



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 27, 2011

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 27, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

#### Call to Order

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

Mr. Vincent called the meeting to order.

#### M 529 11 Amend and Approve Agenda

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to amend the Agenda by deleting "Approval of Minutes" and by deleting "Job Applicants' Qualifications, Personnel, and Land Acquisition" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

#### Employee Recognition/ G. Hill

The County Council recognized Greg Hill, employee in the Building Code Department, who will be retiring on September 30, 2011 after 12 years of service to the County. Mr. Hill was in attendance and received a plaque in recognition of his service.

#### Employee

The County Council recognized Bonnie Wootten, employee in the Personnel

**Recognition/  
B. Wootten**      **Department, who will be retiring on September 30, 2011 after 30 years of service to the County. Ms. Wootten was not in attendance.**

**Mr. Baker noted that both employees are taking advantage of the Early Retirement Option.**

**U of D  
Ag. Ext.  
Program  
U of D  
Ag. Ext.  
Program  
(continued)**      **On behalf of the College of Agriculture and Natural Resources, the University of Delaware, and the Carvel Research and Education Center, Dr. Mark Isaacs thanked the Council for its continued support. Dr. Isaacs gave an overview of how they use the funding allocated by the County: poultry diagnostic and research efforts in the Lasher Laboratories, field crop research, poultry research, extension safety programs, and the overall extension program (in Georgetown). The Council presented a check in the amount of \$69,049.00 to Dr. Isaacs.**

**Withdrawal  
of Adequate  
Public  
Facilities  
Ordinance**      **Mr. Moore stated that on September 13, 2011, there was discussion concerning the withdrawal of a Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 97, ADEQUATE PUBLIC FACILITIES, TO FACILITATE THE PROVISION OF INFRASTRUCTURE RELATING TO STORMWATER MANAGEMENT AND DRAINAGE, EMERGENCY MEDICAL SERVICES, ROADS, AND SCHOOLS NEEDED TO SUPPORT NEW DEVELOPMENT” that was previously introduced. Mr. Moore stated that he asked that this matter be placed back on the Agenda for ratification of the action taken on that date.**

**M 530 11  
Ratify  
Action/  
Withdrawal  
of Adequate  
Public  
Facilities  
Ordinance**      **A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to ratify the action of the County Council that was taken on September 13, 2011 to withdraw the Proposed Ordinance relating to Adequate Public Facilities for the purpose of holding a workshop.**

**Motion Adopted:      5 Yeas.**

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

**Discussion/  
Amendment  
to Windmill  
Ordinance**      **Mr. Baker reported that, on September 13th, the Council approved an ordinance regarding wind turbines and windmills. At that meeting, discussion occurred and it was recommended that the County consider possible revisions to the Ordinance. Paul Driscoll and Charlie Schmehl from Urban Research & Development Corporation, the County’s land use consultants, have suggested considering changes regarding (1) allowing more than one windmill on lots of less than five acres and (2) providing a maximum number of windmills on lots greater than five acres. Mr. Baker reviewed the proposed changes: for lots less than five acres, the proposed change would allow two or three windmills if the height is not more than 50 feet, subject to other setback requirements, etc.; for lots greater than five acres and for wind turbines greater than 52 feet, one such wind turbine would be allowed on each five acres of property area. Any more than five**

wind turbines on a lot larger than five acres would require a special use exception approval by the Board of Adjustment. Mr. Baker noted that a draft ordinance has not been written yet. Mr. Phillips stated that he would like to solicit comments from interested parties prior to the introduction of an ordinance. Mr. Baker noted that there are several housekeeping items that are included in Mr. Schmehl's letter that could be addressed in the draft ordinance. It was the consensus of the Council to draft an ordinance that would amend the Ordinance relating to wind turbines and windmills which was adopted on September 13, 2011.

