



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 16, 2010

#### Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 16, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

Mr. Phillips announced that Councilman Vincent's absence was due to the fact that he was representing the Council at an event in Seaford.

#### M 609 10 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting "Discussion and possible introduction of a Draft Ordinance relating to Administrative Appeals" and by deleting "Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition" and "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. Wilson, Yea;  
Mr. Cole, Yea; Mr. Vincent, Absent;  
Mr. Phillips, Yea

#### Minutes

The minutes of October 26, 2010 were approved by consent.

**Correspondence**

**Mr. Moore read the following correspondence:**

**MASON DIXON WOODWORKERS, DELMAR, MARYLAND.**

**RE: Letter in appreciation of grant and invitation to attend their annual banquet.**

**BETHEL HISTORICAL SOCIETY, BETHEL, DELAWARE.**

**RE: Letter in appreciation of grant.**

**United Way of Delaware**

**Michael Shockley of United Way stated that they are kicking off their annual fundraising campaign and he thanked the Council for being the first pacesetter for the 2010 campaign. Mr. Shockley presented a Certificate of Appreciation to the Council. Mr. Phillips presented a check in the amount of \$2,000 (Human Service Grant) to Mr. Shockley for the United Way.**

**Recognition of Paramedics**

**Sussex County paramedics were recognized for responding to an incident that took place on July 4, 2010 when Randy O'Bier, a 62 year old volunteer firefighter and a member of the Seaford Fire Department, went into cardiac arrest while assisting with a fire near Dewey Beach. Bob Stuart, Director of EMS, reported that Sussex County paramedics, First Responders and members of the Seaford Fire Department and the Rehoboth Beach Volunteer Fire Company, were able to successfully resuscitate Mr. O'Bier. Mr. Stuart reported that, due to the heavy traffic on July 4th, normal response was delayed; two bike medics, Wayne Jester and Jordan Dattoli responded and were the first paramedics on the scene and initiated treatment. Paramedics Jay Shine, Chris Boyer, Frank Mayhorn, Holly Mitchell Donovan, and Kevin Erb (student paramedic) also arrived on the scene and eventually took over care from the bike medics.**

**Manufactured Housing Committee Status**

**Mr. Baker reported that a request has been made to the County Council to add additional meetings for the Manufactured Housing Ad Hoc Committee. On November 3, 2009, the Council approved the establishment of the Committee and the focus of the Committee was to work on manufactured housing issues. The Committee met three times, in February, March and April, after which they made a recommendation to the Council and the Planning and Zoning Commission. Various ordinances were prepared as a result of the Committee's work.**

**Mr. Baker stated that the question is whether to reconvene the Committee and what should be the scope of their task. One option would be to ask the members of the existing Committee for specific issues that they would like discussed.**

**It was the consensus of the Council that a letter will be sent to each member of the Committee requesting that they provide an individual written report on the issues they would like addressed. Further, upon receipt of this information, the Committee will reconvene for one meeting to consider the list of issues submitted.**

**Oak**

**Mr. Baker discussed the River Road Sewer Project, which is an extension of**

**Orchard  
SSD/  
River  
Road  
Contract  
Options**

**the Oak Orchard Sanitary Sewer District. Human remains have been discovered, as expected, along the path of the sewer line along River Road. Five human remains have been removed to date and this work was included in the existing contract. Mr. Baker reported that, to date, a total of 28 human remains have been found in the path of the sewer line under River Road. There have been several meetings with representatives from the County’s consulting engineers (CABE Associates), archaeologist John Milner & Associates, the Delaware State Historical Preservation Office, DelDOT, members of the Nanticoke Tribe, representatives from the County Engineer Department and Mr. Baker.**

**Oak  
Orchard  
River  
Road  
SSD/  
Contract  
Options**

**Mr. Baker presented four options for the Council’s consideration:**

**(continued)**

**Option No. 1 – Burial Excavation**

**This would mean the removal of a total of 28 human remains found in the path of the proposed sewer line. Currently, approximately \$45,000 has been expended, and five of the 28 human remains have been removed. The estimated remaining cost to remove the additional 23 remains is \$185,000.**

