



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 16, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 16, 2008 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
Dale R. Dukes	Member
George B. Cole	Member
Vance Phillips	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy County Administrator
James D. Griffin	County Attorney

M 627 08 Approve Agenda

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to amend the Agenda by moving the following items under David Baker to follow Grant Requests:

- “Discussion of Possible Ordinance Changes – Reference to Replacement of Nonconforming Accessory Structures”
- “Discussion and Possible Introduction of Ordinance – Open Space Definition”

and to approve the Agenda, as amended.

Motion Adopted: 3 Yeas, 2 Absent.

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

Mr. Cole joined the meeting.

Corre-

Mr. Griffin read the following correspondence:

spondence

MISSION OF HOPE, SEAFORD, DELAWARE.

Letter thanking the Council for a grant to the Seaford Mission of Hope.

BOYS & GIRLS CLUBS OF DELAWARE.

Letter thanking the Council for a grant to the Laurel Boys & Girls Clubs “2007-2008 Annual Fund One Campaign”.

THE MOMS CLUB OF REHOBOTH BEACH AREA, DELAWARE.

Letter thanking every sponsor, supporter, participant and volunteer for the Touch-A-Truck 2008 event.

Corre-
spondence
(continued)

Vincent Robertson, Assistant County Attorney, expressed his thanks to the Council for flowers that were sent at the time of his Mother’s death.

Mr. Phillips joined the meeting.

Artesian
Wastewater
Proposal

John Thaeder, Vice-President of Operations; David Spacht, CFO; Dian Taylor, CEO, and other representatives from Artesian were present to outline their proposal for a Public/Private working relationship with the County, which they perceive as the most cost-effective solution in managing wastewater issues along the Sussex County coast. Mr. Spacht presented a Powerpoint on Artesian’s Northern Sussex Regional Water Recharge Facility (ANSRWRF).

Mr. Spacht stated that Artesian builds, owns and operates water and wastewater systems, and is currently providing service throughout northern and southern New Castle County, parts of Kent County, and a large part of Sussex County. Artesian partners with municipalities throughout the State in the operation of wastewater systems. Mr. Spacht stated that Artesian works with the engineering firm of George, Miles and Buhr.

Mr. Spacht stated that the City of Rehoboth, which is seeking land alternatives to its current wastewater system of discharging into the Inland Bays, has issued a Request for Proposal (RFP). Mr. Spacht noted that Rehoboth’s current wastewater disposal is approximately 1.5 mgd., with Sussex County being responsible for 35% of the associated costs.

Mr. Spacht stated that spray irrigation is very beneficial in preserving the Delaware watersheds and waterways, reclaiming water for beneficial use, protecting drinking water supplies along the coastline, recharging aquifers and alleviating drought for the farmers. Mr. Spacht stated that in response to Rehoboth’s RFP, Artesian would plan to pipe the wastewater from Rehoboth to the Artesian facility through an equalization facility, such as a reservoir or other pumping facility. This would go through the County’s service territory directly to Artesian’s service territory. Mr. Spacht noted, however, that this would not be the most economical approach, as it duplicates the services and equipment already available.

**Artesian
Wastewater
Proposal
(continued)**

Mr. Spacht stated that Artesian feels that the most cost-effective approach in assisting Rehoboth in a wastewater disposal alternative would be for Artesian to partner with Sussex County, optimize both Rehoboth's and Sussex County's existing infrastructure, and build new infrastructure to handle the wastewater from Rehoboth.

Mr. Spacht proposed pumping wastewater from Rehoboth through the Wolfe Neck Regional Wastewater Treatment Facility and allowing Pump Station 210 to pump it to Artesian's Regional Facility. Mr. Spacht stated that Artesian currently has 1,700 acres of available spray irrigation fields, with options for an additional 1,000 acres.

Mr. Spacht stated that the benefits of using ANSRWRF are: no discharge in the Inland Bays, excellent site for lagoon construction, not in the Inland Bays Pollution Control Strategy, and offers opportunity to support other Sussex County systems.