**Early  
Retirement  
Option  
Report**

Mr. Baker reported that, at the July 26, 2011, Council meeting, the Council approved a limited early retirement offer for employees in certain departments. As in the past, this was a voluntary offer. These departments were selected based on the reduction in workload and/or demand for services as a result of the economy. Eligible participants that accepted the offer received three years of service for the purpose of calculation of pension benefits. Mr. Baker outlined the results of the limited early retirement offer. Seven employees elected to take the offer; this includes four General Fund employees and three Water and Sewer employees. The annual savings is estimated to be approximately \$110,000 per year for the General Fund and \$68,000 per year for Water and Sewer Districts, totaling \$178,000 per year. The estimated savings over three years totals \$534,000.

**Adminis-  
trator's  
Report**

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

1. **Wings & Wheels 2011**

The 4<sup>th</sup> Annual Wings & Wheels Fall Festival will be held at the Sussex County Airport on October 1 from 10:00 a.m. to 4:00 p.m. A large crowd is expected as last year when over 7,500 attended. The event includes a car show, vintage planes fly-in, food, crafts, World War II re-enactments, and World War II testimonials. On Friday night, September 30, a "Stage Door Canteen" will be held, which is a salute to music in the 1940's. Attached is information on this festival sponsored by the Greater Georgetown Chamber of Commerce.

2. **2011 Delaware Chapter of the National Association of Housing and Redevelopment Officials Award**

We are pleased to announce that Mr. William Lecates was awarded the 2011 Delaware Chapter of the National Association of Housing and Redevelopment Officials Award. Mr. Lecates, who has worked over 32 years for the County, has been dedicated to providing affordable housing for Sussex County residents and improving housing for low- to moderate-income citizens. We appreciate this recognition of Mr. Lecates for his tireless efforts in Sussex County.

3. **Sussex County Community Emergency Response Team Training**

As per the attached press release, we are encouraging local

interested residents to contact Mr. Carl Davis at 858-5302 with the Sussex County Citizen Corps who are interested in assisting with emergency response. Last spring the County held a two-day session at the Emergency Operations Center. Mr. Davis, a County paramedic, has volunteered his time to assist with this function to help during emergencies.

Adminis-  
trator's  
Report  
(continued)

4. Red Cross Soliciting Volunteers from Sussex County

The American Red Cross, as per the attached News Release, is requesting assistance from volunteers to also help with emergencies, especially in shelters throughout our County. A volunteer orientation will be held at the Cordrey Center/East Coast Garden Center near Millsboro from 6:00 to 7:00 p.m. on Wednesday, September 28. We encourage prospective volunteers to contact the local Red Cross at 1-800-777-6620, option 7, as per the attached News Release.

5. Sussex County Airport Advisory Committee

The Sussex County Airport Advisory Committee will be meeting September 28 at 6:00 p.m., as per the attached agenda. Various items are noted on this agenda including an update on the Wings & Wheels Festival, as well as review of Airport policies. The meeting will be held at the Sussex County Emergency Operations Center.

6. Sussex County Business Meeting

On September 26 from 8:30 to 10:30 a.m., the Sussex Economic Development Action Committee and the Sussex County Council sponsored a program to help prospective businesses in our County. Attached is a copy of information regarding the various agencies that were represented at this function. Currently these free business development consultations will be held on the fourth Monday of each month. The initial meeting was successful, with a variety of residents attending to attain information regarding how to develop and expand business in Sussex County at one place.

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

NSP  
Program/  
Seaford  
Property

William Lecates and Brandy Bennett of the Community Development and Housing Department reported that the Diamond State Community Land Trust has been unable to sell their NSP (Neighborhood Stabilization Program) property to a qualifying household. The property is located at 304 Elm Street, Seaford. Mr. Lecates stated that the Department is seeking the Council's permission to take possession or to transfer ownership of the

property located at 304 Elm Street in Seaford from Diamond State to one of the other non-profit partners who have established waiting lists of potential homebuyers. Mr. Lecates noted that this would be allowable under the program guidelines and the Department feels that this move would best serve the intent of the NSP program. All parties are in agreement with this option.

**M 531 11**  
**Market**  
**NSP**  
**Property**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that Sussex County Council grants approval to allow Community Development and Housing to take necessary steps to market 304 Elm Street in Seaford by taking possession or through other partners, as deemed in the best interest of Community Development & Housing.

