



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 16, 2008

**Call to Order** A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 16, 2008 at 10:10 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
George B. Cole	Member
Dale R. Dukes	Member
Vance Phillips	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
James D. Griffin	County Attorney

**M 904 08 Approve Agenda** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the Agenda, as posted.

**Motion Adopted:** 5 Yeas.

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

**M 905 08 Approve Minutes** A Motion was made by Mr. Dukes, seconded by Mr. Cole, to approve the minutes of December 2, 2008.

**Motion Adopted:** 5 Yeas.

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

**Correspondence** Mr. Griffin read the following correspondence:

SUSSEX COUNTY 4-H EXCHANGE GROUP, MILLSBORO, DELAWARE.

RE: Letter in appreciation of the Council's recent grant.

**WOODBIDGE ELEMENTARY SCHOOL, GREENWOOD, DELAWARE.**

**RE: Letter in appreciation of the Council's recent grant.**

<b>Corre- spondence (continued)</b>	<b>CREATIVE CONCEPTS, OCEAN VIEW, DELAWARE.</b> <b>RE: Letter thanking Dale Dukes for his service and support of businesses while serving on the Sussex County Council.</b>
<b>State Police Program</b>	<p><b>Mr. Baker updated the Council on the County's State Police Program; the County is currently in its 14th consecutive year of contracts with the Delaware State Police to provide additional troopers in Sussex County. He reported that the County currently contributes approximately \$1.9 million towards the funding of 40 additional troopers in the County, over and above the State's allotment.</b></p> <p><b>Major R. L. Hughes extended thanks on behalf of himself and Colonel Thomas MacLeish for the County's continued support. Major Hughes thanked the Council for its foresight 14 years ago to leverage taxpayers' dollars to enhance public safety.</b></p> <p><b>The Council presented a check in the amount of \$633,804.44 to Major Hughes representing the County's first quarter payment for Fiscal 2009.</b></p>
<b>Employee of the Year</b>	<b>The Council recognized and congratulated Jayne Ellen Dickerson, Sussex County Employee of the Year.</b>
<b>Recognition of Retiring Councilmen</b>	<b>Councilman Dale R. Dukes (20 years of service), Councilman Finley B. Jones, Jr. (12 years of service), and Councilman Lynn J. Rogers (12 years of service), who will retire as of January 6, 2009, were recognized by all in attendance. Comments were made by Eddie Lambden, Mayor of the Town of Georgetown; Councilman Vance Phillips; David Baker, County Administrator; Hal Godwin, Deputy County Administrator, and James Griffin, County Attorney. Mr. Baker presented each retiring Councilman with a framed certificate highlighting the numerous accomplishments during each member's tenure.</b>
<b>Presentation to County</b>	<b>Eddie Lambden, Mayor of the Town of Georgetown, presented to the Council a plaque from the Old Courthouse Building with the following engraved on it: <i>Courthouse Annex, Board of Assessments, Receiver of Taxes.</i> Mr. Lambden stated that the plaque was owned by a member of his family and he wished to donate it to the County for display in the Administrative Office Building.</b>
<b>Proposed Super Green</b>	<b>Mr. Baker reviewed the latest version of the Super Green proposal; the goal of this proposal is to encourage environmentally sensitive development and building practices in the County. Mr. Baker stated that the County's</b>

<b>Program</b>	<b>version is to supplement the State's proposal with two additional levels; the two proposed County levels would be less stringent than the State's Super Green level; however, it would provide some incentives for developers to build in an environmentally sensitive manner. The State's Super Green level was designed to work for approximately 5 percent of new developments; the additional proposal of County levels will encourage more developers to incorporate green building practices within their projects.</b>
<b>Proposed Super Green Program (continued)</b>	<b>Mr. Baker asked the Council to consider the latest version of the Super Green Proposal for implementation on a trial basis and as a matter of policy. He suggested that implementation could take place on July 1, 2009 with pilot projects, subject to the adoption of State criteria; another option is that the County could implement its Levels prior to the State's adoption of their Program. Mr. Baker advised that the State has not yet finalized its criteria for their Program.</b>
<b>M 906 08 Approve Super Green Program on Trial Basis</b>	<b>A Motion was made by Mr. Dukes, seconded by Mr. Cole, to approve implementing on a trial basis the Proposed Super Green Program for Levels 1 and 2; the Proposed Program would provide recognition and possible expedited review for construction in an environmentally sensitive manner.</b>  <b>Motion Adopted: 5 Yeas.</b>  <b>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b>
<b>Wastewater Service Agreement/ Town of Selbyville</b>	<b>Mr. Baker presented for discussion the County's Wastewater Service Agreement with the Town of Selbyville. Mr. Baker explained that the County has an Agreement with the Town to process wastewater through the County's Ocean Outfall in an amount up to 1.5 MGD from the Town of Selbyville. The Town treats the waste and the only County infrastructure used is the Ocean Outfall. The original Agreement was for 1 MGD; in 1990, the Agreement was revised for an additional 500,000 MGD capacity. In 2004, the Town requested additional capacity of 500,000 MGD, which would bring their maximum capacity to 2 MGD. The Town's requested increased was discussed at a January 2004 County Council meeting when the Council approved the South Coastal Area Planning Study Update.</b>  <b>Mr. Baker stated that the matter before the Council on this date is to consider approving an increase to the Town of Selbyville for an additional 500,000 (to 2 MGD, as requested in 2004). Mr. Baker noted that there have been discussions back and forth between County staff and the Town; however, no final Agreement has been executed. Mr. Baker advised that the Town would like the Council to go on record agreeing to the additional 500,000 MGD flow.</b>  <b>Michael Izzo, County Engineer, discussed the capacity of the Ocean Outfall; the average daily flow capacity is approximately 9 MGD; currently, the</b>

average daily flow is approximately 6.5 MGD with peak days at 7.5 MGD.

Mayor Cliff Murray and Town Administrator Bob Dickerson were in attendance along with members of the Town Council.

Mr. Cole questioned the Mayor and the Town Administrator regarding the Town's long range plan. He stated that the County cannot continue to permit additional capacity as there will be continued growth in that area and extensive costs to the County to upgrade and rehabilitate its facilities.

Wastewater  
Service  
Agreement/  
Town of  
Selbyville  
(continued)

The Mayor stated that they currently have no plans past the 2 MGD; that their treatment plant has been upgraded with the knowledge that they would max out at 2 MGD; that their pipe going to the South Coastal Plant maxes out at 2 MGD also; that the Town Comprehensive Plan addresses the 2 MGD, based on the area they survey and their annexation plans; and that Mountaire is a big part of their flow. Mayor Murray stated that, when this matter was discussed in 2004, there was no discussion on adjusted costs.

Susan Webb referenced the existing Agreement with the Town of Selbyville; that the model presented in the Agreement is not updated for current costs; that the capital costs that are used are 28 years old; that the costs need to be evaluated to make it equitable for Selbyville's share; and that the County needs to cover its costs for the additional capacity (50,000 MGDs).

