



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 15, 2011

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 15, 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
David Baker	County Administrator
Todd F. Lawson	County Administrator Appointee
Susan M. Webb	Finance Director
Everett Moore	County Attorney

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

Call to Order

Mr. Vincent called the meeting to order.

M 603 11 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by deleting "Executive Session - Job Applicants' Qualifications, Personnel, Pending/Potential Litigation, and Land Acquisition"; by deleting "Possible Action on Executive Session Items"; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of November 8, 2011 were approved by consent.

Corre- spondence

Mr. Moore read the following correspondence:

SARA WOOD, MILFORD, DELAWARE.

RE: Letter in appreciation of the Council's support of her mission trip to Uganda, Africa.

GOVERNOR JACK A. MARKELL, DOVER, DELAWARE.

RE: Letter congratulating William Lecates (Director of Community Development and Housing) on being chosen as the 2011 Ambassador Award recipient by the Delaware Chapter of the National Association of Housing and Rehabilitation Officials.

**County
Council
Member
Partici-
pation
Options**

Mr. Lawson stated that, during the November 8th Council meeting, there was a discussion regarding member participation options when a Council member is unable to be present during a meeting. During that discussion, the County Attorney was asked to research participation options.

Mr. Moore reported that under 29 Del. C. § 10006 regarding video-conferencing participation in open meetings (under the FOIA Chapter), it does indicate that public bodies can have participation except for any public body in which members are elected by the public to serve on the public body. Mr. Moore stated that this statement specifically exempts the County Council; therefore, a Council member must be physically present for votes and discussion.

In response to questions raised by Mrs. Deaver, Mr. Moore stated that it has been a policy in the past on Planning and Zoning issues that if a Council member is absent and if they opt to listen to the recording of the Public Hearing(s) missed, they may cast a vote on the application if they are physically present when the vote is taken. Mr. Moore also stated that a quorum (3 Council members) must be present to conduct a Public Hearing and a vote would require 3 affirmative votes to pass.

**Public
Service
Commission
Information
Report**

Mr. Lawson stated that, at the October 18th Council meeting, Mr. Cole and other Council members brought up pending rate increase comments received from constituents and Mr. Cole asked that the Public Service Commission be contacted and invited to attend a Council meeting to give an overview of the process of a rate increase. Mr. Lawson advised that four members of the Public Service Commission were in attendance on this date to give a presentation and to answer questions.

David Bonar, Ombudsman for the Delaware Public Service Commission (PSC), stated that the PSC was established in 1949 by legislative fiat. The PSC is made up of five members, appointed by the Governor and confirmed by the Senate. The Commission makes its decisions at formal meetings that are open to the public; public hearings regarding rate changes, rulemakings, and complaints are conducted throughout the year. Mr. Bonar stated that Bill O'Brien is the Executive Director of the PSC and his responsibility is the day-to-day operations of the Commission and oversight of the staff.

Mr. O'Brien presented information on the Public Service Commission's process and jurisdiction over wastewater utilities. He advised that legislation was passed in 2004 granting the PSC the authority to regulate non-governmental wastewater systems serving fifty or more customers, including

rate regulations and regulations over service territories (CPCNs – Certificate of Public Convenience and Necessity, also known as franchise areas.)

Mr. O'Brien stated that the reason they were in attendance on this date is that Tidewater Environmental Services (an affiliate of Tidewater Utilities) has applied for a rate increase for its wastewater systems for 8 or 9 developments plus the Town of Milton.

Public
Service
Commission
Information
Report
(continued)

Mr. O'Brien stated that public and written comments are received during the process and complaints can be submitted to the PSC or the public advocate (by email at publicadvocate.delaware.gov or by phone at (302) 577-5077).

Mr. O'Brien advised that rate increases must be approved by the PSC and applications for rate increases are only permitted once every 12 months.

Mr. Cole suggested that the Sussex County Council should talk with its legislators regarding updating franchise legislation, i.e. including a bidding process.

Mr. Cole questioned if the Sussex County Council has any impact on the PSC's rate increases. Mr. O'Brien stated that county governments can intervene as a party and then they would have access to all the discovery; they could cross-examine witnesses; and they could take a bigger role in the CPCN process.

