



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 14, 2010**

**Call to Order**      A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 14, 2010 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

The invocation was led by President Phillips.

**9/11 Ceremony**      A brief ceremony was held by the Honor Guard of the Sussex County EMS Department commemorating the ninth anniversary of the September 11, 2001 terrorists attack on our nation. Following remarks by Robert Stuart, Director of the Sussex County EMS Department, the bells were sounded to honor those who lost their lives on September 11<sup>th</sup>.

The Pledge of Allegiance was led by President Phillips.

**M 466 10 Amend and Approve Agenda**      A motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda as follows:

- delete “King Farm Utility Agreement”
- delete “Emergency Operations Center – Renewable Energy Project Design; Energy EECBG Program – Grant Project 3654”
- delete “Land Acquisition” from Executive Session

and to approve the Agenda, as amended.

Motion adopted by consent.

<b>Minutes</b>	<b>The minutes of August 24, 2010 were approved by voice vote.</b>
<b>Corres- pondence</b>	<b>Mr. Moore read the following correspondence:</b>  <b>ERMA &amp; LEVIN CLARK SR.</b> <b>RE: Letter commending the Sussex County Community Development and Housing for the work done on their home.</b>
<b>Corres- pondence (continued)</b>	<b>SUSSEX TECHNICAL H.S. RAVENS MUSIC BOOSTERS, INC.</b> <b>RE: Letter thanking the Council for its sponsorship of the band's East Coast Road Trip.</b>  <b>DELMARVA POWER</b> <b>RE: Letter to Lawrence Lank, Director of Planning and Zoning, addressing the "sound issue" at Delmarva Power's Cool Spring Substation.</b>  <b>LYLE HUMPTON</b> <b>RE: Letter to Mr. Phillips thanking the Council for not raising property taxes.</b>  <b>OPEN ARMS FOOD MINISTRY</b> <b>RE: Letter to Mrs. Deaver thanking her for her donation to their soup kitchen and food pantry.</b>  <b>DELAWARE LIONS FOUNDATION</b> <b>RE: Letter to Mrs. Deaver thanking her for her donation to their foundation.</b>  <b>REHOBOTH ART LEAGUE</b> <b>RE: Letter to Mr. Cole thanking him for his donation used for repairs for handicap accessibility at its campus.</b>
<b>M 467 10 Adopt Proclama- tion</b>	<b>A motion was made by Mr. Cole, seconded by Mr. Vincent, to adopt the proclamation entitled "PROCLAIMING MONDAY, SEPTEMBER 27, 2010 AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN".</b>  <b>Motion Adopted: 5 Yeas.</b>  <b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</b>
<b>2010 Delaware District III Softball World Series</b>	<b>Martin Donovan, Chairman of the Senior League Softball World Series, was present today to thank the Council for its continued support of this annual event. This is the 37<sup>th</sup> Sr. League Softball World Series, with the last seven being held at the Lower Sussex Little League Park in Roxana. Mr. Donovan reported \$109,000.00 gross income with major expenses being hotel, food and busing for a total of approximately \$90,000. He stated that with the</b>

additional smaller expenses they were expected to break even. He extended a special thanks to the Sussex County Paramedics, who observed a visitor at one of the ballgames having a heart attack and quickly transported her to the hospital where she underwent surgery and two days later was back at the ballpark watching her son play ball. Mr. Donovan presented the Council with a plaque and a framed host team jersey.

**Capital  
Transportation  
Program  
Update**

Mr. Baker presented a revised edition of the 2011 – 2017 Capital Transportation Program Request along with answers from Michael Simmons of DelDOT to questions raised by the Council at the draft presentation of the County's CTP request. Mr. Baker reported the following addition to the CTP Request since the draft presentation to the Council on August 24, 2010:

- **Local Roads – Pages 13-14**  
Under Lewes – Addition of Plantation Road (Road 275)/Postal Lane Intersection – signalization improvements

Mr. Baker reviewed the answers that had been received from Mr. Simmons.