Mr. Phillips referenced the County's agreement in 2004, as a part of the SCAPS Study, to allow a capacity of 2 MGD and he questioned why there is a question of cost. He stated that the County should utilize the same formula as in 1997, when the initial Agreement was approved.

Mr. Cole stated that it is his understanding that there was no formal Agreement in 2004. He also stated that the County should update its terms and operate the sewer districts responsibly.

M 907 08  
Motion  
Died

A Motion was made by Mr. Cole to defer action; to allow staff to develop and negotiate costs based on current models with the Town of Selbyville; and to agree to a 2 MGD allocation to the Town of Selbyville. The Motion died for the lack of a Second.

M 908 08  
Motion  
Died

A Motion was made by Mr. Phillips to direct County Administration and Engineering to enter into an Agreement with the Town of Selbyville which honors the Ocean Outfall Motion passed by the Sussex County Council in 2004, increasing the Town's allocation from 1.5 MGD to 2 MGD; clarifying that this represents a 7-day average flow, as defined in the original Agreement between Sussex County and the Town of Selbyville; and using the same fee formula employed by the County in 1997 when increasing the capacity from 1 MGD to 1.5 MGD. The Motion died for the lack of a Second.

M 909 08

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to authorize

**Negotiate and Enter into Agreement/ Town of Selbyville** and direct the County Engineering Department to negotiate in good faith and enter into an Agreement with the Town of Selbyville increasing the Town's capacity to 2 MGD based on a 7-day average flow and to negotiate with the Town forthright, under the direction of the County Council President, with the hopes of entering into an Agreement by the end of the year (and directing that County Council members be advised of the final Agreement).

**M 909 08 (continued)** Motion Adopted: 5 Yeas.

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

**Adminis- trator's Report** Mr. Baker read the following information in his Administrator's Report:

1. Delaware Solid Waste Authority Report – November 2008

Over 21,000 pounds of recycling material was collected at the Recycling Center at the West Complex in Georgetown during November 2008.

2. Christmas and New year's Holidays

County offices will be closed on December 25 and 26, 2008 to celebrate the Christmas holiday. County offices will also be closed on January 1, 2009, New Years Day. The next regularly scheduled meeting of the Sussex County Council will be January 6, 2009. Swearing-in ceremonies will be held on January 6, 2009.

**M 910 08 Amend Agenda** A Motion was made by Mr. Dukes, seconded by Mr. Cole, to amend the Agenda for a special presentation.

Motion Adopted: 5 Yeas.

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

**Presen- tation** Councilmen Dukes, Jones, and Rogers made a special presentation to Daniel Kramer on behalf of the Council – a turkey, because Mr. Kramer has on numerous occasions called the Councilmembers "turkeys".

**Paramedic Chassis Conversion/ Bid** Frank Shade, Purchasing Officer, presented the bid results for the retrofitting of two (2) Light Rescue Bodies for mounting and use as paramedic vehicles, as follows:

<b>Results</b>	IBIS Tek	\$67,245.00 each
	Odyssey Automotive	\$83,497.00 each
	Delmarva Pump Center	\$90,887.00 each
	FESCO Emergency Sales	Not Complete

**Mr. Shade advised that the EMS staff reviewed the bids and recommended that the bid be awarded to IBIS Tek.**

**M 911 08**      **A Motion was made by Mr. Cole, seconded by Mr. Dukes, that the Sussex**  
**Award Bid**      **County Council accepts the bid of IBIS Tek in the amount of \$67,245.00 per**  
                         **unit for two (2) Light Rescue Bodies for use as Paramedic Units.**

**M 911 08**      **Motion Adopted:      5 Yeas.**  
**Award**

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

**Recognition**      **Glenn Luedtke, Director of EMS, introduced and recognized four students**  
**of 2008**      **who have completed their paramedic training through Delaware Technical**  
**Paramedic**      **& Community College: Ryan Deck, Paul Stillman, Brandon Rogers and**  
**Graduates**      **Jason Stadler.**

**Appre-**      **Mr. Luedtke thanked the Councilmen for their past support. Mr. Luedtke**  
**ciation**      **made a presentation to the three retiring Councilmen.**

**Agenda**      **Mr. Phillips advised that an additional item should have been considered**  
**Item**      **under the Agenda item “Wastewater Service Agreement”.**

**M 912 08**      **A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend the**  
**Amend**      **Agenda by revisiting the Agenda item “Wastewater Service Agreement”**  
**Agenda**      **following the Executive Session.**

**Motion Adopted:      5 Yeas.**

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

**Mr. Cole stated that Agenda items should be clearer.**

**Georgetown**      **Jim Hickin, Director of Airport and Industrial Park Operations, presented**  
**Air Services/**      **for the Council’s consideration, the renewal of a Tie-Down Management**  
**Agreement**      **Agreement with Georgetown Air Services. He recommended that the**  
                         **Agreement be renewed under the same terms as the current Agreement,**  
                         **which expires in January 2009.**

**M 913 08**      **A Motion was made by Mr. Cole, seconded by Mr. Dukes, that the Sussex**  
**Authorize**      **County Council authorizes the County Administrator to execute the Tie-**  
**Tie-Down**      **Down Management Agreement with Georgetown Air Services, as presented.**  
**Manage-**

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

**Agreement/**      **Vote by Roll Call:      Mr. Cole, Yea; Mr. Phillips, Yea;**  
**Georgetown**

**Air Services**

**Mr. Dukes, Yea; Mr. Rogers, Absent;  
Mr. Jones, Yea**

**Mr. Rogers was out of the room during the vote.**

**Urban  
Engineers  
Urban  
Engineers/  
Agreement  
(continued)**

**Jim Hickin presented a Proposed Agreement with Urban Engineers, Inc. for engineering services for Sussex County Project No. 09-01, Aircraft Tie-Down Area Expansion. Mr. Hickin stated that the current number of tie-down spaces is inadequate. He reported that the Airport Master Plan has identified an additional tie-down area and in Fiscal 2009, the County added \$478,000.00 for design and construction of a ramp. Mr. Hickin stated that they propose to delay the construction of the ramp until 2010; however, they propose to continue with the design portion of the project in 2009. A proposal has been received from Urban Engineers, Inc. (Airport Consultants) in an amount of \$79,950.00.**

**M 914 08  
Authorize  
Agreement  
with Urban  
Engineers**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council hereby authorizes its President to execute an Agreement with Urban Engineers, Inc., for Engineering Services for Sussex County Project No. 09-01, Aircraft Tie-Down Ramp, at a cost not to exceed \$79,950.00.**

**Motion Adopted: 5 Yeas.**

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

**Fenwick  
Island SSD/  
Pump  
Station  
Project/  
Bid Results**

**Michael Izzo, County Engineer, presented the Bid Results for the Fenwick Island Sanitary Sewer District, Contract No. 08-11, Pump Station No. 31 Force Main (SR 54 Project), as follows:**