**Option No. 2 – Bore and Jack**

**This option would involve a process commonly used to bore under roadways to install sewer lines. The proposal would involve a jack and bore option for approximately 80 linear feet, which would be a minimum of 8 1/2 feet from the surface and a minimum of four feet below the buried human remains that have been discovered. The County’s contractor for this project, Daisey Construction, could handle this option at an estimated cost of \$85,000.**

**Option No. 3 – Relocate Sewer Line Path**

**This option would involve moving the path of the sewer line from along River Road within the DelDOT right-of-way around some of the homes that are adjacent to the north side of River Road. The concern is that this initially would require additional archaeological work to determine the extent of exactly where the human remains from this apparent cemetery are located. The County has expended approximately \$45,000 to date for the archaeological work to locate 28 remains and excavate five of the 28. A possible \$30,000 expenditure or more is anticipated to perform the same scope of work, plus additional costs to pay for easements and re-engineering of the project. It is estimated that the cost for this option may equal the additional cost of excavating the remains as Option 1.**

**Option No. 4 – Discontinue the Project at a Point Approximately 200 Feet from the Burial Location**

**This would mean that this project would serve approximately six properties, and approximately 20 other properties along the Inland Bays would not be served with central sewer. Another concern in the future could be that**

additional growth in the area would not have the availability of central sewer.

Mr. Baker stated that there are some transfer tax funds remaining from the original Oak Orchard Sanitary Sewer District construction project and that these funds could be used for any of the options.

Oak Orchard SSD/River Road (continued)

Michael Izzo, County Engineer, introduced Steve Lewandowski from CABA Associates (the Engineer for the project), Mr. and Mrs. Ashley, two local residents who would be served by the project; Dan Parsons, Sussex County Historic Planner, and two elders of the Nanticoke Tribe. Mr. Izzo thanked everyone for their participation in this process.

A discussion was held regarding the project and the proposed options.

M 610 10 Approve Bore and Jack Option for Oak Orchard SSD River Road Contract

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council approves the Bore and Jack Option for the Oak Orchard Sanitary Sewer District, River Road, Contract F, Sewer Expansion and the County will work to designate and mark the location of the cemetery.

Motion Adopted: 4 Yeas, 1 Absent.

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

Clarification of Amendment to Agenda

Mr. Moore stated that the Council Agenda was amended on November 12, 2010, to enable the Council to consider the above options. Due to the emergency nature of the issue and the importance of handling this matter in a timely fashion, the amendment to the Agenda was done in accordance with FOIA requirements. A decision regarding the path to take was needed as soon as possible since the Council will incur additional construction costs for delay if a decision is not made.

Administrator's Report

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

1. Community Development & Housing Public Hearing and Meeting Dates

Attached is a schedule of public hearing and meeting dates for the Community Development & Housing Block Grant Program proposal for Fiscal 2012. The County's Community Development & Housing Division will attend each meeting and prepare a budget recommendation based on the input received at the meetings.

2. 2009 International Residential Code Seminar

The County is sponsoring a seminar on the International Residential

**Building Code on December 2 and 3, 2010. The cost of this seminar is \$150. A representative from the International Residential Code organization will provide the instructions. County inspectors will also receive this training and it is open to members of the public who are interested. There are approximately seven spaces available for the seminar. Attached is information regarding the offering.**

**Adminis-  
trator's  
Report  
(continued)**

**3. Angola Sanitary Sewer District – Camp Arrowhead Road**

**As part of the Angola Sanitary Sewer District construction project, work is being done along Camp Arrowhead Road to install sewer lines. Some temporary stone paving is in place in certain areas of the road. Stone roadway will be replaced, as soon as the weather cooperates, with a temporary asphalt surface. The paving of the temporary asphalt surface is scheduled for today, weather permitting.**