**Q.** *What is the timetable for the US9/SR1 re-alignment?*

**A.** US 9 relocation is in the very early stages of design. Right-of-way Acquisition phase is scheduled to begin in FY 2012 and last beyond FY 2016. There are no funds in the current five-year plan for construction of this project.

**Q.** *What is DelDOT's criteria for adding shoulders to roads?*

**A.** Elements considered are traffic count, number of accidents, severity of accidents, type of accidents and many other factors. Even if the need for shoulder is determined, project would have to compete for transportation funds with other transportation needs.

**Q.** *What are DelDOT's rules regarding maintenance responsibilities for subdivisions streets, both new and existing?*

**A.** New subdivisions – DelDOT's responsibility if roads are built to state Standards. Existing subdivision brought to state standards – DelDOT would take over responsibility.

**Adminis-  
trator's  
Report**

Mr. Baker noted that the CTP Request is based on a Needs Assessment and input from the County Council, as well as school districts, paramedics, towns, and the public. Mr. Baker thanked Chip Guy, Public Information Officer; Debbie Morris of the Information Technology Department and Buddy Lynch of the Mapping and Addressing Department for putting together the CTP Request. Mr. Baker announced that the DelDOT will hold a Public Hearing on Thursday, September 16, 2010 from 4:00 p.m. – 7:00 p.m. at the DelDOT's South Administration Building, Georgetown.

**Adminis-  
trator's  
Report  
(con't)**

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

**1. Dial-A-Story – National Association of Counties News**

Attached is a copy of an article that appeared in the September 6 National Association of Counties newsletter. It is also available on the National Association of Counties website at [www.naco.org](http://www.naco.org). A picture of Carolyn Hitchens from the Sussex County Library Department is included in the story, as well as Ms. Carol Fitzgerald's description of the purpose of this service to encourage "reading and literacy for young children." Per Ms. Fitzgerald, "Because as they hear stories read, it does expand their vocabulary. And it does prepare them to learn to read." The Dial-A-Story Program is available for anyone to use, and the numbers are 856-3535, 856-3536, and 856-3537.

**2. Delaware State Police Report – July 2010**

Attached is a copy of the most recent report received from the Delaware State Police reflecting 4,698 complaints handled during July. There were 1,563 total criminal arrests for the month in Sussex County.

**3. Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County**

Attached is the agenda for the September 20, 2010, meeting at 10:00 a.m. of the Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County. A representative from the Delaware Department of Insurance will explain Medigap changes and healthcare reform. The meeting will be held at the Roxana CHEER Senior Center in Frankford.

**4. Barbara Marzooa – County Pensioner**

It is with deep regret that we wish to announce that Mrs. Barbara Marzooa passed away on September 12, 2010. Mrs. Marzooa worked for the Sussex County Council from September 1977 to February 1990 as a Bookkeeper for the CETA Program and in the Accounting Division. We wish to express our condolences to her family and friends.

**5. County Employee – Michelle Johnson**

**New  
Checking  
Account for  
eBay Use**

We also regret to inform you that Michelle Johnson passed away on September 1, 2010. Mrs. Johnson worked for the Sussex County Department of Libraries since 1995, most recently in Library Administration. We wish to express our condolences to the family, friends, and fellow employees of Mrs. Johnson.

**Checking  
Account for  
eBay Use  
(con't)**

**M 468 10  
Adopt  
R 022 10**

Susan M. Webb, Finance Director, stated that on August 3, 2010 the Council approved the plan to use the internet auction site, eBay, to begin selling County surplus equipment. As this will involve wiring funds in and out through PayPal on the Internet, Mrs. Webb recommended opening a separate bank account. She stated that keeping these funds separate would allow us to better identify these transactions, reconcile the eBay sales, and will provide an accounting trail. She recommended opening the account with Delaware National Bank, as they already have our non-interest bearing accounts and there would be no service charges and no minimum balance. She noted that this account would not hold any accumulation of funds.