**Motion Adopted: 5 Yeas.**

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

**Draft**  
**Emergency**  
**Evacuation**  
**Plan for**  
**Adminis-**  
**tration**  
**Building**

John Ashman, Director of Utility Planning and Chairman of the Safety and Security Committee, and Joe Kempf, Safety Director, presented and reviewed an Emergency Evacuation Plan that the Committee would like to put in place which outlines how to evacuate the Administration Building located on 2 The Circle in Georgetown in the event of an emergency.

Mr. Ashman asked the Council for direction as to how to proceed and he asked the Council if they are interested in a similar plan being developed for all County buildings.

Mr. Cole suggested that there be evacuation route designations placed in the buildings in addition to the maps being displayed in the buildings.

**M 532 11**  
**Adopt**  
**Emergency**  
**Evacuation**  
**Plan**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council adopts the Emergency Evacuation Plan for the Sussex County Administration Building, 2 The Circle, Georgetown, Delaware, as presented on September 27, 2011.

**Motion Adopted: 5 Yeas.**

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

**Aircraft**  
**Tiedown**  
**Apron**  
**Expansion**

Bob Jones, Project Engineer, presented a Balancing Change Order and a request for Substantial Completion for Sussex County Airport, Aircraft Tiedown Apron Expansion Project. The contractor for the project was A. P. Croll. Mr. Jones reported that the Change Order adjusts the quantities

**Project** from the bid amount of \$166,453.00 down by \$4,262.74 to a final cost of \$162,190.26.

**M 533 11 Aircraft Tiedown Project Approvals** A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that the Balancing Change Order for Sussex County Contract No. 09-01, Aircraft Tiedown Apron Expansion, with A. P. Croll & Son, Inc. be approved, which decreases the Contract by the amount of \$4,262.74 for a new contract total of \$162,190.26; that Substantial Completion be granted effective July 19, 2011; and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

**M 533 11 (continued)**

**Motion Adopted:** 5 Yeas.

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

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

**M 534 11 Community Grant** A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$250.00 (\$50.00 from each Community Grant Account ) to the Sussex County Foster Parent Association for fall training courses for foster parents.

**Motion Adopted:** 5 Yeas.

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

**M 535 11 Community Grant** A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,100.00 (\$220.00 from each Community Grant Account) to the Beebe Medical Foundation to sponsor the Beebe Ball (which benefits The School of Nursing at Beebe Medical Center).

**Motion Adopted:** 5 Yeas.

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

**M 536 11 Community Grant (Motion Died)** A Motion was made by Mr. Cole to give \$500.00 (\$100.00 from each Community Grant Account) to Reading ASSIST Institute for their Volunteer Tutor Program.

The Motion died for the lack of a Second.

**M 537 11 Community** A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give \$1,000.00 from Mrs. Deaver's Community Grant Account to Reading

**Grant**                    **ASSIST Institute for their Volunteer Tutor Program.**

**Motion Adopted:**        **5 Yeas.**

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

**M 538 11**                **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500.00**  
**Community**            **from Mrs. Deaver's Community Grant Account to First State Community**  
**Grant**                   **Action Agency for the Pinetown Community and Beautification Project.**

**Motion Adopted:**        **5 Yeas.**

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

**M 539 11**                **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give**  
**Community**            **\$1,000.00 (\$200.00 from each Community Grant Account) to VFW Dept.**  
**Grant**                   **Delaware Up-Link for the Operation Up-Link Program (free call days for**  
                                 **active duty military and hospitalized veterans).**

**Motion Adopted:**        **5 Yeas.**

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

**There were no proposed ordinances for introduction and no additional business.**

**M 540 11**                **At 11:19 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,**  
**Go Into**                 **to recess the Regular Session and to go into Executive Session for the**  
**Executive**               **purpose of discussing matters relating to pending/potential litigation.**  
**Session**