Mr. Bonar concluded by thanking the Council for the invitation to speak and by stating that complaints/concerns can be submitted by calling (302) 736-7500.

Adminis-
trator's
Report

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

1. Advisory Committee on Aging and Adults with Physical Disabilities

Attached is a copy of the agenda for the November 21, 2011, meeting of the Sussex County Advisory Committee on Aging and Adults with Physical Disabilities. Subcommittees will meet at 9:00 a.m. followed by the regular meeting at 10:00 a.m. at the West Administrative Complex in Georgetown. Mr. Ken Bock will be discussing CHEER's Strategic Plan.

2. Community Development and Housing – Public Hearing and Meeting Dates

Attached is a copy of the public hearing and meeting schedule for the Sussex County Community Development and Housing program. At these meetings, discussions will occur regarding funding requests for housing renovations and/or eligible infrastructure within each of the noted towns. The Sussex County Community Development and Housing Division attends and participates in each meeting.

Adminis-
trator's
Report
(continued)

3. **Town of Georgetown – Blueprint Community**

We are pleased to congratulate the Town of Georgetown on being selected as a *Blueprint Community* in the State of Delaware. Attached is information regarding this selection. Blueprint Communities are eligible for funding assistance for planning of special projects within their town.

4. **Councilman Vance Phillips' Recovery**

As per the attached press release, Sussex County Councilman Vance Phillips has been transferred to Jefferson Health System's Magee Rehabilitation Hospital in Philadelphia. Councilman Phillips has begun therapy at this rehabilitation center in Philadelphia. The attached press release provides addresses for Mr. Phillips. As noted in the press release, per Mr. Phillips, "I continue to be overwhelmed with the outpouring of support from the good people of Delaware. The prayers I am receiving are sustaining my recovery and give me great hope for the future."

5. **Holiday Schedule**

The Sussex County Council will not meet on November 22, 2011, in honor of the Thanksgiving holiday. The next regularly scheduled meeting of the Sussex County Council will be November 29, 2011, at 10:00 a.m.

Sussex County offices will be closed on November 24 and November 25, 2011, in honor of the Thanksgiving holiday. Offices will open at 8:30 a.m., the normal time, on November 28.

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

Proposed
Loan
Resolution/
Woodlands
of
Millsboro
SSD

Mrs. Webb presented a Proposed Loan Resolution for the Woodlands of Millsboro Sanitary Sewer District. Mrs. Webb advised that she is preparing to close the USDA Bonds for the District, which has been online for the past year. The General Obligation Bond issuance is for \$90,000 and the bonds were used to fund a portion of the cost of acquiring, constructing, enlarging, improving, and or extending the sewer. The Bonds were financed with State bonds and grants from the Federal Stimulus Package; the Bonds will be sold to USDA. The Bonds are backed by the County's full faith and credit and it is expected that the debt service will be paid for with the revenues of the Woodlands of Millsboro Sanitary Sewer District. The terms of the Bonds are: \$90,000 loan; term not to exceed 40 years; the rate is anticipated at 2.625 percent. Mrs. Webb noted that the County received a \$402,953.00 grant for the project from the USDA.

M 604 11
Adopt

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Resolution entitled "A RESOLUTION OF THE SUSSEX COUNTY

Loan Resolution/ Woodlands of Millsboro SSD **COUNCIL AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS SEWER FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION” (Woodlands of Millsboro Sanitary Sewer District)**

M 604 11 (continued) **Motion Adopted: 4 Yeas, 1 Absent.**

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

Industrial Park Lease/ Cooper Bearings **Jim Hickin, Director of Sussex County Airport and Industrial Park, requested the Council’s approval of an Industrial Park Lease with Cooper Bearings, Inc. Cooper Bearings is a leading re-manufacturer of bearings and journal boxes for the rail industry who expect to employ 6 to 8 workers in the Industrial Park. The company is currently located on Zoar Road in Georgetown; however, their business is expanding and they need to expand their facilities. Mr. Hickin reviewed the terms of the lease:**

