel is not zoned for a trailer and is not large enough for a trailer.

The Public Hearing was closed.

Mr. Cole questioned the difference between the structure of Ms. Rummel's home and the structure of a modular home.

Mr. Dukes responded that if Ms. Rummel's home is built to Pawnee Homes specifications, it will meet or exceed the Sussex County Building Code's requirements. However, Mr. Dukes noted that the issue of this application is a technical issue; that the question is how the home is classified; and that Delaware Department of Motor Vehicles has it classified as a manufactured home because it is titled with them.

**M 519 02
Defer
Action
on C/U
No. 1460**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to defer action on Conditional Use No. 1460 filed on behalf of D. Angley Rummel.

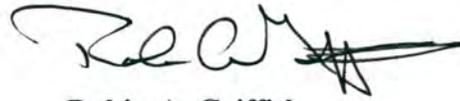
Motion Adopted: 5 Yea.

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

**M 520 02
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn at 4:17 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rea" followed by a stylized flourish.

Robin A. Griffith
Clerk of the Council