A motion was made by Mrs. Deaver, seconded by Mr. Vincent, to adopt Resolution No. R 022 10 entitled “RESOLUTION TO AUTHORIZE THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE DELAWARE NATIONAL BANK BEARING THE SIGNATURES OF ANY TWO OF VANCE PHILLIPS, PRESIDENT; MICHAEL H. VINCENT, VICE PRESIDENT; OR SUSAN M. WEBB, FINANCE DIRECTOR, AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL FOR THE ACCOUNT SUSSEX COUNTY COUNCIL SURPLUS EQUIPMENT FUND”.

**Paramedic  
Vehicles/  
Bid Results  
& Award  
Recommendation**

**Motion Adopted: 5 Yeas.**

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

Hal Godwin, Deputy County Administrator, reviewed bids submitted and made award recommendation for the purchase of two 2011 Chevrolet Suburbans and Emergency Conversion Packages, which would replace two paramedic emergency response vehicles.

Robert Schoonover, Assistant Director of EMS, explained that the new vehicles would be replacing two 2007 Suburbans with high mileage used by EMS supervisors.

Mr. Godwin explained that he will determine whether the vehicles currently being replaced should be recommended for sale or whether they can continue to be used within the County fleet.

The following bid results were received:

	<u>Suburban Bid</u>		<u>Location</u>	<u>Base</u>	<u>Total</u>
(con't)	Hertrich		Milford, DE	\$40,827.00	\$81,654.00
	IG Burton		Milford, DE	\$41,122.25	\$82,288.90
	Townsend Bros.		Dover, DE	\$41,617.00	\$83,234.00
M 469 10 Bid Award	<u>Emergency</u>				
	<u>Conversion Bid</u>			<u>Base</u>	<u>Total</u>
	Priority Install		Gaithersburg, MD	\$18,289.00	\$36,578.00
	Winstead Fire		Easton, MD	\$23,715.00	\$47,430.00
	Ibis Tek		Butler, PA	\$23,875.00	\$47,750.00
	DPC Equipment		Marydel, DE	\$34,100.00	\$68,200.00

A motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council agrees to purchase two 2011 4-wheel drive Chevrolet Suburbans from the lowest responsible bidder, Hertrich Fleet Services, Inc. of Milford, Delaware at the bid price of \$40,827.00 each, totaling \$81,654.00, plus agreed to contract with Priority Install LLC, of Gaithersburg, Maryland for two emergency conversion packages to be installed on both newly-acquired Chevrolet Suburbans at the bid price of \$18,289.00 each, totaling \$36,578.00, bringing the complete package to a grand total of \$118,232.00 for two fully-equipped new 2011 Chevrolet Suburbans to serve as paramedic supervisor response vehicles.

Local Law  
Enforce-  
ment  
Grant  
Request

Motion Adopted: 5 Yeas.

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

M 470 10  
Approve  
Local Law  
Enforce-  
ment

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

Fenwick Island	\$20,000.00	Department Operational Costs & Equipment – fuel, vehicle equipment, uniforms & other police supplies
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A motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council authorizes the disbursement of \$20,000.00, as allotted in the annual budge, to the Fenwick Island Police Department for their use in public safety.

Wastewater  
Agreement

Motion Adopted: 5 Yeas.

**M 471 10  
Approve  
Wastewater  
Agreement/  
Sussex  
West**

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

**Mr. Godwin presented a Wastewater Agreement for the Council's consideration.**

**M 471 10  
Wastewater  
Agreement  
(con't)**

**A motion was made by Mr. Vincent, seconded by Mrs. Deaver, that based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 952, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and "Colonial East, LTD" for wastewater facilities to be constructed in "Sussex West" located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**

**Oak  
Orchard  
SSD/  
Ferry Cove/  
Prepare  
and Post  
Notices**

**Motion Adopted:     5 Yeas.**

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

**John Ashman, Director of Utility Planning, presented a request to prepare and post notices for an expansion of the Oak Orchard Sanitary Sewer District to include the Ferry Cove Project. Mr. Ashman stated that on April 17, 2010 the Engineering Department received a request for annexation from Ferry Cove, containing 391 single-family lots. The project obtained site plan approval on February 20, 2007 but did not receive concept plan approval. Mr. Ashman stated that the expansion request is primarily for the Ferry Cove Project, but noted that there are a few other projects in the area in the process of concept plans and/or seeking direction on how to obtain County sewer.**