Mr. Spacht explained that the Artesian Wastewater Recharge Facility approach is a 2-phase alternative, with Phase 1 being a 4.0 mgd treatment capacity facility (2 mgd for Sussex County) at an estimated cost of \$45 million, and a future Phase 2 being an additional 3.0 mgd (2.0 mgd for Sussex County) treatment capacity expansion facility at a cost of \$20 million. Sussex County's contribution for the first 2.0 mgd (Phase 1) would be \$30 million, which would be split between Sussex County and the City of Rehoboth; the \$20 million for the additional 2.0 mgd for Sussex County (Phase 2) would be a total Sussex County contribution.

Mr. Spacht noted that construction of the Artesian Northern Sussex Regional Water Recharge Facility will begin in 2009 and will be on line in September 2009, even if Artesian is not part of the Rehoboth wastewater solution. He noted that Artesian does have a commitment from the Town of Georgetown and will also be serving developments in the area.

Mr. Spake stated that the estimated average bulk rate to Sussex County, based on 2 mgd, would be \$300 - \$350/EDU. The estimated annual user fee would be approximately \$700/ EDU.

Mr. Spacht summarized the advantages of Artesian's proposal as follows:

- **Long term environmentally responsible solution**
- **Most cost effective initiative**
- **Eliminates unnecessary ocean outfall**
- **Utilizes reserve capacity at Artesian North Sussex System**
- **Preserves the Inland Bays recharge area capacity**

Mr. Baker stated that County staff had reviewed Artesian's proposal and has expressed the following concerns:

**Artesian
Wastewater
Proposal
(continued)**

- Possible increase in West Rehoboth sewer rates from \$225 to \$300-\$350
- Sharing costs with Artesian regarding force main
- Rehoboth cost sharing
- Angola sewer – cost savings to West Rehoboth would be lost
- Need more cost numbers to compare and justify costs
- Questions regarding capital costs and bulk service rate costs
- County may have to prepare RFP
- County has land investment in Inland Bays area with higher estimated capacity (13.5 MGD) than Artesian's estimate (7.0 MGD)
- Rehoboth RFP requests plant for 3.4 mgd; estimated Wolfe Neck capacity 3.1 mgd, plus additional flow from Wolfe Point area will continue to be pumped to Wolfe Neck

Mike Izzo, County Engineer, stated that in June 2008 he had informed the Council that they would be approaching a fork in the road in the summer and determination would need to be made regarding the direction of the Wolfe Neck force main. He stated that the Angola Sewer District was beginning its design and would be pumping to the Inland Bays plant. Mr. Izzo noted that he had been directed by the Council to pump to the Inland Bays from the Wolfe Neck plant with the benefit that the Wolfe Neck plant and Angola Sewer District could share the force main, and by sharing the costs 50/50 between the two, a savings of up to \$1,000,000 could result. Mr. Izzo stated that, based upon the directive given by the Council at the time, bidding will begin in early 2009 for construction of the force main. He advised that the proposal being offered by Artesian would be a major deviation from that directive.

Mr. Baker suggested that County staff meet with representatives from the City of Rehoboth following Artesian's presentation to them to discuss whether or not Rehoboth wishes to be included in the proposal offered by Artesian.

Dian Taylor of Artesian stated that she would like for Artesian to be a part of the meeting between the Council and the City of Rehoboth in an effort to find the best solution.

**Recorder of
Deeds
Contract**

John Brady, Recorder of Deeds, reported that the computer hardware currently being used in the Recorder of Deeds will soon expire. He stated that notification has been received from ACS Enterprise Solutions that they will no longer support the current system. Mr. Brady presented a proposed Agreement with ACS for a new software system called ACS 20-20 system, at an annual savings to the County of approximately \$35,000 over the next three years. Additionally included in the Agreement is the upgrading of all equipment, as well as internet accessibility for documents. Mr. Brady stated that late in November he will be presenting an ordinance to the Council for consideration, which would reduce the recording of notary commissions and put in place a pay per printing charge off the internet of

(continued)

either \$1.00 per page, or \$100.00 per month, which would allow printing of deeds currently on file, thus saving usage time on County copiers and printers. Mr. Brady stated that by state mandate, the County must have electronic notarization available by 2009 and noted that the new system would comply with that mandate. The new system will also allow for electronic filing of deeds and mortgages, thus eliminating paper copies in the office. Mr. Brady reported that as of July 1, 2008 the Recorder of Deeds is no longer printing deed books. He requested the Council's consideration of the new ACS 20-20 system and stated that the County IT staff is trained to maintain the new system, thus, making the Council less dependent on ACS. Mr. Brady stated that electronic filing of deeds would begin in 2009 and that once all the deeds have been scanned, which will take a few months, title searches may be done online.