**Motion Adopted:**        **5 Yeas.**

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

**Executive**                **At 11:23 a.m., an Executive Session of the Sussex County Council was held**  
**Session**                **in the Second Floor Conference Room for the purpose of discussing matters**  
                                 **relating to pending/potential litigation. The Executive Session concluded at**  
                                 **12:01 p.m.**

**M 541 11**                **At 12:05 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips,**

**Reconvene Regular Session**      **to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted:**      **5 Yeas.**

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

**M 542 11 Recess**      **No action was necessary on Executive Session items.**  
**At 12:06 p.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess until 1:30 p.m.**

**Motion Adopted:**      **5 Yeas.**

**M 542 11 (continued)**      **Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Phillips, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**

**M 543 11 Reconvene**      **At 1:32 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene.**

**Motion Adopted:**      **4 Yeas, 1 Absent.**

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

**Mr. Phillips joined the meeting.**

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

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on September 8, 2011 at which time the Commission deferred action; on September 22, 2011, the Commission recommended that the application be approved.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated September 8 and 22, 2011.)**

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



**Mr. Lank distributed an amended copy of an Exhibit Book that included additional comments from PLUS and the Applicant's response to those comments.**

**Mr. Lank reported that the record includes 2 letters of support and 111 letters in opposition.**

**Public  
Hearing/  
C/Z**

**No. 1709  
(continued)**

**In response to a question raised by Mrs. Deaver, Mr. Lank stated that there are no deed restrictions attached to the property.**

**The Council found that Heidi Gilmore, Attorney, was present on behalf of the Applicants. Also present were Mark Davidson and Douglas Berry of Pennoni Associates.**

**Mrs. Gilmore and Mr. Berry stated that the Applicants are proposing an application for a B-1 Neighborhood Business so that they can develop the site with professional and medical offices (Red Mill Manor Office Park); that they applied for a Change of Zone, rather than a Conditional Use, since conditional use zoning is not supported by financial institutions; that they realize that they are not submitting a formal site plan, but they may refer to the conceptual site plan for reference; that the proposed use is not out of character with the neighborhood and B-1 zoning is consistent with the uses in the area; that several B-1 and C-1 zonings and uses exist in close proximity to the project site; that there are several Conditional Use applications in close proximity; that the two (2) lots immediately adjacent to the site are zoned B-1 Neighborhood Business; that the site is located in Level 1 according to the State Strategies, which references that it is the State's intent to use its spending and management tools to maintain and enhance community character, to promote well-designed and efficient new growth, and to facilitate redevelopment; that the proposed use conforms to the purpose of B-1 zoning; that the proposed use conforms to the Comprehensive Land Use Plan; that the adjoining two (2) lots to the north, which are also owned by the Applicants, are improved with an office building; that the site is located within the Environmentally Sensitive Developing Areas which reference that they are areas that can accommodate development provided special environmental concerns are addressed, and that retail and office uses are appropriate; that other business uses in close proximity include but are not limited to Beach Babies Day Care and Delaware Guidance Services; that they propose to improve the site with three (3) additional office buildings; that the buildings are planned to maintain the residential character in appearance to blend in with the residential housing within Red Mill Manor, the adjacent subdivision; that DelDOT has not voiced any major objections; that all improvements required by DelDOT will be complied with by the Applicants; that the site is very restrictive due to the limitations of the site, access, depth, etc; that according to DelDOT, Best Lane has been dedicated to public use since 1978; that they submitted a corrected site plan that**

Public  
Hearing/  
C/Z  
No. 1709  
(continued)

depicts that Best Lane is dedicated to public use, rather than being depicted as a private street; that DelDOT suggested sidewalk interconnection between Pondview Drive and Best Lane, but there are no sidewalks intended; that the existing parking along Best Lane will be relocated to the interior of the site; that since the site is located within the Environmentally Sensitive Developing District Overlay Zone, they have prepared an Environmental Assessment Report which references stormwater and the use of bio-retention facilities, groundwater recharge and excellent infiltration, and a nutrient budget to meet TMDLs; that central water will be provided by Tidewater Utilities; that central public sewer will be served by Sussex County; that there are no endangered species reported on the site; that the site is not in a flood plain; that 40 percent of the site will remain in open space; that buffering will be provided; that there are no historic uses impacting the site; that the existing four (4) EDUs are adequate to serve the project; that the only access to the site will be from Best Lane, a public street maintained by DelDOT; that they did present their application to PLUS for review; that the proposed B-1 area meets the purpose of the Zoning Ordinance in that it promotes the orderly growth, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; that there are no deed restrictions within Red Mill Manor subdivision; and that the Preliminary Land Use Service (PLUS) had no objections to the application.