<b>Underground Utilities Corp.</b>	<b>\$628,005.00</b>
<b>Precision Grading Services, LLC</b>	<b>\$672,450.00</b>
<b>Bunting &amp; Murray Construction Co.</b>	<b>\$695,410.00</b>
<b>Teal Construction, Inc.</b>	<b>\$858,888.00</b>
<b>A. P. Croll &amp; Son, Inc.</b>	<b>\$909,390.00</b>
<b>Hopkins Construction, Inc.</b>	<b>\$996,925.00</b>
<b>American Paving Corp.</b>	<b>\$1,067,188.66</b>
<b>George &amp; Lynch, Inc.</b>	<b>\$1,177,614.00</b>
<b>JJID, Inc.</b>	<b>\$1,611,480.00</b>
<b>Montana Construction Corp. Inc.</b>	<b>\$1,850,550.00</b>

**The Engineer's Estimate for the project was \$942,450.00.**

**M 915 08  
Award Bid/  
Fenwick**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department and the Consulting Firm of Whitman, Requardt & Associates, LLP, that the**

**Island SSD Pump Station Project**      **Contract for the construction of the Fenwick Island Sanitary Sewer District Pump Station No. 31 Force Main, be awarded to Underground Utilities Corporation, the low bidder, at a cost of \$628,005.00, contingent upon the approval of the County Attorney and funding agencies.**

**Motion Adopted:      5 Yeas.**

**M 915 08 (continued)**      **Vote by Roll Call:      Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea**

**Fenwick Island SSD Project/ Contract Amendment**      **Mr. Izzo presented an Amendment to an Administration and Inspection Contract with Whitman, Requardt & Associates, in the amount of \$122,984.00, for inspection work for the Fenwick Island Sanitary Sewer District, Pump Station No. 31 Improvements and Force Main. Mr. Izzo noted that the Contract is a Time and Materials Contract.**

**M 916 08 Execute Contract Amendment/ Fenwick Island SSD Project**      **A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the County Engineering Department, that the Sussex County Council hereby authorizes its President to execute Amendment No. 48 to its Contract with Whitman, Requardt & Associates, LLP, for the Construction Administration and Resident Project Representation for Pump Station No. 31 Improvements and Force Main, at a cost not to exceed \$122,984.00.**

**Motion Adopted:      5 Yeas.**

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

**M 917 08 Amend Agenda**      **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to amend the Agenda by moving “Grant Requests” after “Old Business”.**

**Motion Adopted:      5 Yeas.**

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

**Donation/ Peirce Park Group**      **Under “Any Additional Business Brought Before Council”, Mrs. Webb reported that Peirce Park Group has expressed their desire to allocate \$500.00 to a charity of the Council’s choice.**

**M 918 08 Allocate Donation from Peirce**      **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give the money (\$500.00) donated by Peirce Park Group to the Sussex County Employee Benefit Committee to be used for the needy family project.**

**Motion Adopted:      5 Yeas.**



**Park  
Group**

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

**M 919 08  
Go Into  
Executive  
Session**

**At 12:10 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess the Regular Session and to go into Executive Session for the purpose of discussing Pending/Potential Litigation and Land Acquisition.**

**Motion Adopted: 5 Yeas.**

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

**Executive  
Session**

**At 12:11 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Sussex County Council Chambers for the purpose of discussing Pending/Potential Litigation and Land Acquisition. The Executive Session concluded at 1:03 p.m.**

**M 920 08  
Reconvene  
Regular  
Session**

**At 1:04 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted: 5 Yeas.**

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

**M 921 08  
Recess**

**At 1:05 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess the Regular Session until 1:30 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Reconvene**

**Mr. Jones called the Council back into session at 1:30 p.m.**

**Wastewater  
Service  
Agreement/  
Wolfe  
Neck  
Regional  
Wastewater**

**The Council discussed the second Agenda item under “Wastewater Service Agreement”, which relates to alternatives for the North Coastal Planning Area (Inland Bays and Wolfe Neck Regional Wastewater Facilities) and a proposal to issue a RFP.**

**On June 3, 2008, the Council voted to support the spray irrigation option (Alternative No. 3 – Joint Sussex County and Rehoboth Spray Irrigation).**

## **Facilities**

### **Wastewater Service Agreement/ Wolfe Neck Regional Wastewater Facilities (continued)**

Michael Izzo, County Engineer, stated that he has been contacted by the Cleanwater Advisory Council and they indicated that there may be grant money available for a feasibility study on the City of Rehoboth doing a spray irrigation project with Sussex County. The County has met with the City of Rehoboth and DNREC and a Scope of Work was developed and discussed. The Cleanwater Advisory Council is proposing that the County and City attend their February meeting to seek funding; however, they have indicated that they would offer a 50 percent grant for a feasibility study for a joint Sussex County – City of Rehoboth venture. Mr. Baker stated that the County's position is that the City of Rehoboth should pay the non-grant funded portion and split the cost with Henlopen Acres and Dewey Beach.

Mr. Baker reported that, since the June meeting when the Council considered spray irrigation versus outfall, Artesian presented a separate proposal for a spray irrigation option between the County, City of Rehoboth and the Artesian Wastewater Company. Mr. Baker advised that, if the County is interested in pursuing this as an option, the County Attorney has advised that the County would have to go through the RFP process.

In response to a question raised by Mr. Griffin, Mr. Izzo stated that, in regards to the Sussex County – Rehoboth spray irrigation option, the County Engineering Department would apply for the grant, obtain the money, and perform the study.

Mr. Phillips stated that he would prefer that competitive proposals be obtained.

### **M 922 08 Authorize Issuance of RFP/ Wolfe Neck Treatment Facility and City of Rehoboth**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to authorize County staff to issue an RFP (for cost alternatives for wastewater treatment and disposal services for the Wolfe Neck Treatment Facility and City of Rehoboth).

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

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

### **Action on Executive Session Items/ Property in Georgetown**

Under the Agenda Item entitled "Possible Action on Executive Session Items", the Council considered several matters.