M 628 08

**Approve
Contract
Amendment/
ACS**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, that the Sussex County Council approves a Contract Addendum to extend the ACS Contract for Recorder of Deeds Records Management for three years at a reduced cost of \$3.78 per document.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
LNSSD/
Bay Farm
Road
Expansion
Proposal**

A Public Hearing was held to consider extending the Long Neck Sanitary Sewer System to include lands situated north and south of Bay Farm Road, primarily from Route 24 to Route 298.

John Ashman, Director of Utility Planning, reported that the total expansion area of the LNSSD is 15 acres; the parcels are primarily single-family lots; and it is contiguous. Mr. Ashman advised that the system connection charge would be \$3,252.00 per lot (based on July 1, 2008 – June 30, 2009 rates).

Public comments were heard.

Sydney Argo, a resident of Bay Farm Road, spoke in opposition to the expansion. He stated that when the sewer system was initially installed in front of his property, Peninsula Point was the primary recipient of the benefit, and residents were told at that time that Peninsula Point would be responsible for all costs involved. Mr. Argo has now received notice of the fees that he would be charged to connect to the sewer and he expressed concern over those costs, stating that he is on a fixed income and that his current septic system and water system work fine. He questioned if hook-up was mandatory. Mr. Ashman stated that Mr. Argo would be required to hook up to the system and would have one year to do so.

Rita M. Kilby, who resides at 26510 Bay Farm Road, was opposed to the

expansion, stating that they have never had a problem with their septic system or well, which were put in many years ago when they bought their lot. Mrs. Kilby, who is 80 years old, stated that mandatory hookup to the system would create an extreme financial hardship on her, as well as many of her neighbors.

Bill Farley, who owns a lot at 26522 Bay Farm Road, is not a full-time resident, but spends most weekends here. He stated that he has no problem with his current septic system and that he is not opposed to being connected to the sewer expansion.

**Public
Hearing/
LNSSD/
Bay Farm
Road
Expansion
Proposal
(continued)**

Mike Minnick of 26500 Bay Farm Road was not in favor of the expansion.

Doug Ritter of 24265 Canal Drive, Millsboro, Delaware spoke in favor of the expansion.

Burr Monroe owns three lots on Bay Farm Road and he spoke in support of the expansion.

Dan Kramer of Greenwood, Delaware stated that property owners should not be mandated to hook up to the expansion and that it should be optional.

Mr. Dukes questioned the possibility of adopting a Resolution to extend the Long Neck Sanitary Sewer District to include Bay Farm Road with the option of not hooking up to the sewer system. Mike Izzo, County Engineer, stated that the district could be extended in bits and pieces, as long as the lots were contiguous; however, he thought that state law requires existing homes within a sewer district to connect within a certain period of time. Mr. Izzo also stated that the septic permit may include a provision that mandates connection to the central sewer system, if it becomes available. He will verify this information and will present it to Council at next week's meeting. He stated that the Pollution Control Strategy as currently proposed, which DNREC may adopt in the future, would require homeowners to contract the operation and maintenance of their private septic systems.

Mr. Ashman advised that the County must make a decision by next week on whether or not to extend the Long Neck Sanitary Sewer System to Bay Farm Road, or notices will have to be posted again.

Mr. Izzo asked that the residents of Bay Farm Road that are present today meet with him following the Council meeting and to provide a written statement as to whether or not they are opposed or in favor of the expansion. Attempts will be made to contact those residents on Bay Farm Road that did not respond to the first letter.

Mr. Dukes stated that he will be out of town next week but would not support the Bay Farm Expansion as currently proposed due to the strong opposition, but that he would be in favor of changing the boundaries to

include only those residents that are contiguous to the current sewer district. Mr. Dukes is not in favor of extending the system all the way down Bay Farm Road unless there are failing septic systems, or unless the property owners would have the option of not hooking up to the system until their septic fails.

M 629 08

**Continue
Public
Hearing/
LNSSD**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to continue the Public Hearing and leave the record open on the Long Neck Sanitary Sewer District, Bay Farm Road Expansion Proposal, until September 23, 2008

M 629 08

(continued)

Motion Adopted: 5 Yeas.