**We urge that motorists stay within their lane while traveling along Camp Arrowhead Road or other roads in the Angola area that have been impacted by the construction of our sewer system. The County is carefully monitoring the situation and is encouraging our contractors to handle the individual problems as quickly and safely as possible.**

**4. Thanksgiving Holiday**

**The Sussex County Council will not meet on Tuesday, November 23, 2010, in honor of the Thanksgiving holidays. County offices will also be closed on November 25 and November 26, 2010, for Thanksgiving. County offices will reopen on November 29, 2010, at 8:30 a.m.**

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

**Financial  
Report**

**Mrs. Webb presented the financial report for the Quarter Ending September 30, 2010.**

**Local  
Law  
Enforce-  
ment  
Grant  
Request**

**Mr. Godwin presented the following Local Law Enforcement Grant requests:**

<b>Dewey Beach</b>	<b>\$20,000</b>	<b>Patrol Vehicle</b>
<b>Selbyville</b>	<b>\$ 8,500</b>	<b>Computers, In Car Printers, DVR System</b>

**M 611 10  
Approve**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to approve Local Law Enforcement Grants to the Town of Dewey Beach (\$20,000) and**

- Local Law Enforcement Grant**      **the Town of Selbyville (\$8,500).**  
**Motion Adopted:**      **4 Yeas, 1 Absent.**  
**Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Wilson, Yea;  
Mr. Cole, Yea; Mr. Vincent, Absent;  
Mr. Phillips, Yea**
- Grant Requests**      **Mrs. Webb presented grant requests for the Council’s consideration.**  
**Mrs. Webb reported that the first grant request (Milton Historical Society) has already been handled through Human Service Grants.**
- M 612 10 Community Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent’s Community Grant Account to the Town of Blades for their Annual Kids Christmas Bazaar.**  
**Motion Adopted:**      **4 Yeas, 1 Absent.**  
**Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Wilson, Yea;  
Mr. Cole, Yea; Mr. Vincent, Absent;  
Mr. Phillips, Yea**
- M 613 10 Community Grant**      **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$3,500.00 from Mr. Cole’s Community Grant Account to the Boys & Girls Club of Oak Orchard/Riverdale for their fundraising campaign.**  
**Motion Adopted:**      **4 Yeas, 1 Absent.**  
**Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Wilson, Yea;  
Mr. Cole, Yea; Mr. Vincent, Absent;  
Mr. Phillips, Yea**
- M 614 10 Community Grant**      **A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$1,000.00 from Mrs. Deaver’s Community Grant Account to Lewes Aid to help those in need pay for electric, heating oil, medicine, rent, etc.**  
**Motion Adopted:**      **4 Yeas, 1 Absent.**  
**Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Wilson, Yea;  
Mr. Cole, Yea; Mr. Vincent, Absent;  
Mr. Phillips, Yea**
- Introduction of Proposed Ordinances**      **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.3328 ACRES, MORE OR**

**LESS” (Change of Zone No. 1700) filed on behalf of Stephen Bilobran.**

**Introduction  
of Proposed  
Ordinances  
(continued)**

**Mr. Cole 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-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 20.94 ACRES, MORE OR LESS” (Change of Zone No. 1701) filed on behalf of CMF Bayside, LLC.**

**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO OPERATE BUSINESSES RELATED TO GRASS CUTTING, POWER WASHING, MARINE SERVICES AND SALES, AND CONSTRUCTION SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.5188 ACRES, MORE OR LESS” (Conditional Use No. 1881) filed on behalf of Harold R. Ennis Jr. & Dick Ennis, Inc.**

**The Proposed Ordinances will be advertised for Public Hearing.**

**Additional  
Business/  
Public  
Facilities  
Ordinance  
Workshop**

**Under Additional Business, Barbara Vaughn inquired about the status of an adequate public facilities ordinance. She stated that, on May 4, 2010 it was decided that the Council would hold a workshop on this issue.**

**It was the consensus of the Council to hold a workshop on the adequate public facilities ordinance. Mr. Cole suggested that the workshop be held in January 2011.**