Mr. Godwin presented information on a Proposed Agreement discussed during Executive Session. The Proposed Agreement, between Sussex County and the Town of Georgetown, refers to the disposition of two properties owned by the County and located on East Pine Street in Georgetown (#111 and #115). The Agreement would allow the Town to take ownership of a small portion of #115 East Pine Street while giving the

**County permission to demolish all other structures on the two properties.**

**M 923 08**  
**Adopt**  
**Agreement**      **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council adopts and endorses an Agreement with the Town of Georgetown (regarding properties at 111 and 115 East Pine Street).**

**M 923 08**  
**(continued)**  
**Motion Adopted:      5 Yeas.**  
**Vote by Roll Call:      Mr. Cole, Yea; Mr. Phillips, Yea;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**Action on**  
**Executive**  
**Session**  
**Items**  
**Purchase of**  
**Land**      **Mr. Griffin presented information on the potential purchase of land on Sycamore Road outside of the town limits of Laurel for a future paramedic station site, behind O’Neal’s Antique Store. Currently, Paramedic Station No. 102 occupies rented space in the Laurel Fire Hall and the Laurel Fire Company has indicated to the County that they would like the County to obtain a different location. The site, containing .9 acre off of Route 13, has been offered to the County at a cost of \$81,000.00.**

**M 924 08**  
**Execute**  
**Contract**  
**for Land**  
**for**  
**Paramedic**  
**Station**  
**No. 102**      **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to authorize the President of the Sussex County Council to execute a Contract for the purchase of .9 acre on Sycamore Road in Laurel at a cost of \$81,000.00, for use as a future site for Paramedic Station No. 102.**  
**Motion Adopted:      5 Yeas.**  
**Vote by Roll Call:      Mr. Cole, Yea; Mr. Phillips, Yea;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**Subdivision**  
**Appeal/**  
**L.T.**  
**Associates/**  
**Senators**  
**Subdivision/**  
**#2006-52**      **The Council considered the Appeal filed by L.T. Associates regarding the Planning and Zoning Commission’s decision on Subdivision No. 2006-52 (Senators Subdivision).**  
**Mr. Griffin stated that the issue of the Appeal relates to a condition imposed by the Commission, specifically Condition “K”, as follows:**

**“There shall be at least a 50 foot buffer from all wetlands existing on any adjacent parcel. The design of the buffer shall provide for the existing naturally vegetated area to be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area. The design of the buffer shall be shown on the landscape submitted as part of the Final Site Plan review.**

**The Appeal is based on the Applicant’s belief that the Commission’s Condition K including “all wetlands” is contrary to Section 115-193 and**

that the Commission exceeded its authority by ignoring Section 115-193 and substituting in its place its own standard for wetlands buffers.

**M 925 08  
Regarding  
Appeal on  
Subdivision  
M 925 08  
Regarding  
Appeal on  
Subdivision  
#2006-52/  
Amend  
Condition  
Imposed by  
P&Z  
Commission  
(condition)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that in regards to Subdivision No. 2006-52, the Planning and Zoning Commission made an error in its interpretation of the applicable provisions of the Code and for that reason, Condition K should be amended to read, as follows:

“There shall be at least a 50 foot buffer from all State wetlands existing on any adjacent parcel. The design of the buffer shall provide for the existing naturally vegetated area to be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area. The design of the buffer shall be shown of the landscape submitted as part of the Final Site Plan review.

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**C/U  
No. 1772**

The Council considered Conditional Use No. 1772 filed on behalf L. T. Associates, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2008; on March 27, 2008, the Commission recommended that the application be approved for 258 multi-family units instead of the requested 472 units, with conditions A-O.

The County Council held a Public Hearing on this application on January 29, 2008 at which time action was deferred.

**M 926 08  
Amend  
Condition  
Proposed  
by the  
Planning  
and Zoning  
Commission  
on C/U  
No. 1772**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend Condition No. “A” proposed by the Planning and Zoning Commission changing 258 multi-family units to 472 multi-family units, based on the Density Trade Ordinance which allows the County to receive fees proffered for conservation usage, as follows:

“There shall be no more than 472 multi-family units within the project. The construction of the project shall be phased with no more than 60 residential building permits being issued within any given calendar year.”

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**M 927 08  
Amend  
Condition  
Proposed  
by the  
Commission**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend Condition No. K recommended by the Planning and Zoning Commission to insert the word “State” prior to wetlands, as follows:**

**“There shall be at least a 50 foot buffer from all State wetlands. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.**

**M 927 08  
(continued)**

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**M 928 08  
Adopt  
Ordinance  
No. 2020  
(C/U  
No. 1772)**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 2020 entitled “AN ORDINANCER TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (472) UNITS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 186.56 ACRES, MORE OR LESS” (Conditional Use No. 1772) filed on behalf of L. T. Associates, LLC, with the following conditions:**

- 1. There shall be no more than 472 multi-family units within the project. The construction of the project shall be phased with no more than 60 residential building permits being issued within any given calendar year.**
- 2. The Applicant shall form a Condominium Association to be responsible for the maintenance of streets, roads, multi-modal paths, buffers, stormwater management facilities, recreational facilities and other common areas.**
- 3. The project shall be connected to County sewer and central water shall be provided.**
- 4. The stormwater management system shall meet or exceed the requirements of the State and County, and shall be designed and maintained using Best Management Practices to maximize groundwater recharge.**
- 5. All entrance and road improvements shall comply with all of DelDOT’s requirements.**
- 6. Any bike lanes or multi-modal lanes that are contiguous to roadways within the project shall be striped or adequately marked to distinguish those areas from automobile traffic.**

**M 928 08  
Adopt  
Ordinance  
No. 2020  
(C/U  
No. 1772)  
(continued)**

7. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks on both sides of the street and street lighting. There shall also be interconnectivity with the adjoining properties. The Applicant shall submit as part of the site plan review, a landscape plan showing the proposed tree and shrub landscaping design for the project.
8. The entire perimeter shall be surrounded by a 30 foot vegetated buffer. The vegetation to be included in this buffer shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.
9. All amenities shall be constructed and open to use by residents of the project within 2 years of the issuance of the first residential Building Permit.
10. The existing forested areas that will be preserved shall be clearly shown on the Final Site Plan.
11. There shall be at least a 50 foot buffer from all State wetlands. The design of the buffer shall comply with Section 115-193 of the Zoning Code and it shall be shown on the Landscape Plan submitted as part of the Final Site Plan review.
12. An area for a school bus stop shall be established with the coordination of the local school district. The location of the bus stop area shall be shown on the Final Site Plan.
13. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
14. The Final Site Plan shall contain the review and approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
15. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**C/Z  
No. 1630**

**The Council considered Change of Zone No. 1630 filed on behalf of L.T. Associates, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2008; on March 27, 2008, the Commission recommended that the application be denied.**

The County Council held a Public Hearing on this application on January 29, 2008 at which time action was deferred.

**C/Z**  
**No. 1630**  
**(continued)**

Mr. Griffin reported that a letter was received from Dennis Schrader, Attorney for LT Associates, LLC, dated December 16, 2008, stating that he has been directed to withdraw the application (Change of Zone No. 1630). The letter also states that “It is my client’s intention to re-file a similar application modifying and reducing the size of the project. To that end, I would ask on behalf of my client that the new application be expedited.”

**M 929 08**  
**Accept**  
**Request to**  
**Withdraw**  
**C/Z**  
**No. 1630**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to accept the request of LT Associates, LLC to withdraw their application (Change of Zone No. 1630) and to allow them to re-file a modified application and to permit an expedited review.

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**C/U**  
**No. 1741**

The Council considered Conditional Use No. 1741 filed on behalf of David G. Horsey & Sons, Inc.

Mr. Dukes advised that he would not be participating in the discussion or the vote on Conditional Use No. 1741 and he left the Council table.