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

Economic

**Development
Director**

David Baker, County Administrator, introduced Julie Wheatley, who has recently been appointed as the County's new Economic Development Director.

M 630 08

**Appointment
to Advisory
Committee/
Aging &
Adults with
Physical
Disabilities**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to appoint Francine Shockley to the Advisory Committee for the Aging & Adults with Physical Disabilities for a term of two years.

Motion Adopted: 5 Yeas.

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

Ms. Shockley will replace Sandra Dole, whose term expired in August 2008.

M 631 08

**Appointment
to Library
Advisory
Board**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to appoint Shirley O'Neal to the Library Advisory Board for a term of three years.

Motion Adopted: 5 Yeas.

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

Ms. O'Neal will replace Janice Tranberg, whose term expired in June 2008.

**Adminis-
trator's
Report**

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

1. Sussex County Paramedic Competition

The Sussex County Paramedic Team of Holly Donovan, Stuart Hensley, Jill Wix, and Robbie Murray placed third in the international competition in Israel last week. We wish to

congratulate our Sussex County Paramedics for this outstanding accomplishment. Over 40 teams competed in this international competition. Our Sussex County Paramedic Team has in the past placed within the top ten in national competitions. Each of the other teams in the competition included nurses and physicians, while our team only included paramedics. Attached is a press release regarding this accomplishment.

2. Delaware State Police Report

Adminis-
trator's
Report
(continued)

Attached is a copy of the Delaware State Police report for July 2008. As per the report, there were 4,851 complaints, 4,327 traffic arrests, and 1,164 criminal arrests.

3. Delaware Solid Waste Authority Recycle Program

Attached is a copy of a report from the Delaware Solid Waste Authority showing that in August 2008, 20,498 pounds of recycled material was collected at the Georgetown site. Per Mr. Von Stetten, this represents a substantial amount for a relatively new site. The County Council approved opening this site in the parking lot by the West Complex.

Urban
Engineers/
Contract
Amendment
No. 2

Mike Izzo, County Engineer, presented Contract Amendment 2 for Urban Engineers. Mr. Izzo stated that Jim Hickin, Director of Airport and Industrial Park Operations, was recently informed by the FAA that grant money is available in the amount of \$32,000.00 and he asked if the County had any projects that could make use of it. Mr. Hickin has designated the use of this grant for an obstruction analysis and a review of the minimums of the existing runway and the new runway currently under construction. Mr. Izzo explained that current FAA regulations state that there must be one mile of visibility and the County would like to reduce that to $\frac{1}{2}$ or $\frac{3}{4}$ of a mile. This would increase the number of days that aircraft could fly in and out of the airport. At present, if the visibility is below one mile, aircraft may not fly in or out of the airport. Mr. Izzo stated that the FAA has determined that an obstruction exists, which also impacts the ability to reduce the minimum visibility. This study would allow the County to locate such an obstruction, do mapping, and allow the appropriate surveying data, which would be used to reduce the existing minimums at the airport.

Mr. Izzo explained that the study would be funded by the FAA at 95%, $2\frac{1}{2}\%$ by the State; the County would pay \$800.

M 632 08
Adopt
Urban
Engineers/
Contract
Amendment
No. 2

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based on the recommendation of the County Engineering Department, that the Sussex County Council authorizes Amendment No. 2 with Urban Engineers, Inc. be approved for the obstruction analysis for Runways 4-22 and 10-28 at the Sussex County Airport, at a cost not to exceed \$32,000.00, and further directs the County Engineer to execute documents to accept the

corresponding grant from the FAA

Motion Adopted: 5 Yeas.

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

**Milton
Library
Second
Floor
Completion/
Change
Order
No. 1**

Russell Archut, Assistant County Engineer, requested that the contract for the second floor completion of the Milton Library be awarded to Bob Smith Contractors. Mr. Archut reviewed the proposed project, which will complete the second floor shell that was constructed when the library was expanded, and will consist of creating tutoring rooms, a meeting room, bathrooms, a small kitchen, and an outside stairway. A copy of the bids was distributed to the Council; Bob Smith Contractors of Avondale, Pennsylvania, submitted the lowest bid at \$719,000.00. Mr. Archut stated that one bid protest was received from one of the bidders concerning the low bid. The low bid was reviewed by James Griffin, County Attorney, who determined it to be a minor deficiency and advised that the County could move forward with the bid award.