**Additional  
Business/  
Manu-  
factured  
Housing**

**Under Additional Business, Dixie Boucher thanked the Council for agreeing to hold an additional meeting of the Manufactured Housing Ad Hoc Committee. Ms. Boucher submitted her recommendations, in writing, to Mr. Baker. Ms. Boucher also requested that Councilman Cole attend the Ad Hoc Committee meeting and that he be allowed to provide input.**

**Mr. Cole questioned if he is allowed to provide input at the meeting since he is not a member of the Committee. Mr. Moore stated that he would look into this issue and advise Mr. Cole prior to the Committee meeting being held.**

**Ms. Boucher asked what percentage of cases before the Board of Adjustment relate to manufactured housing. Mr. Lank responded that he would provide this information. She stated that her purpose for asking this is that additional committee hearings are needed because a large percentage of issues that are developing are based on manufactured housing.**

**Ms. Boucher stated that, in the interest of full disclosure by public officials,**

she is asking each member of the Council to verbally state, for the record, if they have ownership, full or partial, or any financial interest in any manufactured housing community of any size in the County.

**Purpose of  
Additional  
Business/  
Public  
Comment  
(continued)**

Mr. Moore stated that the Additional Business/Public Comment period should not involve discussion with the County Council and the speaker as it is a time for the public to make comment to the Council. Mr. Moore stated that discussion matters should be matters that are placed on an agenda. Mr. Moore also noted that any time an issue comes up that may pose a conflict, at that point it would be incumbent on a Councilmember to announce a possible conflict.

**Policy**

Mr. Cole asked Mr. Moore to review the County's Conflict of Interest Policy and that the policy be placed on a future agenda.

**Draft  
Fuel  
Tax  
Resolution**

Mr. Phillips distributed a copy of a draft Resolution entitled "A RESOLUTION EXPRESSING SUSSEX COUNTY COUNCIL'S CONCERN THAT A PROPOSED INCREASE IN THE FEDERAL FUEL TAX WOULD BE HARMFUL TO THE CITIZENS OF SUSSEX COUNTY, DELAWARE, AND THE COUNTY'S OVERALL ECONOMIC HEALTH". Mr. Phillips stated that the draft Resolution would be placed on the November 30th Agenda for consideration.

**M 615 10  
Recess**

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

**M 616 10  
Reconvene**

At 1:34 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to reconvene. Motion Adopted by Voice Vote.

Councilman Vincent was in attendance for the P.M. session.

**Public  
Hearing/  
C/U  
No. 1867**

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 MULCH FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.20 ACRES, MORE OR LESS" (Conditional Use No. 1867) filed on behalf of Lawson's Produce, LLC.

Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 28, 2010 at which time they deferred action. On November 10, 2010, the Commission recommended that the application be approved with the following conditions:

1. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps or construction waste shall be accepted at the site.
2. The Applicant shall install a 6-foot tall solid vinyl fence along the



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Hearing/  
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No. 1867  
(continued)

- western boundary of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan.
3. Grinding and dyeing or processing hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday.
  4. There shall be no grinding or dyeing operations within 100 feet of any neighboring property line. The areas set aside for grinding and dyeing shall be shown on the Final Site Plan.
  5. There shall not be any mulch storage within 20 feet of any neighboring property line. The areas set aside for mulch storage shall be shown on the Final Site Plan.
  6. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday. The site shall be gated so that after-hours deliveries or dumping do not occur.
  7. Sales and delivery hours will be limited to 9:00 a.m. to 6:00 p.m. seven (7) days per week.
  8. Water shall be available to control dust and for fire prevention within the site.
  9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 28 and November 10, 2010.)

Mr. Abbott read a summary of the Commission's Public Hearing.

For the record, Mr. Moore stated that he has known Mr. Lawson all of his life; that this application appears to be a routine matter; that he does not have a vote; that he believes he can conduct the Public Hearing fairly; and that any legal questions would be directed to one of the Assistant County Attorneys.