The Planning and Zoning Commission held a Public Hearing on this application on May 8, 2008 at which time the Commission recommended that the application be approved with conditions, as follows:

1. No materials may be brought from off the site for processing, mixing or similar purposes.
2. The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties, as follows: (a) A 200 foot buffer shall be maintained along that portion of the site which abuts the State Route 20 (Hardscrabble Road) and the Route 446 (Asbury Road) rights-of-way. Existing vegetation within the buffer area between the property line and the perimeter dike shall remain undisturbed. (b) A 100 foot vegetation buffer shall be maintained along all other perimeter property lines within the site. Existing vegetation between the property lines and the perimeter dike shall remain undisturbed. (c) A water truck will be available to control dust from interior trucking traffic when conditions require.
3. Hours of operation of trucking activities shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 6:00 a.m. to 2:00 p.m. on

**Saturday. There shall be no trucking activities on Sunday.**

**C/U  
No. 1741  
(continued)**

- 4. Entrance improvements required by the Delaware Department of Transportation in connection with this land use will be completed by the Applicant.**
- 5. The borrow pit entrance shall have a fenced gate, which shall be secured when the operation is closed.**
- 6. No materials will be stored on any access roads or within any buffer areas.**
- 7. Signage will be placed at appropriate locations to designate pit areas.**
- 8. Fuel shall be stored in storage tanks with confinement areas as required by the Department of Natural Resources and Environmental Control (DNREC) and the Office of the State Fire Marshal.**
- 9. No stumps, branches, debris or similar items will be buried on the site.**
- 10. A Final Site Plan, including all pit side slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to commencement of operations.**
- 11. Before any excavation operations begin, a complete Environmental Impact Study as defined in connection with Ordinance No. 1310 will be conducted and presented with the Final Site Plan.**
- 12. Owner shall comply with all State and County erosion and sediment control regulations.**
- 13. Owner shall be responsible for monitoring ground water quality. Specifically, owner shall install two wells, one above the excavation, and one below the excavation. Monitoring shall be performed by a licensed geologist, and the results filed on an annual basis with Sussex County and the Department of Natural Resources and Environmental Control (DNREC). Owner shall be responsible for all costs associated with the water monitoring. Owner shall also be responsible for the cost of correcting any adverse impact on water quality which may be occasioned by the excavation operation. Necessary remediation shall be determined by Sussex County, upon guidance from the Department of Natural Resources and Environmental Control.**
- 14. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation will be completed in phases as excavation operations in a section are completed. Applicant will notify the Planning and Zoning Department in writing on or about April 1st of each year as to the**



status of the reclamation and reclamation plans for the following year.

15. The 199.5 acre parcel shall be divided into three (3) phases of approximately 45 acres each. Phase Two will not be started until 75% of Phase One is completed. Phase Three will not be started until 75% of Phase Two is completed.

C/U  
No. 1741  
(continued)

16. The dredge may operate 24 hours per day, but no front-end loaders, backhoes, or other construction equipment with safety buzzers will operate after 10:00 p.m.
17. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control, or any successor. Upon certification by the Department of Natural Resources and Environmental Control of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.
18. Trucking vehicles shall be prohibited from using Road 446 (Asbury Road). The entrance to the borrow pit shall be from Route 20 (Hardscrabble Road).

The County Council held a Public Hearing on this application on June 3, 2008 at which time action was deferred.

Mr. Lank read a letter, dated September 8, 2008, from Richard Abbott, Attorney for the Opposition. Mr. Abbott highlighted the concerns of the area residents, as follows: shallow water table; shallow aquifer and recharge area; lack of required recharge area protection provisions; the Comprehensive Plan's recommendation for low density and low intensity uses and that a borrow pit would be a conflict; makes reference to DNREC's letter which states that water quality could be degraded; makes reference that the proposed borrow pit would be the fifth borrow pit in a short stretch of Hardscrabble Road; that the proposed industrial use directly contravenes the uses permitted to be conducted on the property by the Comprehensive Plan; that the Plan envisions this area to be agricultural and low-density residential and not an industrial park; that the borrow pit represents an environmental risk and it is directly contrary to the Conservation Element, Future Land Use Element, and the Water and Wastewater Supply Element of the Comprehensive Plan.

**Motion Died**                    **1741 until DNREC regulations can be developed.    The Motion died for the lack of a Second.**

**M 931 08 Amend Conditions**            **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend Condition 2a and 2b recommended by the Planning and Zoning Commission, as follows:**

- M 931 08 Amend Conditions Recommended by the Planning and Zoning Commission on C/U No. 1741**
- 2a.    A 200 foot vegetation/forested buffer shall be maintained along that portion of the site which abuts State Route 20 (Hardscrabble Road) and Route 446 (Asbury Road) rights-of-way. Existing vegetation and forest plants within the buffer area between the property line and the perimeter dike shall remain undisturbed.**
  - 2b.    A 100 foot vegetation/forested buffer shall be maintained along all other perimeter property lines within the site. Existing vegetation between the property lines and the perimeter dike shall remain undisturbed.**

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

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

**M 932 08**                    **A Motion was made by Mr. Cole to amend the last sentence of Condition 3 recommended by the Planning and Zoning Commission, as follows:**

**MOTION DIED**                    **There shall be no activities on Sunday.**

**The Motion died for the lack of a Second.**

**M 933 08 Amend Condition Recommended by the Planning and Zoning Commission on C/U No. 1741**            **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend the first sentence of Condition 13 recommended by the Planning and Zoning Commission, as follows:**

**Owner shall be responsible for monitoring ground water quality. Specifically, owner shall install three wells, one above the excavation and two below the excavation.**

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

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

**M 934 08 Amend Conditions Recom-**            **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to amend Condition No. 15 recommended by the Planning and Zoning Commission, as follows:**

mended by  
the P&Z  
Com-  
mission on  
C/U 1741

15. The 199.5 acre parcel shall be divided into three (3) phases of 45 acres each. Phase Two will not be started until 75 percent of Phase One is completed. Phase Three will not be started until 75 percent of Phase Two is completed. The excavation area shall not exceed 135 acres.

M 934 08  
(continued)

Motion Adopted: 4 Yeas, 1 Absent.

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

M 935 08  
  
MOTION  
DIED

A Motion was made by Mr. Cole to amend the last sentence in Condition No. 17 recommended by the Planning and Zoning Commission, as follows:

The permit shall terminate upon the expiration of thirty (30) years from the date of enactment.

The Motion died for the lack of a Second.

M 936 08  
Add  
Condition/  
C/U  
No. 1741

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to add Condition No. 19 to the conditions recommended by the Planning and Zoning Commission, as follows:

19. No dewatering activities will occur on-site.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 937 08  
Add  
Condition/  
C/U  
No. 1741

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to add Condition No. 20 to the conditions recommended by the Planning and Zoning Commission, as follows:

20. Excavation of materials shall not extend to a depth that is greater than five (5) foot above the top of the unconfined Columbia aquifer, as recommended by DNREC.