**Mr. Ashman presented the following two options for a district expansion to serve the Ferry Cove Project:**

**Option #1 - Annexation which includes a large portion of the remaining planning area for Oak Orchard.**

**Mr. Ashman noted that although this request appears to promote development in the area, it is the County's effort to serve multiple projects that are planned for future service. He reported that the inclusion of the larger mass of land will enable the County to gain two major pump stations and a large amount of conveyance system for the large planning area; that developers for Ferry Cove, as well as Indian River Estates, will be responsible for two of the regional pump stations and a large portion of the force mains back to the Inland Bays Treatment Plant; that the Nentego Project, which is already in the Oak Orchard SSD, is responsible for a third regional pump station, which will convey waste from another portion of this planning area and that two regional pump stations would have to be**

constructed in the future either by Sussex County or a future project., as required.

**Option #2** - Annexation of area that would only encompass a contiguous panhandle path to serve Ferry Cove.

Oak  
Orchard  
SSD/  
Expansion  
No. 2/  
Prepare  
and Post  
Notices  
(con't)

Mr. Ashman requested annexation of the entire area, excluding parcels of the nature conservancy. He stated that a letter had been received from the nature conservancy stating that these parcels would never be developed or sold, and noted that the area has been designated as an area that Sussex County plans to serve. Mr. Ashman noted that the inclusion at this time appears to have no negative effect on the County's planning. Mr. Ashman stated that on March 30, 2010 Sussex County approved a concept plan for Ferry Cove. He reported that Ferry Cove is part of DelDOT's preferred alternative for the north-south connector for Route 113 and noted that the concept plan shows the right-of-way, which takes up a large portion of the eastern part of the project. A letter has been received from DelDOT stating its strong opposition to this project. Mr. Ashman stated that in discussions with DelDOT, they indicated that the developer had not responded to DelDOT's request to purchase the property. The developer did confirm that DelDOT has expressed interest in the project and that DelDOT has required the project to be phased to stay out of the eastern portion for an extended period of time.

Mr. Cole voiced concern with approving the Ferry Cove Project with the awareness of the possibility that a major north-south realignment by DelDOT may occur.

Mr. Ashman stated that David Rutt, Assistant County Attorney, had reviewed the project and had given the Engineering Department direction to bring the request to prepare and post notices before the Council.

Mr. Ashman stated that the developer wishes to move forward with developing the western portion of the project, or developing the entire project if DelDOT does not come through with its proposed plan.

M 472 10  
Defer  
Decision to  
Prepare  
and Post  
Notices

Mr. Cole asked that the Engineering Department find out the current permit status of the subdivision from Planning and Zoning before the Council makes a final decision on the annexing of Ferry Cove. Mr. Cole reiterated his concern with approving the annexation, considering the major impact it would have on the proposed project by DelDOT for a north-south connector from Route 113. Mr. Cole suggested placing this item back on the agenda at a later date with Planning and Zoning present.

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer decision by the Council to proceed with preparing and posting notices for Ferry Cove.

Review of  
Public

Motion Adopted: 5 Yeas.



**Meeting/  
Millville  
SSD/  
Contract F  
NW**

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

**Expansion**

**Mr. Ashman reported on a public meeting for the northwest expansion of the Millville Sanitary Sewer District, which was held on August 25, 2010 at the Millville Fire Hall. The purpose of the meeting was to inform residents of upcoming construction of sewer infrastructure and explain the costs and the county rate structure. Mr. Ashman stated that the project would include several communities and individual parcels along White Neck's Road, Ocean Farms and Denton Mills subdivisions. Mr. Ashman stated that presentations were made by Mike Izzo; Will Hintz, of Whitman, Requardt and Associates; Gary Tonge, Director of Utility Permits; and Dan Parsons, Historic Preservation Planner.**