**M 633 08
Milton
Library
Second
Floor
Completion
Project/
Bid
Award**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, based upon the recommendation of the consulting architect, Studio JAED, and the Engineering Department, that the bid submitted for Sussex County Project #07-04, Milton Library Second Floor Completion, be awarded to Bob Smith Contractors, of Avondale, Pennsylvania, at the base bid amount of \$719,000.00.

Motion Adopted: 3 Yeas, 2 Nays.

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

**So. Coastal
Library/
C/O No. 1**

Bob Jones, Project Engineer, presented Change Order No. 1 for the South Coastal Library Renovations, Contract No. 06-04.

**M 634 08
Approve
Change
Order
No. 1/
South
Coastal
Library**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department and its consultant, Studio Jaed, that Change Order No. 1 for Sussex County Project #06-04, South Coastal Library Renovations, be approved, which decreases the contract amount by \$6,212.00, for a new total of \$4,197,788.00.

Motion Adopted: 5 Yeas.

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

**Airframe
Maintenance
& Technology
Facility/
DTCC**

(continued)

Gene Kelly, Project Engineer, presented Balancing Change Order No. 2 and a request for Substantial Completion for Airframe Maintenance & Technology Facility Project No. 07-02. The Change Order consists of nine potential changes resulting in a cost increase of \$3,950.58 to the contract. The changes include a design change in the front entrance; addition of hardware to existing doors; addition of a floor drain in the sprinkler room; painting entire exterior of building; door sweeps, thresholds, other miscellaneous hardware to existing doors; deletion of bronze plaques, which will now be supplied by DTCC; deletion of general contractor supplying fire extinguishers, as existing building has extinguishers which will be utilized; and two reductions in the scope of work by electrical and mechanical contractors relating to installation of the paint booth.

**M 635 08
Approve
Balancing
Change
Order/
Airframe
Main-
tenance
and
Technology
Building**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, based on the recommendation of the County's Architectural & Engineering Consultants, Andrew W. Booth, and the Sussex County Engineering Department, that Change Order No. 2 for County Project No. 07-02, Airframe Maintenance and Technology Building, be approved in the increased amount of \$3,590.58, which increases the total contract sum from \$707,067.25 to \$710,657.83.

Motion Adopted: 5 Yeas.

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

Mr. Kelly stated that the project Notice to Proceed was dated November 21, 2007 with a completion date of May 23, 2008. Through the change order time extensions, the completion date was revised to September 8, 2008.

**M 636 08
Approve
Substantial
Completion**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the County's Architectural & Engineering Consultants, Andrew W. Booth, and the Sussex County Engineering Department, that the Sussex County Council grant Substantial Completion effective September 8, 2008, for Sussex County Project No. 07-02, Airframe Maintenance and Technology Building, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

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

Mr. Jones, Yea

**Grant
Requests**

Susan Webb, Finance Director, presented the following grant requests for Council's consideration:

M 637 08

**Community
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$10,000.00 from Mr. Dukes' Community Grant Account to the Nanticoke Rotary Club for their Transitional Housing Program.

Motion Adopted: 5 Yeas.

M 637 08

(continued)

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

M 638 08

**Community
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$3,500.00 from Mr. Dukes' Community Grant Account to the Laurel Historical Society for renovations to the Cook House.

Motion Adopted: 5 Yeas.

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

M 639 08

**Community
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$5,000.00 from Mr. Dukes' Community Grant Account to the Laurel Fire Department for furniture for their meeting room.

Motion Adopted: 5 Yeas.

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

M 640 08

**Community
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$750 (\$500 from Mr. Dukes' Community Grant Account and \$250 from Mr. Phillips' Community Grant Account) to the Laurel Alumni Scholarship Foundation, Inc. for their fundraising campaign.

Motion Adopted: 5 Yeas.

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

M 641 08

**Community
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$2,500.00 from Mr. Cole's Community Grant Account to the Boys and Girls Clubs of Oak Orchard/Riverdale for scholarships and program expenses.

Motion Adopted: 5 Yeas.

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

**M 642 08
Community
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$500 from Mr. Phillips' Community Grant Account to Delmar Middle and Senior High School for their uniform assistance program.

**M 642 08
(continued)**

Motion Adopted: 5 Yeas.