Bob Lawson and Clifford Lawson were present on behalf of the application. Bob Lawson stated that Lawson's Produce has been in operation since 1999; that for the first time, he feels threatened about their farm operation; that their neighbor has presented statements to the Planning and Zoning Commission that have a direct impact on their farm operation; that the neighbor is not a full time resident of Harbeson; that the neighbor has stated that he has been awakened a couple of times by the noise of the loader; that they do not start mulch operations until 8:00 a.m.; that if the neighbor was awakened before 8:00 a.m., it was because of the farm operation; that the neighbor has known of the farm operation for many years; that he relocated his new house closer to where the grinder is operated; that the neighbor was aware that the mulch and farm operation existed; that the adjacent landowners have no objection to the mulch, farm, or market operations except the one neighbor; that the mulch grinding is an agricultural operation; that only tree chips are used for grinding; that they never applied for a rezoning because the land was already zoned AR-1,

which is contiguous to an agricultural operation and is confirmed by the Secretary of Agriculture and the Planning and Zoning findings; that, for these reasons, they never thought they were required to seek a zoning change; that in regards to the nuisance cited by the neighbor, Mr. Lawson cited the Delaware Right to Farm Bill – “No agricultural or forestry operation within the State which has been in operation for a period of more than one year shall be considered a nuisance either public or private as a result of changed conditions in or about the locality or such agricultural or forestry operation is located.”; and that the operation is a good, viable agricultural operation.

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Hearing/  
C/U  
No. 1867  
(continued)

Clifford Lawson, owner of Lawson’s Produce, LLC, reviewed the Planning and Zoning Commission’s proposed conditions:

1. The use shall be limited to a mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps or construction waste shall be accepted at the site.

**Lawson’s Produce agrees to this recommendation.**

2. The Applicant shall install a 6-foot tall solid vinyl fence along the western boundary of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan.

**Lawson’s Produce does not agree with this recommendation and offers the following points: requiring a new fence to be installed is unnecessary and cost prohibitive; the mulch business is an agricultural operation located on an AR-1 zoned field adjacent to nearly 176 acres of farmland; fencing is not required for agricultural operations. The current property line setbacks for the operation, which are referenced in Items 4 and 5 below, will provide adequate separation from the mulch operation. The mulching operation is on leased ground that is scheduled to be developed into a housing community in the future. The installation of a fence for a short period of time is unnecessary and cost prohibitive. Lawson’s Produce recommends the following: move the mulching operation away from the adjacent neighbors, as described in Items 4 and 5 below.**

3. Grinding and dyeing or processing hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday.

**Lawson’s Produce agrees to this recommendation as it usually operates within these hours; however, Lawson’s Produce asks that a waiver be allowed to this time frame should an unforeseen event arise, such as equipment failure or weather caused delays. In such a case, Lawson’s Produce would seek to temporarily extend processing hours to ensure an adequate product inventory.**

4. There shall be no grinding or dyeing operations within 100 feet of any neighboring property line. The areas set aside for grinding and dyeing shall be shown on the Final Site Plan.

**Lawson's Produce agrees to this recommendation.**

5. There shall not be any mulch storage within 20 feet of any neighboring property line. The areas set aside for mulch storage shall be shown on the Final Site Plan.

**The Applicant agrees to this recommendation.**

6. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m. Monday through Saturday. The site shall be gated so that after-hour deliveries or dumping do not occur.

**The Applicant does not agree with this recommendation and offers the following points: limiting the hours a tree service can access the property to 9:00 a.m. to 6:00 p.m. is impractical due to the nature of a tree company's business. Tree companies can operate on a 24 hour schedule in case of emergencies due to weather related conditions. The property used for the mulch operation also serves as a family farm which requires the use of large farm equipment throughout the property. The installation of a gate would prohibit the movement of farm equipment. A gate is not necessary to limit access to the property to receive treated materials. Lawson's Produce knows the businesses that deliver to its property and it can limit the hours of delivery through an agreement with the participating tree services. In the alternative, Lawson's Produce recommends the following: limit the entrance points of the tree service companies; future access to the mulch operations would be limited to a northeast entrance to the property; this is the furthest point from any neighboring property line and has Lawson's property on each side of it. Limit the unloading points of tree service companies. In the future, vehicles would only be permitted to unload to designated areas, 100 feet away from any neighboring property lines.**