- **Lot 25A, consisting of 2.13 acres. Lot is between the County’s water plant and PATS manufacturing facility (old Edgehill building).**
- **30 year term with 3 five year options**
- **Rent is \$7,000 per acre per year (\$14,910). This is the appraised fair market value, determined by W. R. McCain & Associates in 2007.**
- **Rent to increase by CPI every five years.**
- **No rent due during first six months of lease.**
- **Lot to be used for manufacturing and maintaining equipment for the railroad industry or any other use which may be permitted by the County. Other uses require County approval.**
- **Property, business income, and general liability insurance required.**
- **Sub-letting or assignment of lease requires County approval.**
- **Tenant responsible for all improvements.**
- **Tenant responsible for utility costs. Utilities already provided to lot line.**
- **FAA-required provisions: protection of airport, non-discrimination, etc.**

Mr. Hickin introduced representatives of Cooper Bearings, Inc. who discussed their company and their plans in the Industrial Park.

Mr. Baker explained that Cooper Bearings’ plan is to build on the site at the Industrial Park.

M 605 11

Authorize Lease Agreement/ Cooper Bearings **A Motion was made by Mr. Cole, seconded by Mr. Wilson, that the Sussex County Council authorizes the Council President to execute the Lease Agreement with Cooper Bearings, Inc. for Lot 25A in the Sussex County Industrial Park, as presented by Jim Hickin, Director, Sussex County Airport & Industrial Park, on November 15, 2011.**

M 605 11 (continued) **Motion Adopted: 4 Yeas, 1 Absent.**
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea

Old Business/ Re-districting Ordinance **Under Old Business, the Council considered the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL ORDINANCE NO. 1548 RELATING TO COUNCILMANIC ELECTION DISTRICTS AND ADOPTING COUNCILMANIC ELECTION DISTRICTS”.**

A Public Hearing was held on the Proposed Ordinance on October 25, 2011, at which time the Public Hearing was closed and the public comment period was left open until Noon on Friday, October 28th.

The County Council continued its discussion and consideration of the Proposed Ordinance on November 1 and 8, 2011.

Mr. Moore reported that on November 1st and 8th, he advised the Council that road names would be inserted into the Proposed Ordinance in lieu of road numbers. He stated that this was due to the fact that when the Proposed Ordinance was drafted, the new road names were used in preparing the three districts that were changed; however, for the districts that were not changed, the road numbers were left in the document.

Mr. Moore clarified that there is no change in any lines in the Proposed Ordinance distributed on this date and that the only changes are: (1) adding the road names where appropriate and (2) in District No. 1, on Page 2, there was a branch that was incorrectly referred to when it should have been a ditch.

M 606 11 Adopt Changes to Proposed Ordinance Relating to Re-districting **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to adopt the following changes to the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL ORDINANCE NO. 1548 RELATING TO COUNCILMANIC ELECTION DISTRICTS AND ADOPTING COUNCILMANIC ELECTION DISTRICTS”: adding the road names to the Proposed Ordinance and by amending language in the First Councilmanic District by adding “unnamed ditch” as opposed to “Stoney Branch”.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 607 11
Adopt
Ordinance
No. 2227

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to adopt Ordinance No. 2227 entitled “AN ORDINANCE TO REPEAL ORDINANCE NO. 1548 RELATING TO COUNCILMANIC ELECTION DISTRICTS AND ADOPTING COUNCILMANIC ELECTION DISTRICTS”, as amended.

M 607 11
(continued)

Motion Adopted: 4 Yeas, 1 Absent.

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

Board of
Elections/
Additional
Proposed
Changes/
Re-
districting

Mr. Moore stated that he has heard of two additional changes that are being requested by the Board of Elections to incorporate two fixes of pockets which will require approval by the Sussex County Council and the State Senate: one is between Shingle Point Road and Sand Hill Road between Route 9 and Briarwood Manor which consists of approximately 300 people and another is in the area of Mt. Joy which consists of approximately 38 people.