MOTION  
DENIED

Motion Denied: 3 Nays, 1 Yea, 1 Absent.

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

M 938 08  
Add

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to add Condition No. 20 to the conditions recommended by the Planning and

- Condition/  
C/U  
No. 1741**      **Zoning Commission, as follows:**
20. The Applicant shall delay the sale of materials off-site until January 1, 2011.
- Motion Adopted:**      3 Yeas, 1 Nay, 1 Absent.
- M 938 08  
(continued)**      **Vote by Roll Call:**      Mr. Cole, Yea; Mr. Phillips, Yea;  
Mr. Dukes, Absent; Mr. Rogers, Yea;  
Mr. Jones, Nay
- M 939 08  
Add  
Condition/  
C/U  
No. 1741**      **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to add Condition No. 21 to the conditions recommended by the Planning and Zoning Commission, as follows:**
21. No hauling from the site shall occur prior to January 1, 2011.
- Motion Adopted:**      3 Yeas, 1 Abstention, 1 Absent.
- Vote by Roll Call:**      Mr. Cole, Abstained; Mr. Phillips, Yea;  
Mr. Dukes, Absent; Mr. Rogers, Yea;  
Mr. Jones, Yea
- M 940 08  
Adopt  
Ordinance  
No. 2021  
(C/U  
No. 1741)**      **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Ordinance No. 2021 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BORROW PIT EXCAVATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 199.50 ACRES, MORE OR LESS” (Conditional Use No. 1741) filed on behalf of David G. Horsey & Sons, Inc., with the following conditions:**
1. No materials may be brought from off the site for processing, mixing or similar purposes.
  2. The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties, as follows:
    - a. A 200 foot vegetation/forested buffer shall be maintained along that portion of the site which abuts the State Route 20 (Hardscrabble Road) and the Route 446 (Asbury Road) rights-of-way. Existing vegetation and trees within the buffer area between the property line and the perimeter dike shall remain undisturbed.
    - b. A 100 foot vegetation/forested buffer shall be maintained along all other perimeter property lines within the site. Existing vegetation between the property lines and the perimeter dike shall remain undisturbed.

- c. A water truck will be available to control dust from interior trucking traffic when conditions require.
3. Hours of operation of trucking activities shall be from 6:00 a.m. to 6:00 p.m., Monday through Friday, and 6:00 a.m. to 2:00 p.m. on Saturday. There shall be no trucking activities on Sunday.
4. Entrance improvements required by the Delaware Department of Transportation in connection with this land use will be completed by the applicant.
5. The borrow pit entrance shall have a fenced gate, which shall be secured when the operation is closed.
6. No materials will be stored on any access roads or within any buffer areas.
7. Signage will be placed at appropriate locations to designate pit areas.
8. Fuel shall be stored in storage tanks with confinement areas as required by the Department of Natural Resources and Environmental Control (DNREC) and the Office of the State Fire Marshal.
9. No stumps, branches, debris or similar items will be buried on the site.
10. A Final Site Plan shall be reviewed and approved by the Planning and Zoning Commission prior to commencement of operations.
11. Before any excavation operations begin, a complete Environmental Impact Study as defined in connection with Ordinance No. 1310 will be conducted and presented with the Final Site Plan.
12. Owner shall comply with all State and County erosion and sediment control regulations.
13. Owner shall be responsible for monitoring ground water quality. Specifically, owner shall install three wells, one above the excavation, and two below the excavation. Monitoring shall be performed by a licensed geologist, and the results filed on an annual basis with Sussex County and the Department of Natural Resources and Environmental Control (DNREC). Owner shall be responsible for all costs associated with the water quality monitoring. Owner shall also be responsible for the cost of correcting any adverse impacts on water quality which may be occasioned by the excavation operation. Necessary remediation shall be determined by Sussex County, with guidance from the Department of Natural Resources and Environmental Control.

**M 940 08  
Adopt  
Ordinance  
No. 2021  
(C/U  
No. 1741)  
(continued)**

- 14. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation will be completed in phases as excavation operations in a section are completed. Applicant will notify the Planning and Zoning Department in writing on or about April 1<sup>st</sup> of each year as to the status of the reclamation and reclamation plans for the following year.**
- 15. The 199.5 acre parcel shall be divided into three (3) phases of 45 acres each. Phase Two will not be started until 75% of Phase One is completed. Phase Three will not be started until 75% of Phase Two is completed. The excavated area shall not exceed 135 acre.**
- 16. The dredge may operate 24 hours per day, but no front-end loaders, backhoes, or other construction equipment with safety buzzers will operate after 10:00 p.m.**
- 17. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control, or any successor. Upon certification by the Department of Natural Resources and Environmental Control of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.**
- 18. Trucking vehicles shall be prohibited from using Road 446 (Asbury Road). The entrance to the borrow pit shall be from Route 20 (Hardscrabble Road).**
- 19. No dewatering activities will occur on site.**
- 20. The Applicant shall delay the sale of materials from off-site until January 1, 2011.**
- 21. No hauling of materials shall occur from the site prior to January 1, 2011.**

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

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

**Mr. Dukes rejoined the meeting.**

**Proposed Ordinance Relating to Open Space**

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

**Proposed Ordinance Relating to Open Space (continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2008 at which time they recommended approval, with the following amendments:**

- 1. The exclusion of buffers from open space calculations in mobile home parks in Section 115-172G (6) should be deleted.**
- 2. The County Council should consider changing Section 99-5 and 115-4 regarding the definition of Open Space to allow certain types of stormwater management to be included in open space calculations, such as green technologies, etc.**
- 3. The County Council should consider all of the written recommendations considered by the Planning and Zoning Commission during the Public Hearing.**

**The County Council held a Public Hearing on this application on December 2, 2008 at which time action was deferred and the Council directed staff and the County Attorney to look at the cumulative changes heard during the Public Hearing to determine what changes could be incorporated without making a major change to the Proposed Ordinance since major changes would require a new Public Hearing.**

**Mr. Griffin reviewed the list of changes that can be made to the Proposed Ordinance without holding an additional Public Hearing.**

**It was the consensus of the Council to amend, under Section 99-5, the definition of Open Space on Page 1 as follows:**

**“those land areas within all major residential subdivisions, residential planned communities, or developments which have a bona fide purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and non-residential areas and/or commercial and non-commercial areas.”**

**It was the consensus of the Council to amend Section 99-5A, as follows:**

**“Recreational facilities, including swimming pools, game courts, play areas, walking paths, bike paths and multi-modal paths that are not located on State road rights-of-way, provided that impervious cover shall not exceed 15% of the calculated open space area.”**

**M 941 08  
Amend  
Proposed  
Ordinance  
on Open  
Space**

**A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend Section 99-5 Definitions under permitted uses, by adding the following:**