7. Sales and delivery hours will be limited to 9:00 a.m. to 6:00 p.m. seven (7) days per week.

**Lawson's Produce does not agree with this recommendation and offers the following points: due to the nature of mulching and landscaping, customers of Lawson's Produce routinely begin their day as early as possible to avoid the excessive heat during the spring and summer months to peak season and customers require the mulch products before 9:00 a.m. Limiting the hours to 9:00 a.m. will severely affect the business. Other businesses located in Harbeson, including Allen's Poultry Processing, operate outside the 9:00 a.m. to 6:00 p.m. time frame. In the alternative, Lawson's Produce offers the following:**

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(continued)

**operations from 8:00 a.m. to 6:00 p.m., seven days per week.**

8. Water shall be available to control dust and for fire prevention within the site.

**The Applicant agrees to this recommendation.**

9. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**The Applicant agrees to this recommendation.**

Public  
Hearing/  
C/U  
No. 1867  
(continued)

Clifford Lawson submitted a copy of his comments for the record.

Mr. Cole expressed concern about the Conditional Use being taken over by another person/entity and he questioned if the conditions could contain a stipulation to address this concern.

Mr. Cole suggested that a comparison should be prepared to consider the recommendations of the Commission versus the recommendations of the Applicant.

There were no public comments in support of the application.

David Chicosky of Harbeson Road spoke in opposition to the application. He stated that his property is adjacent to Mr. Lawson's business property; that the Commission did not address one of his primary concerns, which is the use of the land directly behind his residence for mulch storage and the nuisance odor that blows into his home as a result of it; that he disagrees with the Commission's assessment that "the use, with the conditions placed upon it, will not adversely affect the neighboring properties or community"; that the odor is not an occasional odor such as those associated with agricultural uses, it is a 24 hour, 7 days per week stench; that he asks the Council to permanently restrict the storage area of this material to the land sitting directly behind Mr. Lawson's business property; that the northeast corner property marker at the rear of the Chicosky property heading eastward should be established as the line of demarcation so that nothing south of that line be permitted for mulch storage use; that another issue insufficiently addressed by the Commission is with regard to the size of the piles of mulch and the fire hazard they create as a result of the possibility of spontaneous combustion; that he agrees a water source available at this facility is wise; that the Commission stated that "water shall be available to control dust and for fire prevention"; that having water available is not going to prevent a fire from occurring; that restricting the size of these piles of mulch will go a lot further towards fire prevention than any other means and the Commission did not have any recommendation regarding this aspect; that if this permit is approved without some restriction on the size of the piles, he fears that there will be 20 to 25 feet tall mountains of mulch with no feasible means to adequately turn them to prevent a spontaneous

combustion fire; and that he asks the Council to permanently restrict the height and volume of mulch storage at this facility.

Mr. Chicosky submitted a Tax Map highlighting the location of the mulch and soil piles, a Tax Map highlighting the suggested permit restricted boundary; and photographs of the mulching operation.

Mr. Lawson stated that they handle only 99 percent fresh chips and that they have enough green sap in them so there is no fire hazard; that they have been stacking them 35 feet high for years and have had no fire problems.

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No. 1867  
(continued)

Mr. Cole questioned if the Applicant could move the stockpiling over near the railroad tracks and he questioned if the Council could suggest a buffer from residential properties.

The Public Hearing was closed.

Mr. Cole stated that he would like to defer action for a comparison report on the Applicant's proposed conditions and the Planning and Zoning Commission's proposed conditions. Mr. Cole also commented that he would like to defer action so that he can visit the site. Mr. Cole also stated that 20 feet is too close to a residential property.