Old
Business/
Proposed
Ordinance
Relating

Under Old Business, the Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY BY AMENDING §26-4 RELATING TO THE ADVISORY RETIREMENT BOARD”.

to the
Advisory
Retirement
Board

A Public Hearing was held on the Proposed Ordinance on November 8th at which time action was deferred and Council directed staff to research the makeup of the pension committees of the other two counties and the State. Mrs. Webb advised that the information was previously distributed to the Council members in their Council packets.

Mrs. Webb stated that the State has a different pension structure and the State’s pension is worth \$1 billion. She advised that the State has a Board of Pension Trustees, an Investment Committee, and a Pension Advisory Council. None of the members are State of Delaware employees; however, areas of State Government are represented.

Mrs. Webb stated that 5 union members serve on the Pension Board in New Castle County.

Mrs. Webb stated that Kent County has 5 members on their Board which is made up of 2 employees and 3 citizens.

The Council discussed the make-up of Sussex County’s Advisory Retirement Board, as proposed.

Mr. Cole suggested that the member(s) from the community should have banking or investment security backgrounds.

Mrs. Deaver stated that the members of the Committee need a lot of knowledge in investments, including the employee member and the community member.

Mrs. Deaver commented on the public exposure of the meetings and she stated that, in the past, agendas, minutes, and audio have not been on the County's website. (It was noted that, in the past, Agendas have been posted on the bulletin board in the County Administrative Building.)

Old
Business/
Proposed
Ordinance
Relating
to the
Advisory
Retirement
Board
(continued)

Mr. Baker also noted that the Secretary of the Committee has been asked to post the information on the County's website in the future.

Mr. Vincent stated that he would be in favor of the Council not serving on the Board and in favor of an additional member of the public serving on the Board. Mrs. Deaver stated that she suggested this at the meeting of the Pension Committee.

M 608 11
Amend
Proposed
Ordinance
Relating
to the
Advisory
Retirement
Board

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY BY AMENDING §26-4 RELATING TO THE ADVISORY RETIREMENT BOARD" by removing (in Section D.) the following wording "The Sussex County Council shall appoint one of its members to the Committee in January of every year." and by changing the reference to "a Sussex County community member" to "two Sussex County community members".

Motion Adopted: 3 Yeas, 1 Nay, 1 Absent.

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

M 609 11
Adopt
Ordinance
No. 2228

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to Adopt Ordinance No. 2228 entitled "AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY BY AMENDING §26-4 RELATING TO THE ADVISORY RETIREMENT BOARD", as amended.

Motion Adopted: 3 Yeas, 1 Nay, 1 Absent.

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

OOSD/
Change
Order

Michael Izzo, County Engineer, reported on a Balancing Change Order with Teal Construction, Inc. in the credit amount of \$243,765.75 for the Oak Orchard Sanitary Sewer District Expansion Project (Contract 09-13)

M 610 11

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the

Approve Change Order/ Contract 09-13/ OOSSD	recommendation of the Sussex County Engineering Department and its Consultant, Davis, Bowen and Friedel, that the Balancing Change Order with Teal Construction, Inc. of Dover, Delaware, for Sussex County Project No. 09-13, Oak Orchard Sanitary Sewer District Expansion No. 1, be approved at a credit amount of \$243,765.75 which decreases the final total contract to \$2,664,221.25, pending the receipt of approval from the funding agencies.
M 610 11 (continued)	Motion Adopted: 4 Yeas, 1 Absent. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Wilson, Yea; Mr. Vincent, Yea
Angola Neck SSD/ Change Order	Michael Izzo, County Engineer, presented a Balancing Change Order with A. P. Croll & Son, Inc. in the credit amount of \$175,277.91 for the Angola Neck Sanitary Sewer District – Angola Neck Park, Cove on Herring Creek, and Pump Station No. 320 / Pump Station No. 321 (Contract 09-16).
M 611 11 Approve Change Order/ Angola Neck SSD/ Contract 09-16	A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department, that the Balancing Change Order with A. P. Croll & Son, Inc. of Georgetown, Delaware, for Sussex County Project No. 09-16, Angola Neck Sanitary Sewer District, Angola Neck Park, Cove on Herring Creek and Pump Station No. 320 and Pump Station No. 321, be approved, which decreases the contract amount by \$175,277.91 for a new total of \$3,550,204.09, contingent upon the receipt of approval from the funding agencies. Motion Adopted: 4 Yeas, 1 Absent. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Wilson, Yea; Mr. Vincent, Yea
SCRWF PS 30 ForceMain/ Contract 10-03/ Change Order	Michael Izzo, County Engineer, presented Change Order No. 1 with Bunting & Murray Construction Corporation in the amount of \$299,551.00 for the South Coastal Regional Wastewater Facility (SCRWF) – Force Main Construction from Pump Station 30 to the South Coastal Regional Wastewater Facility (Contract 10-03). Mr. Izzo explained that the Developer of the Waters Run Project on Derrickson Creek has a gravity sewer line to put in at Old Mill Bridge Road at the same location as the Force Main is going to be installed. Mr. Izzo stated that it was discussed that the County would work with the Developer to establish an Escrow Account, thereby allowing the County's contractor to put in the gravity sewer line at the same time that the Force Main goes in. The benefit would be to the public as the road would be torn up only one time. Additionally, this would allow the Developer to serve 13 existing homes.

