



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 17, 2010

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 17, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

M 442 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the
Amend Agenda by deleting "Security Fence Breach at Dewey Beach Water Plant",
and "Proposed Policy to Dispose of Surplus Real Estate", and "Land
Approve Acquisition" under "Executive Session"; and to approve the Agenda, as
Agenda amended.

Motion Adopted: 5 Yeas.

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

Minutes The minutes of August 10, 2010 were approved by consent.

There was no correspondence read into the record.

Nemours John Hollis, Director of Community Relations for Nemours Health and
Health Prevention Services, thanked the Council and County administration and

Coalition Report

staff for its support of Nemours' effort to help children to live healthier lives. Mr. Hollis reported that, over four years ago, Nemours launched an effort in Sussex County and since that time, a S.C. Child Health Coalition has developed. The Nemours program targets children where they spend time, including schools, child care centers and churches, in an effort to change their behavior relating to eating and physical activity. Today, that Coalition has over 150 active member organizations and over 225 individual members. During that time, the percent of Sussex County children at an unhealthy weight has gone down 2.3 percent. Mr. Hollis noted that Sussex County is the only area in this State and this Region where the percentage has decreased; during that time, children at an unhealthy weight nationally has gone up almost 9 percent. Mr. Hollis announced that the model of what is taking place in Sussex County will be declared a national model.

Delaware Transit Corporation Transportation Program Proposed Budget

Mr. Baker reported that, each year, the Council is responsible for establishing a budget for the allocation of State grant funds to various senior agencies within Sussex County that provide transportation services. For the last few years, the State of Delaware has maintained funding for these programs at a level of \$796,862. In the past, the County has recommended maintaining funding for each agency at the prior year level, consistent with the State total allocation with no changes.

For Fiscal 2011, the total State funding remains the same at \$796,862. However, the Easter Seal Rehabilitation Center has dropped its request for funds to zero. During Fiscal 2010, the Easter Seal Rehabilitation Center received \$47,279. Mr. Baker recommended that the \$47,279 be reallocated to the other organizations and he presented the proposed total allocations, 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 |

Mr. Baker reported that the recommendation is based on the service miles of each Center.

M 443 10 Approve Transportation Program Budget

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to approve the allocation of State grant funds to various senior agencies within Sussex County that provide transportation services, as presented.

Motion Adopted: 5 Yeas.

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

Mr. Phillips, Yea

**Delaware
Clean
Water
Advisory
Council

Delaware
Clean
Water
Advisory
Council
Funding
Proposal
(continued)**

Mr. Baker reported that, at its June 16th meeting, the Delaware Clean Water Advisory Council (who makes recommendations on funding for wastewater projects) heard a recommendation from the staff at DNREC, which the County had some objections to. The Advisory Council heard a draft proposal from their Finance Committee regarding subsidy repayments by borrowers of the Clean Water Revolving Fund Municipal Loan. Based on their draft proposal, the subsidy repayments would be required and based on additional connection fee revenue that is received from sewer districts as they experience growth. The proposed policy stated that if new connection fee revenue was not spent in two years, repayment to the Advisory Council would be required.

Mr. Baker stated that the County uses connection fee revenue to help pay for infrastructure upgrades that are due to growth in a district. He stated that it almost always takes more than two years to accumulate enough connection fee revenue to fund a project; in the case of new districts, upgrades or expansions may not be needed within the two year period and that it may be five or ten years.

As a result of the objections, DNREC revised their recommendation to the Advisory Council. The draft of the revised proposal states that, when the County borrows through the SRF Program and receives a grant or a lower interest rate loan, the County must report to them annually on the number of new sewer connections, connection fees collected, and any investment income on the collection fee income. In addition, an annual budget must be provided outlining how the collected collection fee revenues will be used. If the required information is not provided, a follow-up request will be made, after which, a borrower should be required to immediately repay the CWSRF subsidies originally provided. Annual CWSRF subsidy repayment will be limited to new connection fee revenue collected and to the total amount of grant and interest rate subsidies originally provided. Mr. Baker stated that the current proposal is more acceptable to the County.

Mr. Baker stated that there is also concern that there should be sufficient follow-up from DNREC if a report is not filed and possibly an appeal process before a penalty would be imposed.

The Clean Water Advisory Council will meet again on Wednesday, August 18th.