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

**M 643 08
Community
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$5,000 from Mr. Rogers' Community Grant Account to the Milton Seniors Club for programs and projects.

Motion Adopted: 5 Yeas.

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

**M 644 08
Community
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$10,000 from Mr. Rogers' Community Grant Account to the Milton Historical Society for programs and projects.

Motion Adopted: 5 Yeas.

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

**Options for
Replacement
of Noncon-
forming
Accessory
Structures**

Mr. Baker stated that following discussion at the September 9, 2008 Council meeting regarding variances for replacement of accessory structures, concerns have been expressed from the public regarding the costs involved to obtain a variance. He stated that Planning and Zoning has suggested the following alternative options for Council's consideration:

- 1. Do not require a variance for replacement of small accessory buildings less than 120 square feet:**
 - a) Replacement building must be of same size and same footprint as previous building.**
 - b) Building permit shall be required; however, variance would**

- not, if located at same footprint.
- c) Previous accessory building must have been allowed by grandfathering or approved building permit.

2. Continue requiring a variance, but reduce fee for requiring a variance from \$400 to \$100 for replacement of small accessory buildings less than 120 square feet.

**Options for
Replacement
of Noncon-
forming
Accessory
Structures
(continued)**

Mr. Cole was initially in favor of continuing to require a variance for noncomplying structures less than 120 square feet in order to allow a Public Hearing and reducing the fee from \$400 to \$100 in mobile home parks.

Mr. Baker reported that a cost analysis done by Kathy Roth, Budget and Cost Manager for Sussex County, about two years ago, determined the average cost to the County for a Board of Adjustment case is \$382.

Mr. Cole then stated that decreasing the variance application fees should not result in a loss to the County and, therefore, felt that the County should make no amendments to the current Ordinance.

Mr. Phillips, Mr. Dukes, and Mr. Jones were in favor of Option #1, with Mr. Rogers and Mr. Cole being in favor of Option #2. Option #1, as presented, will be introduced to the Council in the form of an amendment to the existing ordinance.

Mr. Griffin, County Attorney, noted that a vote to add an amendment to the existing ordinance would not be necessary, as Council would vote on the amendment to the existing ordinance when presented for consideration. An ordinance with the amendment of Option No. 1 above will be presented to Council for consideration, as discussed, which will state that a variance would not be required for replacement of a small accessory building less than 120 square feet. A Public Hearing will then be scheduled.

**Discussion &
Possible
Introduction
of Ordinance
Relating to
Open Space
Definition**

Mr. Baker presented a draft ordinance defining “open space” within subdivisions and developments for the Council’s consideration, as per the 2007 Comprehensive Plan Update.

Mr. Baker noted that the ordinance would permit the following uses within “open space” :

- Recreational facilities
- Recreational ponds
- Buffers
- Sidewalks not located within street rights-of-way
- Spray irrigation areas

He noted that the following uses would not be permitted under the ordinance:

- Land within designated lot lines
- Building footprints
- Certain impervious surfaces, such as streets and parking lots
- Stormwater ponds
- Utility facilities
- Tidal wetlands

Mr. Cole stated that a public golf course within a subdivision should not be calculated as “open space” unless it is owned by the residents of the subdivision, as it is a commercial land use.

(continued)

Mr. Rogers was in agreement with Mr. Cole. Mr. Phillips, Mr. Dukes and Mr. Jones voiced their opposition to Mr. Cole’s statement.

**Introduction
of Proposed
Ordinance**

Mr. Abbott was requested to find out how Kent and New Castle Counties calculate open space.

Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE OPEN SPACE AND TO INCORPORATE OPEN SPACE REQUIREMENTS INTO THE APPLICATION AND APPROVAL PROCESS IN ALL RESIDENTIAL ZONING DISTRICTS AND IN RESIDENTIAL PLANNED COMMUNITIES AND TO CLARIFY PROVISIONS RELATING TO RESUBDIVISION PERMITTED USES, BONDS, SITE PLANS AND OTHER APPROVAL CRITERIA.”

**Introduction
of Proposed
Ordinance**

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9.33 ACRES, MORE OR LESS” (Change of Zone No. 1675) filed on behalf of Barry Baker.

**Introduction
of Proposed
Ordinance**

Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 10.0238 ACRES, MORE OR LESS” (Change of Zone No. 1676) filed on behalf of The Johnson Associates, LLC.