**“I. Tidal and non-tidal wetlands.”**

**and to amend Section 99-5 Definitions under uses not permitted, by deleting the following:**

**“F. Tidal wetlands.”**

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**M 942 08  
Amend  
Proposed  
Ordinance  
on Open  
Space**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend Section 99-5 B to read as follows:**

**“Ponds.”**

**Motion Denied: 3 Nays, 2 Yeas.**

**MOTION  
DENIED**

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

**M 943 08  
Amend  
Proposed  
Ordinance**

**A Motion was made by Mr. Dukes to amend Section 99-5 B to read as follows:**

**“Ponds which have a demonstrated recreational value and purpose.”**

**MOTION  
DIED**

**The Motion died for the lack of a Second.**

**M 944 08  
Amend  
Proposed  
Ordinance**

**A Motion was made by Mr. Dukes, seconded by Mr. Cole, to amend Section 99-5 B to read as follows:**

**“Ponds which have a demonstrated recreational value.”**

**Motion Adopted: 5 Yeas.**



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

**M 945 08** A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend  
**Amend-** Section 99-5 E (E becomes D) under uses not permitted to read as follows:  
**ment**

**M 945 08** “Utility facilities, including but not limited to, any building, plant,  
**(continued)** equipment for treatment or pumping, lagoon and rapid infiltration  
basins, for sewer, water gas and/or electric utilities.”

**Motion Adopted:** 5 Yeas.

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

**M 946 08** A Motion was made by Mr. Cole, seconded by Mr. Rogers, to amend  
**Amend** Section 99-26 A (19) as follows:  
**Proposed**

**Ordinance** “The locations, dimensions and purposes of all open space areas. The  
**on Open** legend or plot notes must show a breakdown of acreages, both gross  
**Space** and net, of open space, the percentage of impervious cover area, the  
percentage of open space to total gross acreage and the total acreage  
of proposed streets, roads, parking lots, alleys and ways used for  
vehicle access and multi-modal paths located within State rights-of-  
way.”

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

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

**M 947 08** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to delete Section  
**Amend** 115-172 “Special requirements.” in its entirety.  
**Proposed**

**Ordinance** **Motion Adopted:** 5 Yeas.  
**on Open**

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

**M 948 08** A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend  
**Amend** Section 99-5 Definitions under permitted uses, by adding the following:  
**Proposed**

**Ordinance** “J. Stormwater management facility areas.”

and to amend Section 99-5 Definitions under uses not permitted, by deleting

the following:

**“D. Stormwater management facility areas.”**

**M 948 08  
(continued)**

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**M 949 08  
MOTION  
DIED**

**A Motion was made by Mr. Cole for staff to put the Proposed Ordinance into written form and bring back to the Council at a later date. The Motion died for the lack of a Second.**

**M 950 08  
Open  
Space  
Ordinance  
to be  
Effective  
1/1/2009**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to delay the implementation of the Proposed Ordinance until January 1, 2009.**

**Motion Adopted: 5 Yeas.**

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

**M 951 08  
Proposed  
Ordinance  
to Apply  
Only to  
New  
Applica-  
tions**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the Proposed Ordinance, if adopted, will apply only to new applications after January 1, 2009.**

**Motion Adopted: 5 Yeas.**

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

**M 952 08  
Amend  
Proposed  
Ordinance  
Relating  
to Open  
Space**

**A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to further amend Section 99-5 Definitions, Open Space, by deleting the word “bona fide”, as follows:**

**“those land areas with all major residential subdivisions, residential planned communities, or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and non-residential areas and/or commercial and non-commercial areas.”**

**Motion Adopted: 5 Yeas.**

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

**M 953 08**  
**Adopt**  
**Ordinance**  
**No. 2022**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 2022 entitled “AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE OPEN SPACE AND TO INCORPORATE OPEN SPACE REQUIREMENTS INTO THE APPLICATION AND APPROVAL PROCESS IN ALL RESIDENTIAL ZONING DISTRICTS AND IN RESIDENTIAL PLANNED COMMUNITIES AND TO CLARIFY PROVISIONS RELATING TO RESUBDIVISION, PERMITTED USES, BONDS, SITE PLANS AND OTHER APPROVAL CRITERIA”, as amended.

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

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

**Proposed**  
**Ordinance**  
**Relating to**  
**Wastewater**  
**Systems**

The Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 110 OF THE CODE OF SUSSEX COUNTY BY ADDING A NEW PART 7 RELATING TO AN APPROVAL PROCESS FOR PRIVATE COMMUNITY WASTEWATER SYSTEMS IN SUSSEX COUNTY PRIMARY SERVICE AREAS AND SECONDARY SERVICE AREAS”.

The County Council held a Public Hearing on the Proposed Ordinance on December 9, 2008 at which time they deferred action.

**M 954 08**  
**Adopt**  
**Ordinance**  
**No. 2023**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Ordinance No. 2023 entitled “AN ORDINANCE TO AMEND CHAPTER 110 OF THE CODE OF SUSSEX COUNTY BY ADDING A NEW PART 7 RELATING TO AN APPROVAL PROCESS FOR PRIVATE COMMUNITY WASTEWATER SYSTEMS IN SUSSEX COUNTY PRIMARY SERVICE AREAS AND SECONDARY SERVICE AREAS”.

**Motion Adopted:** 5 Yeas.

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

**Proposed**  
**Ordinance**  
**Regarding**

The Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE IV, SECTION 115-25 TO PROVIDE CRITERIA FOR DETERMINING WHETHER A

**Superior  
Design**

**PRELIMINARY CLUSTER SUBDIVISION PLAN PROVIDES FOR A TOTAL ENVIRONMENT AND DESIGN WHICH ARE SUPERIOR TO THAT WHICH WOULD BE ALLOWED UNDER THE REGULATIONS” FOR THE STANDARD SUBDIVISION OPTION”.**

**The Planning and Zoning Commission held a Public Hearing on this Proposed Ordinance on November 20, 2008 at which time the Commission recommended approval, subject to the following recommendations:**

**Proposed  
Ordinance  
Regarding  
Superior  
Design  
(continued)**

- 1. That the Sussex County Council consider the information provided to the Commission during the Public Hearing.**
- 2. That the word “setback” in 115-25F(3)(a)(4) on Page 3 of the Proposed Ordinance Amendment be changed to the word “buffer”.**
- 3. That on Line 9 of 115-25F(3)(a)(4) on Page 3 the word “Council” should be changed to the word “Commission”.**
- 4. In 115-25F(3)(a)(2) regarding “Yield Plans” should state that the yield Plan must be designed based on the same sewer infrastructure as the proposed Cluster Subdivision so that lot sizes are comparable. To accomplish this (2)(A) should state “The Yield Plan shall be completed to scale based upon the same sewer infrastructure as the proposed Cluster Subdivision and shall show potential lots, streets and stormwater management facilities.”**
- 5. In 115-25F(3)(a)(3)(B) on Page 2, the final sentence should be replaced with “Accordingly, at least 40% of all required open space shall be located on one centralized location within the project.”**