**Adminis-
trator's
Report**

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

1. Delaware Economic Development Strategy Survey

The Delaware Economic Development Office is conducting a community and business survey as part of its Economic Development Strategic Plan. They are requesting input from businesses and

residents regarding the business climate and “what needs to be done to strengthen and position it for future growth.” This survey is being distributed to County employees and we encourage residents of Sussex County, including businesses and individual residents, to participate. Our goal would be to encourage greater emphasis on new initiatives in Sussex County. The Web site to access this survey is www.delawarestrategicplan.com.

Adminis-
trator’s
Report
(continued)

2. Emergency Operations Center – Fire and Ambulance Call Board Statistics

Attached is a copy of a report showing the number of 9-1-1 calls received for January 1 through July 31, 2010, totaling 62,220 calls. It is interesting to note that 71 percent of these calls were from wireless phones.

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

River
Road
Sewer
Extension/
Bid
Award

Michael Izzo, County Engineer, stated that when sewer was being installed in the original Oak Orchard Contract Area, in the River Road area, in the vicinity of the Indian River Yacht Club, human remains were found in the DelDOT right-of-way. At that time, it was determined to stop the extension of the sewer installation at that location and approximately 25 homes were not served on River Road. Since that time, it has been determined that grant monies are remaining in the amount of \$929,000. Mr. Izzo stated that the County has worked with the State Historic Preservation Office, DelDOT and John Milner Architects and that ground penetrating radar has been used to determine the extent of the remains. He noted that, additionally, there is a historic homestead nearby. Mr. Izzo stated that (1) they have developed a pathway along where sewer could be installed without disturbing remains and (2) a special process will be followed. It was noted that the project area is approximately 2,000 feet long. Mr. Izzo reported that the Contract was bid under these circumstances and that three bids were received with Daisy Construction Company being the low bidder in the amount of \$313,951.25. The Engineer’s estimate for the project was \$314,169.00.

M 444 10
Award
Bid/
River
Road
Sewer
Extension

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Engineering Consultants, CABE Associates, Inc., and the Engineering Department, that Sussex County Project No. 09-15, Oak Orchard Sanitary Sewer District, River Road Extension, be awarded to Daisy Construction Company of Newport, Delaware, at the alternate bid amount of \$313,951.25, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and/or Rural Utility Service.

Motion Adopted: 5 Yeas.

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

**OOSD/
River Road/
Contract
Amendment
(continued)** Mr. Izzo presented a Contract Amendment for the River Road Extension Project. Contract Amendment No. 2 with George Miles & Buhr is for the inspection of the Project and he stated that GMB would be subcontracting to CABA Associates. Mr. Izzo stated that CABA would be performing the inspection and that the amount of the sub-contract is \$45,319.00. Mr. Izzo noted that the inspection costs are higher than normal due to the fact that the project involves archaeological work.

**M 445 10
Approve
Contract
Amend-
ment/
OOSD/
River Road/
Contract
Amend-
ment** A Motion was made by Mr. Vincent, seconded by Mr. Cole, based upon the recommendation of the County Engineering Department, that the Sussex County Council authorizes its President to execute Contract Amendment No. 2 with George, Miles & Buhr, LLC of Salisbury, Maryland, including sub-consultant services by CABA Associates, Inc. to provide Contract Administration and Resident Project Representation Services for Oak Orchard Sanitary Sewer District – River Road Extension at a cost not to exceed \$45,319.00.

Motion Adopted: 5 Yeas.

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

**Deep
Valley
Farm
Annexation/
WRE
DBSSD/
Request
to Prepare
and Post** Rob Davis, Utility Planning Division, presented a request to prepare and post notices for a Public Hearing on the annexation of Deep Valley Farm to the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. Mr. Davis reported that the proposed annexation area is south of the Lewes Georgetown Highway, on both sides of Beaver Dam Road, west of Plantation Road, and includes two parcels of land; the area includes the proposed development known as Deep Valley Farm. Mr. Davis reported that the Engineering Department proposes that a Public Hearing will be held on September 21, 2010.

**M 446 10
Authorize
Engineering
Department
to Prepare
and Post/
Deep
Valley
Farm
Annexation** A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, that the Sussex County Engineering Department is authorized to prepare and post notices for the extension of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District to include the Deep Valley Farm Annexation Area, as presented on August 17, 2010.