M 617 10  
Defer  
Action  
on C/U  
No. 1867

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to defer action on Conditional Use No. 1867 filed on behalf of Lawson's Produce, LLC. and to request that the Planning and Zoning Department submit a comparison report of the Planning and Zoning Commission's and the Applicant's proposed conditions.

Motion Adopted: 5 Yeas.

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

Public  
Hearing/  
C/Z  
No. 1695

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 CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 21,795 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1695) filed on behalf of Thomas Hopkins.

Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 28, 2010 at which time the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 28, 2010.)

Mr. Abbott read a summary of the Commission's Public Hearing.

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C/Z  
No. 1695  
(continued)

Danielle Hopkins was present on behalf of the application. She stated that the site contains approximately 0.5 acre and is immediately adjacent to their automotive dealership; that they purchased the property with the intent to expand their vehicle display area; that extra frontage on Route 13 would help their business; that the existing entrance will be used; that a small house is currently located on the site; that their future plans are to purchase another lot and the house would be moved at that time; that no paving is proposed on the site at the current time; that there are other commercial uses in the area; and that this site is the only parcel not zoned commercial between two commercial districts.

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

M 618 10  
Adopt  
Ordinance  
No. 2159  
(C/Z  
No. 1695)

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to adopt Ordinance No. 2159 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 SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 21,795 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1695) filed on behalf of Thomas Hopkins.

Motion Adopted: 5 Yeas.

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

Public  
Hearing/  
C/Z  
No. 1696

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 22,172 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1696) filed on behalf of Timothy J. Stubbs and Coleen M. Hunter.

Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 28, 2010 at which time the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission

dated October 28, 2010.)

Mr. Abbott read a summary of the Commission's Public Hearing.

Timothy Stubbs and Coleen Hunter were present and stated that they are trying to refinance their home and cannot get a residential loan since the property is zoned C-1 General Commercial; that banks will only offer a commercial loan with higher interest rates; and that he has no intent to utilize the property for commercial use.

(continued)

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

M 619 10  
Adopt  
Ordinance  
No. 2160  
(C/Z  
No. 1696)

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2160 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 22,172 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1696) filed on behalf of Timothy J. Stubbs and Coleen M. Hunter.

Motion Adopted: 5 Yeas.

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

Public  
Hearing/  
C/Z  
No. 1698

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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.51 ACRES, MORE OR LESS" (Change of Zone No. 1698) filed on behalf of Frank J. Emmi, Jr.

Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 28, 2010 at which time the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 28, 2010.)

Mr. Abbott read a summary of the Commission's Public Hearing.

Mr. Abbott distributed Exhibit Packets which were previously provided by the Applicant.

Frank Emmi, Jr. was present with James Fuqua, Attorney. They stated

**Public  
Hearing/  
C/Z  
No. 1698  
(continued)**

that the Applicant had applied for rezoning to CR-1 Commercial Residential in August of 2010; that it was recommended by the Planning and Zoning Commission that the Applicant withdraw that application and reapply for B-1 Neighborhood Business; that the Applicant has owned the property since 1998; that the area is primarily mixed commercial; that a motel exists in the area as well as small manufactured home parks, a convenience store with gasoline sales and the Peddlers Village shopping center; that the adjacent site to the west was approved for B-1 zoning for the Pelican Landing shopping center project which has not yet been developed; that the site is surrounded by business and commercial uses and zonings; that he proposes to continue renting the property for the time being; that the intended use is an office or he could sell the property at which time it would be subject to re-development; that any commercial business use of the property would require site plan approval by the Planning and Zoning Commission; and that the rezoning will bring the site into conformity with the business and commercial activities in the community.

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

**M 620 10  
Adopt  
Ordinance  
No. 2161  
(C/Z  
No. 1698)**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2161 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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.51 ACRES, MORE OR LESS” (Change of Zone No. 1698) filed on behalf of Frank J. Emmi, Jr.

**Motion Adopted: 5 Yeas.**

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

**M 621 10  
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 2:42 p.m. Motion Adopted by Voice Vote.

**Respectfully submitted,**

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