Public comments were heard.

Pat Campbell White, Realtor, was present and she stated that the proposed use will not create a negative impact on surrounding properties; that the increased capacity of the fire hydrant will benefit area residents by possibly decreasing their homeowners insurance; and that the proposed use is in keeping with State Strategies and the County's Comprehensive Plan.

Larry Fifer, Attorney, spoke in opposition to the application and he advised that he was representing Dale Truitt and several other residents of Best Lane. Mr. Fifer discussed the history and character of the area, the prospective need for business/commercial uses on the site versus the impact the business use will have on the surrounding area; and safety considerations. It was noted that photos, including an aerial photo, were previously submitted by Dale Truitt. Mr. Fifer stated that Conditional Uses that are immediately to the north of the property (along the southbound lane of Route 1) are Beach Babies and Delaware Guidance Center; that both of these businesses and their parking lots are to Route 1 over Best Lane; that there are a substantial number of residences in the area; that parking in this area for business uses is going to be substantially increased; that a substantial upgrading and widening of Best Lane will be necessary and this is what his clients are opposed to; that they are concerned about the rapid and expansive development and an increase of traffic along Best Lane, including increased truck traffic; that the proposed use will result in a 300 percent increase in the business use of this property and at the same time, extending it into a residential area; that they are concerned about the

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(continued)

safety of school children; that the existing traffic from Beach Babies and Delaware Guidance Center includes bus traffic; that the existing parking for the REMAX Real Estate office is next to Best Lane and frequently, the parking is insufficient and people park on the grass at the rear of the building; that the application has represented minimal traffic; that the PLUS evaluation reveals an estimated over 200 trips per day for the proposed project; that Mr. Truitt has indicated an increase of traffic accidents at or near the intersection of Best Lane and Route 1 over the past 10 years; that there are traffic and safety concerns; that DelDOT's response also included a requirement to increase the length of the turn lane off of Route 1 onto Best Lane; that to add more length to the turn lane poses difficulties; that the Applicant already has access to Route 1 from Pondview Drive; that this is a residential area; that there are vacant office buildings in the area and there is not a need for more business/office space; that there is nothing in the record that indicates the support of the Red Mill Estates Homeowners Association; that, in the PLUS comments, there was a recommendation for cross-easements being implemented for the six lots which will make up the proposed business development and that there has been no mention of this; that there are archaeological considerations, i.e. ancient dwelling structures; that there is a possibility of archaeological and human remains located at or near the site; that there are substantial wetlands very near to the site; that if the application is approved, the entrance should be closer to Route 1 so that the access would be to the front of the building; and that there are 2 letters in support of the project and 9 letters and a petition containing 111 signatures in opposition to the project.

William Ash, David Farrin, Frances Brown, and Dale Truitt also spoke in opposition to the project. It was stated that Pat Campbell White is the Applicant's realtor; that there will be a negative impact to the area if the application is approved; that Best Lane is a private road; that the safety of children and residents in the area is a major concern; that the Route 1 and Best Lane intersection is already a dangerous intersection; that the Applicant did not ask anyone on Best Lane how they felt about the proposed project; that the proposed project does not benefit anyone except the Applicant; that the project will impact traffic on Best Lane and DelDOT should require a Traffic Impact Study; that there is a burial site in the area; that the project is not needed; that there are many available commercial sites along Route 1; that there are traffic problems now; and that accidents will increase.