Motion Adopted: 5 Yeas.

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

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| Requests | Mrs. Webb presented grant requests for the Council's consideration. |
| M 447 10 Community Grant | A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$250.00 from Mr. Cole's Community Grant Account to Cats Around Town Society for their spay/neuter program. Motion Adopted: 5 Yeas. |
| M 447 10 (continued) | Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea |
| M 448 10 Community Grant | A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to give \$500.00 from Mr. Vincent's Community Grant Account to the City of Seaford for their Community Night Out Against Crime and Drugs. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea |
| Delaware District 3 Softball World Series | Councilman Cole commented on the Delaware District 3 Softball World Series and its economic impact to the area. Mr. Cole suggested that, in the future, Julie Wheatley (Economic Development) and Chip Guy (Public Information) contact the cable companies regarding televising the event for the purpose of promoting the games and Sussex County. It was noted that one of the games is televised on ESPN. |
| M 449 10 Go Into Executive Session | At 10:51 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to pending/potential litigation and personnel. Motion Adopted by Voice Vote. |
| Executive Session | At 10:52 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to pending/potential litigation and personnel. The Executive Session concluded at 11:10 a.m. |
| M 450 10 Reconvene | At 11:12 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted by Voice Vote. |
| Action | Mr. Moore announced that no action was necessary on Executive Session items. |
| M 451 10 Recess | At 11:14 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent, to recess the Regular Session. |

Luncheon **At 12:00 Noon, the Council joined the Sussex County Association of Realtors at their facility on Park Avenue in Georgetown for “Sussex County Appreciation Day”.**

Workshop with Board of Adjustment **At 2:00 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to come out of Recess and to convene the Workshop with the Board of Adjustment. Motion Adopted by Voice Vote.**

A Workshop of the Sussex County Council and the Board of Adjustment was held at the Sussex County West Complex on Route 113 in Georgetown. The following were present:

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|------------------------------|--|
| Vance Phillips | President |
| Michael H. Vincent | Vice President |
| George B. Cole | Councilman |
| Joan R. Deaver | Councilwoman |
| Samuel R. Wilson, Jr. | Councilman |
| Ronald G. McCabe | Board of Adjustment |
| Brent Workman | Board of Adjustment |
| Dale Callaway | Board of Adjustment |
| Jeffrey Hudson | Board of Adjustment |
| John Mills | Board of Adjustment |
| David B. Baker | County Administrator |
| Lawrence Lank | Director of Planning and Zoning |
| Shane Abbott | Assistant Director of Planning and Zoning |
| J. Everett Moore | County Attorney |
| Richard Berl | Assistant County Attorney |

The Workshop was open to the public and the press.

Mr. Moore advised that the Board of Adjustment is an independent quasi-judicial body that conduct hearings, takes sworn testimony, and make final determinations on cases before them. The County Council does not hold hearings on the same matters nor do they hear appeals from the Board of Adjustment. The Board of Adjustment hears appeals and requests for variances and special use exceptions.

Mr. Berl advised that the Board of Adjustment in all three counties in Delaware are created by State Law and therefore, any proposed changes may have to be enacted by the State Legislature.

Mr. Berl discussed some of the difficulties the Board faces and he stated that everything that comes before the Board is not “black or white”.

It was noted that many of the applications do not meet the state-mandated criteria.

Mr. Berl reported that there are three basic cases that come before the Board: appeals, variances and special use exceptions. He noted that most cases are variances and special use exceptions and he reviewed both items.

Workshop
with
Board of
Adjustment
(continued)

Appeals

An appeal to the Board may be taken by a person affected by any decision of the Director of Planning and Zoning.

Variances

Area variances include setbacks, height restrictions, distance between structures, etc.

A variance requires the Applicant to prove that an exceptional practical difficulty exists because of the existence of the following five standards:

- a unique quality to the property itself, such as an irregular shape
- that there is no possibility of developing the property in conformity with the code
- that the problem was not created by the Applicant
- that a variance will not alter the essential character of the neighborhood
- that the variance requested is the minimum necessary to afford relief.

Special Use Exceptions

Special Use Exceptions are uses which can be approved for specific zoning areas, which the Code has already pre-approved, i.e. day care center in a residential neighborhood, the use of a manufactured home as a second dwelling on a property for care of a family member, manufactured home on school property for additional classroom space, replacement of an existing billboard, etc.