**M 645 08
Recess**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Public

Mr. Jones called the Council back into session at 1:45 p.m.

**Hearing
C/U
No. 1743**

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 MOTOR VEHICLE SERVICE, RESTORATION, TOWING, AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.0 ACRES, MORE OR LESS” (Conditional Use No. 1743) filed on behalf of John and Michelle Beaver.

**Public
Hearing
C/U
No. 1743
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on August 28, 2008 at which time the Commission deferred action.

(Refer to the minutes of the meeting of the Planning and Zoning Commission dated August 28, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission).

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

Mr. Abbott stated that a letter was received in opposition to the application and no additional correspondence has been received to date.

The Council found that Michelle Beaver was present on behalf of the application. She stated that her husband collects antique cars; that her husband also does mechanical work; that the hours are 9:00 a.m. to 5:00 p.m. by appointment; that he does not do any body work; that they do tow vehicles onto the property; and that there are approximately 20 cars on the property, which are in an enclosed building. She stated that occasionally her husband sells a car and was flagged by the Division of Motor Vehicles for being a dealership. He was advised by the Division of Motor Vehicles to obtain a used car dealership license, which they have done.

Public comments were heard.

The Council found that Terry Bryan, of 189 Fairfield Road, Dover, Delaware was present in opposition to the application. Mr. Bryan owns the property across the road from Mr. and Mrs. Beaver’s business and the property directly to the north of the business. Mr. Bryan stated that on a visit to his farm, he discovered there was a business next door. He questioned the process of beginning operation of a business with no consideration of the zoning of the property, then requesting a variance. Mr. Bryan stated that they continue to farm the acreage and that the farm may eventually be sold for residential development, as will most of the open

land in the surrounding area. He stated that an automotive service, towing, and used car dealership is not compatible with the zoning in that area and would have a negative impact on the land value in an area where there may be a potential for future development.

Mrs. Beaver asked to be recognized again to clarify that the business is not a used car dealership. She stated that they only sell antique and classic cars, but were required by DMV to obtain a used car dealership license for that purpose.

(continued)

**M 646 08
Defer
Action on
C/U
No. 1743**

Mr. Bryan presented himself again before the Council and expressed concern with the Council questioning the applicant's business plan when the area is not commercially zoned.

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1743 filed on behalf of John and Michelle Beaver.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
C/U
No. 1810**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REGIONAL WATER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 74.61 ACRES, MORE OR LESS" (Conditional Use No. 1810) filed on behalf of Artesian Water Company, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on August 28, 2008 at which time the Commission deferred action.

(Refer to the minutes of the Planning and Zoning Commission dated August 28, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission).

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

Mr. Abbott stated that no additional correspondence has been received.

Mr. Abbott distributed Exhibit Booklets to the Council for their review.

The Council found that Scott Pinder of Artesian Resources and Dennis Schrader, Attorney, were present on behalf of the application.

Mr. Schrader introduced Mrs. Lynn Kelly, Attorney, a new associate with the law firm of Wilson, Halbrook and Bayard.

Mr. Schrader stated that Artesian is proposing a regional water treatment plant on the property site known as Elizabethtown. A booklet including data necessary for Council to make a decision, following recommendation by the Planning and Zoning Commission, was distributed to the Council.

**Public
Hearing/
C/U
No. 1810
(continued)**

Scott Pinder stated that the site is zoned agricultural; that the site has a conditional use approval for a wastewater treatment facility; that they are proposing a 60-foot by 80-foot water treatment building; that they will have a 1,000,000 gallon storage tank, two wells, one primary and one back-up well; that the facility will be monitored by an alarm system for failure or emergency; that all chemicals will be contained within the building; and that it will be a standard unmanned water treatment plant. Mr. Pinder stated that they are proposing to interconnect all their facilities in the region for redundancy, fire protection, and capacity in the event of failure of one of the plants.

**M 647 08
Defer
Action on
C/U
No. 1810**

The Council found that no parties were present in support of or in opposition to the application.

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to defer action on Conditional Use No. 1810 filed on behalf of Artesian Water Company, Inc.

Motion Adopted: 5 Yeas.

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

**M 648 08
Adjourn**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to adjourn the meeting at 2:30 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

**Gaye King
Administrative Secretary**