**Review of  
Public  
Meeting/  
Millville  
SSD/  
Contract F  
NW**

**Expansion  
(con't)**

**Mr. Cole referenced a letter from a property owner in Robinson subdivision, who questioned the difference in connection charges between the older homes and new homes. Mr. Cole asked Mr. Ashman to explain.**

**Mr. Ashman explained that there are now two system connection charges for the Millville Sanitary Sewer District; 1) \$5,768.00 for homes built after June 30, 2003 2) \$2,300.00 for homes built prior to June 20, 2003 -.**

**M 473 10  
Millville  
SSD/  
Northwest  
Expansion/  
Contract F**

**Michael Izzo, County Engineer, stated that the Millville Sanitary Sewer District was formed in 2003. He noted that when the rates for the district were originally presented, some residents asked if they could be reduced. The County decided at that time to subsidize the residents who were living there in 2003 and give them a reduced connection fee of \$2,300. As new residents moved into the district, Mr. Izzo stated the fee was probably \$4,000.00 - \$4,500.00, but the rate has increased over the last seven years to the current \$5,700.00. He stated that the Engineering Department is currently working to reduce the connection fees for those residents who built homes after June 30, 2003. Mr. Izzo pointed out that there are four additional contracts in Millville that would also be subject to a reduced rate.**

**A motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Engineering Department is authorized to begin design, advertise and bid the project to provide sewer infrastructure for the northwest expansion of the Millville Sanitary Sewer District, area to include primarily the properties and communities adjacent to Whites Neck Road, as well as Ocean Farms and Denton Mills Subdivisions.**

**Harris Alley  
Substantial  
Completion**

**Motion Adopted:     5 Yeas.**

**M 474 10  
Approve  
Substantial  
Completion**

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

**Julie Cooper, Project Engineer, presented a Balancing Change Order for**

**&  
Balancing  
Change  
Order/  
Harris  
Alley**      **Harris Alley parking improvements and requested that final payment be made and the 5% retainage held during the project be returned.**

**M 474 10  
(con't)**      **A motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that Sussex County grant substantial completion, effective August 20, 2010 to Ralph Cahall & Son Paving, Inc. for Sussex County Project No. 04-08, Harris Alley Parking Improvements, and further, that Balancing Change Order #2 be approved in the amount of \$2,343.00, thereby increasing the contract amount from \$87,087.00 to \$89,430.00, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.**

**Grant**

**Motion Adopted:    5 Yeas.**

**M 475 10**

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

**Mrs. Webb presented a grant request for the Council's consideration.**

**A motion was made by Mr. Wilson, seconded by Mr. Vincent, to give \$200.00 from Mr. Wilson's Community Grant Account to the Coverdale Crossroads Community Council for the Summer Enrichment Program/Field Day.**

**Additional  
Business**

**Motion Adopted:    5 Yeas.**

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

**Roberta Hemmerick, a resident of Lewes, Delaware asked about the status of the Board of Adjustment appointment and the meetings recommended at the Board of Adjustment Workshop.**

**Mr. Vincent stated that the Board of Adjustment and Richard Berl, County Attorney, were to meet for the purpose of discussing recommendations for changes regarding manufactured homes and report to the Council. Mr. Baker will contact Mr. Berl regarding the status of that meeting.**

**Ms. Hemmerick was advised that the vote on Mr. Gooch's appointment to the Board of Adjustment would be held following the recommendations from the Board of Adjustment Workshop. Ms. Hemmerick again requested that the Council consider the appointment of Mr. John Walsh to the Board of Adjustment.**

**Ms. Hemmerick asked the status of the ad hoc committee recommendations**

and was advised by Mr. Baker that ordinances had been introduced. Mr. Baker will check with the Planning and Zoning Department on the scheduling dates and advise Ms. Hemmerick.