Mr. Berl stated that a major problem confronting the Board is that, despite the County's efforts, many applicants come unprepared when they appear before the Board of Adjustment.

Mr. Cole suggested that these applications should be deferred and he suggested that the Board and Mr. Berl should ask questions of the Applicant to assist them in making their case.

It was also suggested that a list of questions could be created and handed out to applicants during the application process to help them prepare for

their presentation to the Board.

Mr. Workman noted that the Law states that applicants must meet all five standards; however, a lot of applicants cannot meet this requirement. Mr. Workman questioned how the Board should handle these applications.

Workshop
with
Board of
Adjustment
(continued)

Mr. Mills stated that technically, the Board cannot approve an application if they do not meet all the standards and that in the past, the Board has been understanding and forgiving. He questioned if the new Council wants the Board to move in a different direction than it has in the past.

Mr. Berl reviewed more specific examples of applications that come before the Board and questioned how the Council wants the Board to handle the cases:

Long Standing Encroachments – There are numerous situations in which problems have existed for many years, sometimes pre-dating zoning. These situations have only recently been discovered, either because a new survey is done in connection with a transfer, an inspector notices the violation, or a neighbor complains, etc. The result is an application to essentially “validate” the status quo. In many instances, the difficulty was not created by the applicant, which is one of the standards.

Mr. Cole responded that common sense and logic should be used when considering applications and applications that show a blatant disregard for the law should be denied.

Mr. Cole stated that it is important for members of the Board to articulate the reasons for their vote.

Mr. Berl stated that he thinks that most applications for long standing encroachments will be approved by the Board.

Minor Encroachments

In New Castle and Kent counties, the Zoning Director has the ability to grant variances of a minimal nature (usually less than 10%) without a hearing.

It was suggested that Sussex County seek this legislative enactment in Dover.

Minor Subdivision

The Board often gets applications from individuals wishing to essentially subdivide parcels of land into multiple lots, which either lack sufficient square footage to stand as a separate parcel, or lack sufficient road frontage (150 foot minimum). In many instances, the explanation is that an individual wants to carve out parcels for children or other relatives, but the

problem is that there is no way to police the situation. Once subdivided, they can be sold and in some instances the applicants admit they are subdividing for financial reasons.

Mr. Berl stated that he would like the Council's consensus on how to handle these applications.

Workshop
with
Board of
Adjustment
(continued)

A suggestion was made to allow the Zoning Director to issue administrative variances.

Mr. Moore questioned if Council wishes to consider allowing minor subdivisions with certain rules to be handled at the administrative level.

Mr. Cole suggested that Legal Counsel work with the staff to review the entire ordinance for any issues that can be handled at the administrative level.

Mr. Lank stated that a Proposed Ordinance is still pending (2009) which allows staff approval of major subdivisions containing 3 or fewer lots to be located along a new street. He noted that this would be another option for applicants if they do not qualify for a variance.

It was suggested that the Council should revisit the Proposed Ordinance.

Billboards

Some years ago, the County Council had the final say as to the placement of billboards and conditions of placement. This was subsequently handed over to the Board, with the requirement that it grant a special use exception for new billboards, which are now restricted to commercial property. The standard for a special use exception is that the application does not adversely affect neighboring properties. Many of the billboard applications fall easily within that criterion. Recently, the Board has started to see applications for billboards which are clearly attempts to maximize income by increasing the size (using stacked or double-sided billboards), setting them higher than the statutory limit (25 feet), within setbacks in order to get closer to the road, within 300 feet of a dwelling, school, church, etc., all of which require variances.

Mr. Berl stated that the Council has the capability to further restrict billboards.

Mr. Cole stated that permitted billboards on Route 1 are different than permitting them on Route 9, Route 24, and Route 26. Mr. Cole also stated that he would like to see the County prohibit oversized billboards.

A suggestion was made that the County could restrict applications for billboards based on road number or type of road, i.e. highway, rural.