Mr. Truitt submitted additional photos and a petition containing 38 signatures (including 20 signatures of residents on Best Lane and 6 signatures from residents on Pondview Drive). The photos and petition were made a part of the record.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 544 11  
Defer  
Action on  
C/Z  
No. 1709**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1709 filed on behalf of Daniel T. and Dale S. Boines.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
C/Z  
No. 1710**

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

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on September 8, 2011 at which time the Commission deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated September 8, 2011.)**

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

**Mr. Lank distributed Exhibit Books which were previously provided by the Applicant.**

**Mr. Lank reported that 3 letters in support of the application and 137 emails/letters in opposition to the application have been received.**

**The Applicant submitted a “slightly revised” concept plan.**

**The Council found that William Scott, Attorney, was present on behalf of the Applicants, Robert Browning and Bradley Davis, along with James Willey, Jr. of George, Miles & Buhr. They stated that no uses have been identified for the property; that the Applicants have not marketed the property since it is difficult to do so until a change of zone is approved; that it is difficult to obtain financing for Conditional Use applications; that the concept plan shows two buildings, 18,500 square feet total; that in response to public comments, the revised concept plan shows additional buffering; that there is a stand of trees at the north end of the property; that a white fence provides a buffer between the project site and the Bethany Lakes Subdivision; that the site is located in the Environmentally Sensitive Developing District and Investment Level 3 Area, areas that are targeted for growth; that there are no wetlands or endangered species on the property; that there is no significant impact to any wooded portions of the**

Public  
Hearing/  
C/Z  
No. 1710  
(continued)

property; that they will try to retain most of the trees on the property and trees will be added as a part of the landscape plan; that the application went through the PLUS process in 2010 and received favorable comments; that they propose to reduce the impervious area through the use of pervious pavement/concrete; that they will comply with all of DeIDOT's requirements; that according to DeIDOT, the future development of the site will not significantly increase area traffic; that DeIDOT will probably require an entrance/exit on Cedar Neck Road and a right-in only entrance on Fred Hudson Road; that the site plan is considered to be the maximum of Neighborhood Business that will fit on the site with sufficient parking; that the site is located in a groundwater recharge area and infiltration measures will have to be taken; that the Concept Plan shows a connection with new sidewalk to the existing sidewalk in the area; that the project would be within the County's planning assumption for sewer; that water would be provided by Sussex Shores; that if approved, standard site plan procedures would be followed; and that there are no deed restrictions on the property.

Public comments were heard.

Jim Gallant (Bethany Lakes Homeowners Association) and Martin Lefcowitz (Bayside at Bethany Lakes) spoke in opposition to the application. They stated that the current zoning does not deprive the Applicants of realizing an economic return; that the parcel can be used for purposes within the Medium Density Residential designation; that the parcel is surrounded by residences and residential zoning is the most compatible zoning; that the Applicants do not know how they will use the property which is a concern; that the potential use of the property under B-1 zoning is a long list of anything from gas stations to restaurants to traffic destination businesses to convenience stores to small strip centers, and that none of these are compatible with the area; that more than 75 individually written letters have been submitted in opposition to the application; that the letters are from surrounding neighborhoods; that two pods are available in the Harris Teeter shopping center; that area residents have plenty of retail businesses convenient to them; that the proposed use could generate 1,695 trips per day through the intersection; that traffic congestion will increase; that the proposed use could negatively impact the market value of area homes; that there is no buffering on the Cedar Neck side; that no need has been demonstrated for the removal of the single family homes; that there is a lack of community support; that the project site is an island among several hundred residences; and that the site is located at a signalized intersection across the street from a Harris Teeter shopping center.

Mr. Lefcowitz submitted photos. The photos were made a part of the record.

There were no additional public comments.

**The Public Hearing and public record were closed.**

**M 545 11**      **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action**  
**Defer**           **Conditional Use No. 1710 filed on behalf of Robert Browning and Bradley**  
**Action on**      **Davis.**

**No. 1710                      Motion Adopted:                      5 Yeas.**

M 545 11 (continued)	Vote by Roll Call:	Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea
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**M 546 11**      **A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to adjourn at**  
**Adjourn**      **4:25 p.m.**

**Motion Adopted: 5 Years.**

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

**Respectfully submitted,**

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