Additional  
Business  
(con't)

John Walsh, of Rehoboth Beach, Delaware stated that prior to last evening's meeting of the Board of Adjustment, all members were holding a conference in the hallway, which is a violation of the Freedom of Information Act. This was witnessed by a member of the League of Women Voters. Mr. Walsh stated that of the 15 cases on last evening's agenda, one was denied, nine were approved, five were deferred. He also noted that in cases that were approved and there was opposition, a member of the Board questioned the state President of the League of Women Voters concerning a quote she made in the newspaper and asked why her sworn testimony should be believed. Mr. Walsh also stated that he had opposed a request for a setback, citing the position of the fire marshal relative to the distance between homes. It was suggested that the Board obtain information from the fire marshal's office before granting the variance; however, this was not done and the variance was granted. Lastly, Mr. Walsh expressed his concern over the delay in the Board of Adjustment appointment.

Greg Menoche, of Dagsboro, Delaware stated that the town of Dagsboro is losing money due to the lack of building permits being issued by the County. Mr. Menoche stated that he is the owner of a business that sells wind turbines and that this not only affects his business, but also the contractors that he uses and customers that wish to reduce their electric bills by using wind turbines. Mr. Menoche noted that the County will not issue a building permit for a wind turbine if the property is less than five acres and requested that the Council amend the five-acre limitation to meet the state's setback guideline.

Mr. Menoche distributed copies of House Bill No. 70, which went into effect in 2010, and Amendment to House Bill 500, Section 88. He stated that in the 1970's, a zoning ordinance was in effect which stated that anyone with less than five acres of land could apply for a building permit without a variance. He stated that the County still requires five acres of land. He noted that HB 70 requires a minimum setback of 1.0 times the height of the wind system. Mr. Menoche is requesting that the County amend the five-acre limitation to agree with the state requirement.

Introduction  
of Proposed  
Ordinances

Mr. Moore advised that the state law was changed at the last legislative session which stated that the County could not require a public hearing for wind turbines if less than five acres and cannot issue variances or permits for wind turbines if less than five acres. Mr. Moore stated that Richard Berl, County Attorney for the Planning and Zoning Department, has drafted a letter directing Planning and Zoning not to accept any applications for variances, as it would be in violation of state law.

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1

**NEIGHBORHOOD BUSINESS DISTRICT FOR A WINERY/STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.92 ACRES, MORE OR LESS” (Conditional Use No. 1873) filed on behalf of Wine Worx, LLC. The Proposed Ordinance will be advertised for Public Hearing.**

<b>M 476 10 Go Into Executive Session</b>	<b>Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.51 ACRES, MORE OR LESS” (Change of Zone No. 1698) filed on behalf of Frank J. Emmi, Jr. The Proposed Ordinance will be advertised for Public Hearing.</b>
<b>Executive Session</b>	<b>At 11:35 a.m., a motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues related to personnel and pending/potential litigation.</b>
<b>M 477 10 Reconvene Regular Session</b>	<b>Motion adopted by Voice Vote.</b>
<b>Action</b>	<b>At 11:36 an Executive Session was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to personnel and pending/potential litigation. The Executive Session concluded at 12:14 p.m.</b>
<b>M 478 10 Recess</b>	<b>At 12:15 p.m. a motion was made by Mr. Cole, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.</b>
	<b>Motion adopted by Voice Vote.</b>
<b>M 479 10 Reconvene</b>	<b>Mr. Moore announced that no action was required on items discussed in Executive Session.</b>
	<b>At 12:16 a motion was made by Mr. Wilson, seconded by Mr. Vincent, to recess until 1:30 p.m.</b>
<b>Public Hearing/ CU No. 1850</b>	<b>Motion adopted by Voice Vote.</b>
	<b>At 1:35 p.m. a motion was made by Mr. Vincent, seconded by Mrs. Deaver, to reconvene.</b>
	<b>Motion adopted by Voice Vote.</b>
	<b>A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.96 ACRES, MORE OR LESS”</b>

**(Conditional Use No. 1850) filed by Inland Bays, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on August 12, 2010 at which time the Commission deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated August 12, 2010.)**