Workshop
with
Board of
Adjustment
(continued)

Contractor Error

This issue was more prevalent during the construction boom several years ago when many considered themselves contractors, and construction took place without building permits. There are also a number of companies selling pre-constructed sheds which tell owners they do not need a building permit and they can place the shed anywhere they wish. Contractors have “taken off” and homeowners come to the County asking for variances to correct mistakes. The problem is that they rarely meet the standards for a variance. One of the criteria is that the problem not be self-imposed, and because Delaware law says that a contractor is the owner’s agent, the owner, from a strictly legal standpoint, is responsible for the contractor error.

The Board has generally been sympathetic with homeowners in these situations and has granted variances. Mr. Berl stated that, so far, Legal Counsel has not had to address this issue on appeal. If the criteria is strictly enforced, homeowners will have to alter or remove improvements to their property.

Additionally, there are situations in which a homeowner or builder has been given incorrect information by County staff and Certificates of Occupancy have been issued. The Board typically grants applications in such situations.

Mr. Hudson suggested that the County should inspect foundations, once completed, and thereafter, make inspections of all phases of construction.

Mr. Berl stated that he believes the Council would not disagree that variances should be granted when the County itself is involved in the error.

Hardship Application

One of the more common applications is for a special use exception to place a manufactured home on a parcel for hardship purposes. This is typically a second dwelling on a single parcel, and is used primarily in situations in which an elderly parent or other disabled relative needs close supervision or assistance, but in which a residential care facility is not an option. The Board recognizes the expense of assisted living, and tends to grant most of these applications, so long as they are supported by medical evidence. Strictly applying the criteria might very well result in denials, thereby leaving individuals with no alternative but to put “mom” or “dad” in a nursing home.

The initial approval is granted for a maximum of two years, after which time the hardship must be proven again.

Day Care

This is another example of a special use exception. Anyone wishing to operate a day care facility in a home must have Board approval. The Board ordinarily approves these applications, and because they are highly regulated by the State, can usually depend on those regulations to insure that they will function properly.

Workshop
with
Board of
Adjustment
(continued)

The Planning and Zoning Director can approve day care centers for 6 full time children and 2 part-time children.

Mr. Cole stated that his concern with day care facilities in a residential area is location, i.e. standard driveways and parking. He stated that the lack of parking creates a safety concern. Mr. Cole stated that the Board should consider these issues.

Mr. Lank stated that the Ordinance allows the Board to require site plan approval by the Planning and Zoning Commission.

Mr. Berl stated that the Code permits the Planning and Zoning Director to approve certain day care facilities and he suggested that the Council could expand on that.

Cell Phone Towers

Companies like AT&T, Sprint, etc. are obligated by federal law to provide coverage for use of cell phones for their customers, and since the coverage area only goes so far, must either locate an antenna on an existing pole or tower, or construct a new one, in order to bridge gaps in coverage. The County ordinance mandates that the company meet numerous technical requirements; however, the ordinance is in need of modification and updating.

It was noted that the cellular companies should make every effort to share an existing cell tower.

Swann Keys/Cape Windsor

The Board gets a significant number of applications each meeting from these two developments. Both were originally plotted as mobile home parks when single-wides were the only available choice. Subsequently, they were reclassified as subdivisions, but the lot sizes remained the same. Many homeowners are now replacing old single-wides with wider homes and in many instances with stick-built homes, but 40 and 50 foot wide lots are typically insufficient to accommodate the new dwellings, which often come with steps and landings, porches and decks, platforms for HVAC equipment, etc. Because the small lots prevent meaningful improvements, the Board typically grants variances to allow for the new dwellings.

Mr. Cole stated that his concern is rental parks which have one property owner and he questioned if the County can make a property owner combine lots to make larger lots and recreate a lot scheme.

Mr. Berl stated that this may be a condemnation of property.

**Workshop
with
Board of
Adjustment
(continued)**

Additional Business

Mr. McCabe suggested that retired County employee Bud Rickard be rehired to review ordinances, regulations and procedures relating to the Board of Adjustment.

Mr. Cole asked that if the Board is in agreement, they should submit a formal request to the Council to hire Mr. Rickard.

Conclusion

In conclusion, Mr. Moore stated that he would work with Mr. Berl and Mr. Lank to review items discussed during the workshop. He stated that they would look for potential ways to do more administratively and that they would report back to the Board and the Council.

**M 452 10
Adjourn**

At 3:45 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn the Sussex County Council meeting and the Workshop. Motion Adopted by Voice Vote.

Respectfully submitted,

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