Mr. Izzo reported that the bid for this contract was awarded in August to Bunting & Murray Construction Corporation. At the time of the bid, funds had not yet been placed in escrow by the Developer and the County could not award the Bid Alternate which includes the gravity sewer work. In October, the developer placed the funds into escrow and a Change Order was prepared to increase the Contract amount to allow for the gravity sewer work.

**M 612 11
Approve
Change
Order/
Contract
10-03/
SCRWF
PS 30
ForceMain**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 with Bunting & Murray Construction Corporation of Selbyville, Delaware, for Sussex County Project No. 10-03, South Coastal Regional Wastewater Facility, Pump Station No. 30 Force Main, be approved, which increases the Contract amount by \$299,551.00 for a new total of \$3,595,651.00 and increases the Contract time by 30 days contingent upon the receipt of approval from the funding agencies.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Expansion
of the
Angola
Neck SSD/
Request to
Prepare
and Post
Notices**

John Ashman, Director of Utility Planning, presented a request to prepare and post notices for the White Expansion to the Angola Neck Sanitary Sewer District. The proposed expansion consists of two parcels (\pm 3.3 acres) which are located along Camp Arrowhead Road and are contiguous to the existing district. The properties were provided sewer laterals as part of the original construction for the Angola Neck Sanitary Sewer District. The current owners would like to move their existing home to one of the parcels and live there while they build a new home on the second parcel. The parcel will be responsible for system connection charges of \$3,546.00 per EDU based on rates from July 1, 2011 until June 30, 2012.

**M 613 11
Authorize
Posting of
Notices/
Expansion
of the
Angola
Neck SSD**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Engineering Department is authorized to prepare and post notices for the extension of the Angola Neck Sanitary Sewer District boundary to include two parcels along Camp Arrowhead Road, as presented on November 15, 2011.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Grant
Requests**

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

**M 614 11
Community**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$2,500.00 from Mr. Cole's Community Grant Account to the Rehoboth

- Grant** **Beach Historical Society for museum construction costs.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 615 11** **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$2,500.00**
Community **from Mr. Cole's Community Grant Account to the Ocean View Historical**
Grant **Society for project costs.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 616 11** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$250.00**
Community **from Mrs. Deaver's Community Grant Account to the Milton Historical**
Grant **Society for programs and projects.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 617 11** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver to give**
Community **\$1,300.00 from Mr. Cole's Community Grant Account to West Side New**
Grant **Beginnings for their children and youth programs.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 618 11** **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$2,500.00**
Community **from Mr. Cole's Community Grant Account to the Rehoboth Art League**
Grant **for programs and projects.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 619 11** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give**
Community **\$1,500.00 from Mr. Cole's Community Grant Account to the Oak Orchard/**