**Public  
Hearing/  
CU  
No. 1850  
(con't)**

**Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing, which was submitted as part of the Council's record.**

**Mr. Abbott distributed Exhibit Booklets which were provided by the applicant.**

**On September 9, 2010 the Commission discussed the application under Old Business and recommend that the application be approved with conditions.**

**Mr. Abbott reported that following the Public Hearing before the Commission on September 9, 2010 a letter was received from Allen Frost with the following requests:**

- 1. Require a physical barrier be constructed along all its boundaries that afford easy foot access to Bethany Lakes.**
- 2. Require developer to prevent similar runoff from the Inland Bays Project onto the storm water management ponds on the Bethany Lakes subdivision.**
- 3. Require Inland Bays to ensure a visual barrier, in addition to the traffic preventing physical barrier.**
- 4. Request that the pool be located as far from the shared Bethany Lakes property line as possible.**

**The Council found that Dave McCarthy, of Inland Bays, LLC was present on behalf of the applicant with Gordon Meade, of the engineering firm of Davis, Bowen & Friedel and James Fuqua, Attorney. Mr. Fuqua stated that the application is for 48 townhouse units on an 11.96-acre parcel; that it is located on the north side of Fred Hudson Road (County Road 360) approximately one-quarter of a mile east of the intersection of Fred Hudson Road and Cedar Neck Road; that Inland Bays LLC has owned the property since 1998 and that this Conditional Use application is substantially the same Conditional Use application that was presented to the County in 2004. Mr. Fuqua stated that the Council did approve the original application for the 48 units in January 2004. He noted that extensions had been granted to the original Conditional Use, but for business reasons, the project was put on hold and the preliminary approval expired in 2007. Mr. Fuqua stated that the owner would like to revise the project in order to move forward at this**

Public  
Hearing/  
CU  
No. 1850  
(con't)

time. He noted that the substance of the application remains the same as previously approved; that the site is zoned MR medium density residential with no request for change of zone; that the 48 units comply with the existing permitted density; that it is in an Environmentally Sensitive Developing Area and a mixed residential area; that it is in a Level 3 area; that Sussex Shores Water Company will provide water service to the area; that it is in the Cedar Neck Expansion Area of the Bethany Beach Sanitary Sewer District and that DelDOT did not require a Traffic Impact Study. Mr. Fuqua stated that the applicant is requesting a modification to one of the conditions by the Planning and Zoning Commission requiring the installation of a split rail, or similar type, fence along the western and northern boundaries of the property. He stated that it would be sufficient if the fence went only halfway along the northern boundary, as the rest of the northern boundary is wooded and will remain in its natural state. Mr. Fuqua referenced another condition of concern set by the Commission regarding relocating the recreation area into the development. He stated that preservation of wetlands and woodlands makes it difficult to relocate and noted that the plan was the same plan that the County had approved in 2004. Mr. Fuqua offered the following two options: 1) Allow the tennis court to remain on the location as shown on the plan 2) Relocate the clubhouse, bathroom and swimming pool to inside the development and allow just the tennis court to remain on its original location. He stated there would not be enough room within the development to put the tennis court.

Mr. Wilson voiced concern with the retention pond overflow following heavy rains causing a high water table. Mr. Meade stated that there would be an overflow discharge to the storm water management on Fred Hudson Road that would have to be designed to DelDOT's requirements.

M 480 10  
Amend  
Condition/  
C/U No  
1850

Dana Linden, of Virginia Drive, Bethany Lakes, stated that he owns the only lot that directly butts up against the project and expressed concern with flooding from the proposed retention pond.

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

A motion was made by Mr. Cole, seconded by Mr. Vincent, to amend Condition I as follows:

“As required in the original approval the existing Poplar trees along the westerly boundary shall be retained. In addition, a split rail or similar type of fence shall be installed along the western and western one-half of the northern boundaries of the property”.

M 481 10  
Amend  
Condition/  
C/U 1850

Motion Adopted: 5 Yeas.

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

A motion was made by Mr. Cole, seconded by Mr. Vincent, to amend Condition C as follows:

**“Required recreational facilities and amenities, a swimming pool and clubhouse, shall be constructed and open to use by residents within two (2) years of issuance of the first building permit for the project”.**

**M 482 10**      **Motion Adopted:    5 Yeas.**  
**Amend**  
**Condition/**      **Vote by Roll Call:    Mrs. Deaver, Yea; Mr. Wilson, Yea;**  
**C/U 1850**                      **Mr. Cole, Yea; Mr. Vincent, Yea;**  
   **Mr. Phillips, Yea**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition D as follows:

**“The Applicant stated that ‘amenities and recreation features are located for convenient access’ and that ‘central amenities areas are isolated from adjacent developments’. To accomplish these stated goals, the recreation area shown in the northeast corner of the property shall be relocated to a centralized interior location within the development and that northeast corner of the property left undisturbed.”**

**M 483 10**      **Motion Adopted:    5 Yeas.**  
**Adopt**  
**Ordinance**  
**No. 2143/**      **Vote by Roll Call:    Mrs. Deaver, Yea; Mr. Wilson, Yea;**  
**C/U No.**                      **Mr. Cole, Yea; Mr. Vincent, Yea;**  
**1850**                      **Mr. Phillips, Yea**

A motion was made by Mr. Cole, seconded by Mr. Vincent to adopt Ordinance No. 2143 entitled **“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.96 ACRES, MORE OR LESS” (Conditional Use No. 1850) filed by Inland Bays, LLC. with the following conditions, as amended:**

- A. The maximum number of residential units shall not exceed 48 units.**
- B. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant as required by DelDOT.**
- C. The required recreational facilities and amenities, a swimming pool and clubhouse, shall be constructed and open to use by residents within two (2) years of issuance of the first building permit for the project.**
- D. The Applicant stated that “amenities and recreation features are located for convenient access” and that “central amenities areas are isolated**

from adjacent developments”. To accomplish these stated goals, the recreation area shown in the northeast corner of the property shall be relocated to a centralized interior location within the development and that northeast corner of the property left undisturbed.

M 483 10  
(con’t)

- E. The development shall be served as part of the Sussex County Cedar Neck Sewer District in accordance with Sussex County Engineering Department Standards.
- F. The project shall be served by a public central water system providing adequate drinking water and fire protection.
- G. Storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures.
- H. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of the storm water management and erosion and sedimentation control system.
- I. As required in the original approval, the existing Poplar trees along the westerly boundary shall be retained. In addition, a split rail or similar type of fence shall be installed along the western and western one- half of the northern boundaries of the property.
- J. The interior street design shall be in accordance with or exceed Sussex County street design requirements.
- K. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
- L. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.
- M. The Final Site Plan shall contain a landscape plan of the project and shall also show all undisturbed forested areas.
- N. A Hunting Notice similar to the Agricultural Use Protection Notice shall be included on the Final Site Plan, Condominium Declaration Plan, and within the Condominium Governing Documents stating that hunting activities may occur on neighboring lands.
- O. No building shall encroach onto any wetlands.
- P. A vegetated buffer of at least 20 feet shall be established along the eastern boundary of the property.
- Q. As agreed by the Applicant in its PLUS response, the Applicant shall cooperate with DNREC to perform a survey of the property to record any state rare or federally listed plants, animals or natural features.
- R. If this Conditional Use is approved by County Council, the Final Site Plan for this project must be approved within three (3) years, or this Conditional Use shall become null and void.
- S. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission. Subject to the conditions of this recommendation and the conditions that County Council may impose if this application is approved, the Final Site Plan shall be substantially similar to the Preliminary Site Plan.



**M 484 10**

**Adjourn**

**Motion Adopted: 5 Yeas.**

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

**A motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn the meeting At 2:30 p.m. Motion was adopted by Voice Vote.**

**Respectfully submitted,**

**Gaye King  
Administrative Secretary**