- Grant** **Riverdale Boys & Girls Club for programs and projects.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 620 11** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00**
Community **from Mr. Vincent's Community Grant Account to the Town of Blades Kids**
Grant **Christmas for the Kids Christmas Bazaar.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 621 11** **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$500.00**
Community **from Mr. Vincent's Community Grant Account to the Downtown Seaford**
Grant **Association for parade expenses.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- Additional** **Under Additional Business, Mrs. Deaver questioned the status of the**
Business/ **historic preservation ordinance (discussed at the July 28, 2009 Council**
Historic **meeting). Mr. Vincent stated that, to date, no comments have been received**
Preservation **on the information posted on the County's website.**
- M 622 11** **A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to recess**
Recess **until 1:30 p.m.**
- Motion Adopted:** **4 Yeas, 1 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- M 623 11** **At 1:39 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver,**
Reconvene **to reconvene.**
- Motion Adopted:** **3 Yeas, 2 Absent.**
- Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Absent;
Mr. Phillips, Absent; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
(continued)**

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 YARD WASTE AND COMPOSTING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 17.011 ACRES, MORE OR LESS” (Conditional Use No. 1913) filed on behalf of Jeremy W. Smith.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 27, 2011 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 27, 2011.)

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

Mr. Lank distributed the Applicant’s Exhibit Booklet.

Mr. Lank reported that copies of all of the oppositions’ petitions, letters and emails were distributed to all of the Council members. He also reported that there were 161 signatures on the oppositions’ petitions and there were 33 letters/emails in opposition to the application. Mr. Lank stated that two additional pieces of correspondence were received: a fax received on November 14th from Janet M. and Thomas Fadeley and an email received on November 15th from Sandra and Dennis Lynch, both in opposition to the application. (An email was also received on November 14th from Edward and Ellen Krannebitter in opposition to the application – Mr. Lank did not comment on this additional piece of correspondence since it was included in the packet of petitions, letters and emails distributed to the Council members on this date.)

The Council found that Jeremy Smith was present with Doug Barry of Pennoni Associates. They stated that the proposed Conditional Use is for a yard waste recycling and composting facility with sales; that the Applicant is proposing to utilize 17 acres in the center of a 39 acre property which is currently used for farming operations; that the West Ocean Farms and Whites Neck Village Subdivision abuts the property to the north and there is a small agricultural property to the north; that agricultural uses exist to the west of the property; that to the south of the property is the existing Squirrels Run Subdivision; that to the east of the property is Whites Neck Road; that north on Whites Neck Road is an existing B-1 zoned commercial use (Village Square) in addition to the State’s land at the southwest intersection of Old Mill Road and Whites Neck Road (a portion of this land has been used as a soil disposal area for construction of the new Indian River Bridge); that the property is located in an Investment Level 2 Area according to the State Strategies Maps and in an Environmentally Sensitive Developing District according to the County Comprehensive Land Use

Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
(continued)

Plan; that the Exhibit Booklet contains a copy of an Environmental Assessment Report; that they have tried to address all of the necessary environmental issues; that the Applicant is proposing an organic yard waste recycling and composting and sales facility to serve the residents and businesses in the area, thereby eliminating the need for materials to be hauled to the State landfill; that the Environmental Protection Agency (EPA) recommends the composting of yard waste; that the Applicant has attempted to reach out and contact area residents; that the Applicant realizes that this facility must be designed and operated in accordance with DNREC's guidelines for yard waste composting facilities, which were established by the State and the EPA; that the Applicant will need approvals from DNREC and other State agencies if the application is approved, i.e. DNREC Air Permit, DelDOT, Sussex Conservation, etc.; that the existing entrance and driveway are proposed to be utilized to serve the project; that they are proposing to move the entrance to the middle of the site in the future to be reconnected to the existing driveway to separate the entrance from the adjoining subdivisions to the north and south; that they are proposing a 10 foot wide buffer between the driveway and the adjoining subdivision to the south; that they will provide the 300 foot DNREC-required setback from occupied dwellings; that the facility cannot be located within 25 feet of a property line; that a 50 foot buffer will be provided along the rear of the property; that no recycling activities will occur within 100 feet of a water source or perennial stream; that only organic yard waste will be permitted at this facility; that organic yard waste is defined by DNREC as "plant material residues resulting from lawn maintenance and other horticultural, gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter"; that DNREC requires that composting operations may not be located in a 100 year flood plain and this application is not located in a 100 year flood plain; that the Applicant will be required to put a sign out by Whites Neck Road stating that the facility will only accept organic yard waste up to 4 inches; that the site is fairly level and that there should be no negative runoff; that the State Department of Agriculture considers forests and forest products as an agricultural use; that no dumping of kitchen or waste products will be permitted; that they have responded to all of the references to the Environmentally Sensitive Developing District Overlay Zone in the Exhibit Booklet; that the stormwater design for the site will primarily be contained on-site and will incorporate the existing farm pond with a secondary discharge to the tax ditch system located along the easterly property line that will meet DNREC and Sussex Conservation District regulations; that during the stormwater design, the Applicant will work with the Sussex Conservation District to achieve the Best Management Practices for the development of the site; that a Nutrient Budget was prepared via DNREC's Nutrient Protocol and, resultant data indicate that the mandated Total Maximum Daily Loads (TMDLs) was met for this site; that the amount of Phosphorous and Nitrogen currently discharged will be reduced by the design of this project; that the existing poultry house will be converted into storage and equipment storage; that no endangered species were found on

Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
(continued)

the site; that there are no tidal or non-tidal wetlands within the area proposed for the facility; that the existing woodlands will remain wooded; that the facility is approximately 1,000 feet from Whites Neck Road; that no historic or cultural resources exist on the site; that there is no need for sewer service for the project, and that they are proposing to utilize a porta-toilet temporarily; that the grinding equipment will meet the requirements of DNREC; that the DNREC Guidelines For Yard Waste Composting Facilities document has some general requirements, citing restrictions, access control, references to residual disposal, nuisance control, emergency response, air resources protection, water quality protection, alternative technologies for composting, and registration of the compost product; that the Applicant lives within 2 miles of the site and hopes to build on the site in the future; that the materials will not include vegetable and fruit material, household kitchen waste, food products, or chicken manure; that dust will be controlled by water and a water truck if necessary; that the access road will probably be improved with crusher run or crushed concrete, not dirt; that DelDOT is requiring a Class C entrance adjacent to Whites Neck Road; that no Traffic Impact Study was required; that the closest fire company is the Millville Volunteer Fire Department; that the two closest recycling centers are the Eastern Recycling facility and the Blue Hen Organic facility; that there is currently no residence on the site; that the site will be gated to control access; that they will be purchasing some mulch for resale; that some of the mulch will be color dyed on site; that at the start of the business it will be operated by the Applicant and one employee; that in the future the Applicant hopes to have up to 20 employees; that the majority of the trucks coming to the site will be landscaping company vehicles and privately owned pickup trucks; that impervious pads will be provided to store the materials; and that if needed, a larger well may be provided to provide fire protection.

Mr. Barry addressed concerns and comments that were raised during the Public Hearing before the Planning and Zoning Commission:

Odor – This composting facility can accept yard waste and organic waste only. Dumping of kitchen or commercial waste products will not be permitted. In addition, no animal manure will be used. Therefore, as long as Mr. Smith operates the facility and he keeps the composting aerated and the windrows turned periodically in accordance with State regulations, there should be no nuisance odors emitted from the site.

Noise – There is a perimeter forest which lines the majority of the perimeter of the property; this should screen some of the noise that will occur during the day-to-day operations of the facility. The hours of operation are between 8 and 4, which will limit night time noise. In addition, due to the 4 inch limitation, the Applicant is not expecting any heavy equipment at the facility.

Truck Traffic – Since the Applicant is not permitted to accept anything greater than 4 inches, tractor trailers are not expected to use this facility at

all; however, the Applicant does expect periodic tractor trailers for the first few months of operation so that mulch can be delivered to the site (probably one tractor trailer per month). This is less traffic than what is typical for the chicken houses at the rear of the property.

Gas Emissions – Hydrogen sulfide and methane will not be generated at this facility. State regulations are such that waste cannot be enclosed in a vessel. Compost piles are not permitted to be enclosed as proper compost requires and oxygen rich environment.

Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
(continued)

Dust Control - There will be onsite water – there is an existing well on the property and if another one is needed, the Applicant will procure the appropriate DNREC permits to construct an additional well. The onsite water can serve as dust control. In addition, the gravel road that leads to the rear of the property will serve as a mechanism by which the rock vibrations will remove some of the dirt that accumulates in the tires and will minimize deposits on Whites Neck Road and adjacent streets.

Fires – DNREC requirements are in place to minimize excessive heat. There must be proper moisture control and periodic mixing of the windrows; in addition, there are sizing limitations and the compost must be stored on an impervious surface. Therefore, a fire is extremely unlikely. However, in the event of a minor fire, onsite water can be used. Also, the Millville Fire Company is located within 1 mile of the site. In addition, there is an existing fire hydrant on the property adjacent to Whites Neck Road.

Groundwater Contamination – A National Pollutant Discharge Elimination System permit will need to be procured from DNREC. This permit addresses groundwater contamination. The facility will not be permitted by the State of Delaware unless the Applicant adequately demonstrates compliance with the regulations; this is typically achieved through the use of green technology and stormwater best management practices.

Mr. Barry presented suggested Findings of Fact and Conditions of Approval, which were included in the Exhibit Booklet.

Jeremy Smith clarified that, in regards to the proposed hours of operation, 7:30 a.m. to 8:00 a.m. will be operational hours in the morning; that from 8:00 a.m. to 4:00 p.m., yard waste will be accepted; and 4:00 p.m. to 7:00 p.m. will be operational hours (when breakdown will occur).

There were no public comments in support of the application.

Bonnie Patrick, Michael Cuzzo, Ruth Vella, Charlotte Anderson, Dawn Cuzzo, Penn Frey, and Angela Frey spoke in opposition to the application. They stated that there is not a 10 foot buffer and you can see straight through; that the surrounding area is residential; that a facility like the one proposed should be in an open area and not where there are housing

**Public
Hearing/
C/U
No. 1913/
Jeremy
W. Smith
(continued)**

communities; that well contamination is a concern and they question how the facility can be regulated to determine what chemicals have been put on materials coming into the facility; that the composting piles have to be kept moist and there will be leeching into the ground; that all the surrounding communities are on well water; that noise pollution is a concern; that they will need heavy equipment to move the mulch; that trucks will deliver and load mulch/compost; that the amount of trucks would impact Route 265 and Whites Neck Road, both of which already carry too much traffic, especially during the summer season; that there is a concern about tractor trailers and the Applicant previously stated that 800 trucks per day are expected; that trucks will have to line up on a single lane road with no shoulders; that truckloads will have to be inspected; that the single lane road will have to absorb the increased traffic; that the Squirrels Run and Bowerset subdivisions will probably have their single entrance and exit road blocked; that entering and exiting will be severely impacted; that safety is an issue; that property values of area homes will decrease; that there is a concern about increased littering and dumping in the area; that the health, safety and welfare of the residents will be in jeopardy; that they question how the sound of operations can be muffled from 7 a.m. to 7 p.m.; that emergency vehicles will have difficulty accessing homes in the area; that well contamination and migrated water is a concern; that leaves take two years to compost; that another composting facility is located 2 miles away on Route 26 which is zoned commercial; that material will be brought in from undisclosed areas; that they question what will be brought in; that the smell of poultry manure which will be used to hasten decomposition is unwanted; that there is a concern about fires and ensuing smoke; that other compost facilities in the County are not located in residential areas; and that the proposal does not comprise a peaceful, quiet neighborhood that currently exists.

Mr. Lank distributed photographs of the site and the area, which were previously submitted by Bonnie Patrick.

Mr. Vincent called for a show of hands of those who were in attendance in support (0) and in opposition (36) to the application.

The Public Hearing and public record were closed.

**M 624 11
Defer
Action on
C/U
No. 1913/
Jeremy W.
Smith**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1913 filed on behalf of Jeremy W. Smith.

Motion Adopted: 3 Yeas, 2 Absent.

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

**M 625 11
Adjourn**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to adjourn at 3:08 p.m.

Motion Adopted: 3 Yeas, 2 Absent.

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

Respectfully submitted,

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