**The County Council held a Public Hearing on this application on December 2, 2008 at which time action was deferred and the County Attorney was directed to look at the cumulative suggestions heard during the Public Hearing and to determine what changes could be incorporated without making a major change to the Proposed Ordinance. The list of suggested changes was reviewed at the December 9, 2009 meeting.**

**Mr. Dukes reported that he and Mr. Jones met and discussed the amendments proposed and considered the comments made at the Public Hearing on December 2, 2008, including the recommendation of the Commission. Mr. Dukes distributed an amended copy of the Proposed Ordinance.**

**M 955 08**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on the Proposed Ordinance.**

**Rescind  
Motion**

**Mr. Cole and Mr. Phillips rescinded their Motion and Second.**

**Present**

**Mr. Dukes presented the Proposed Ordinance, as amended (the Amended**

**and Review  
New Version  
of Draft  
Ordinance**

**Proposed Ordinance is listed below in its entirety):**

**WHEREAS, Sussex County Council (“Council”) has the power and jurisdiction to regulate zoning and the uses of land in those portions of Sussex County which are not included within the corporate limits of any City or Town; and**

**Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)**

**WHEREAS, Council deems it appropriate to amend the Cluster Subdivision Ordinance to provide a criteria to be used by the Commission in determining whether a preliminary cluster subdivision plan provides a total environment and design which are superior to that which would be allowed under the regulations for the standard option subdivision; and**

**WHEREAS, Council is of the opinion that this amendment will promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the County and provide for a more orderly development of the County; and**

**NOW, THEREFORE,**

**THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 115-25.F (3)(a) is hereby amended as follows:**

**(3) The Sussex County Planning and Zoning Commission shall determine that the following requirements are not before approving any cluster development.**

**(a) The cluster development sketch plan and the preliminary plan of the cluster subdivision provides for a total environment and design which are superior, or that which would be allowed under the regulations for the standard option. For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission, meets all of the following criteria:**

- 1. Homes shall be clustered on the environmentally suitable portions of the tract, specifically those portions of the tract least encumbered by sensitive environmental features, including but not limited to wetlands, mature woodlands, waterways and other water bodies. This does not inhibit the development of wooded parcels.**
- 2. The applicant must submit a “Yield Plan” that conceptually depicts the maximum number of dwelling units possible on the same tract under current**

**applicable conventional (non-cluster) development regulations.**

**Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)**

- A. The Yield Plan shall be completed to scale, and conceptually depicts potential lots, streets, and storm drainage facilities. However, the Yield Plan is not required to contain the same level of engineering detail required for a subdivision plan.**
- B. The Yield Plan shall depict all wetlands, wooded areas, waterways and other water bodies.**
- C. The applicant shall comply with Section 115-25.A (2) or Section 115-25.B (3), as applicable. In addition, the maximum number of dwelling units allowed on a cluster development tract shall not be greater than the maximum number of dwelling units determined to be possible under the Yield Plan prepared for that same tract, plus the number of additional units allowed if the applicant proffers the required per unit fee provided for under Section 115-25.B (3) and F (3) (d) as provided for in Ordinance 1842.**
  - 1. The Yield Plan shall not have any legal standing except for the purposes of determining maximum density allowed under a cluster development.**
- 3. Required open space shall comply with the following criteria:**
  - A. All required open space must meet the official definition of acceptable open space contained in Section 115-4.**
  - B. Required open space must be designed to be beneficial to the residents or users of the open space. It shall not be constituted of fragmented lands with little open space value. Accordingly, 30% of all required open space shall be located on one contiguous tract of land, except that**

such open space may be separated by water bodies and a maximum of one street.

**Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)**

- C. If one of the following physical conditions exist adjacent to the proposed cluster development tract, at least 30% of all required open space must be adjacent to:**
- 1. An existing or officially planned public park, land preserved by easement, or land preserved as open space and in municipal, County, State, or Federal ownership.**
  - 2. Existing wetlands, waterways, wildlife corridors, or other ecology-sensitive land.**
  - 3. Existing farmland and/or woodlands.**
  - 4. If more than one of these physical features exist on adjacent properties, then one of these features will be identified and utilized to satisfy this requirement.**
- D. If the open space is proposed to be dedicated to a municipality, a County, State, or Federal agency or a homeowner's association, an agreement shall be provided, in advance, stipulating that such entity agrees in advance to accept that dedication and maintain that land for public recreation or as a nature preserve.**
- E. Open space in a cluster development shall include a pedestrian trail system accessible to residents. This trail system shall connect to an adjacent trail, adjacent neighborhood, adjacent commercial area, or adjacent public open space, if any such areas exist adjacent to the proposed cluster development. Construction materials for the proposed trail shall be identified and a typical construction detail for the proposed trail shall be shown. Trail construction shall be pervious in nature.**
- 4. A minimum of 25 feet permanent setback must be maintained around the outer boundaries of all wetlands, except for tidal waters, tidal tributary streams and tidal wetlands and from the ordinary high**

water line of perennial non-tidal rivers and non-tidal streams as provided for in Section 115-193.B under Ordinance No. 774 where a 50 foot permanent setback is required. No buildings or paving shall be placed within these setbacks.

**Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)**

5. Stormwater management shall be designed to promote groundwater recharge and protect groundwater quality. Natural drainage flows shall be maintained to the greatest extent possible. Drainage from rooftops shall be directed to vegetated areas or allow green technology. Stormwater detention and retention facilities should be designed to resemble natural ponds as referenced by DNREC in the National Resource Conservation Service's (NRCS) Pond Code 378, Visual Resource Design.
6. Removal of healthy mature trees shall be limited.
7. Scenic views that can be seen from within the tract should be preserved to the greatest extent possible.
8. The applicant for a cluster development shall illustrate that the following sequence and process was followed in the site design of the cluster project:
  - A. Identify Lands that should be Preserved – First, areas worthy of preservation should be mapped, including wetlands, wooded areas, waterways, other water bodies, and natural drainage areas. Then, other features that are important should be mapped, such as tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the “Potential Development Area.”
  - B. Identified Developable Areas – Next, the most appropriate locations for development should be chosen to minimize the impact to the most important features mapped in the first step.
  - C. Locate Roads and Trails – After the developable areas are determined, a road system should be designed to serve those areas. A trail system that links homes to destinations outside of the tract should be designed.



**D. Locate Lot Lines – The last step is to configure lot lines and make necessary adjustments to satisfy the various reviewing agencies' comments.**

**9. Sidewalks shall be required on one side of each street, subject to the approval of the Planning and Zoning Commission.**

**Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)**

**Section 2. This Ordinance shall become effective upon its adoption by a majority of the members elected to Council and shall apply to all cluster subdivision applications filed after the effective date.**

**It was the consensus of the Council to change the word “conceptually” to “accurately” on Page 2, in Paragraph 2 and Paragraph 2A.**

**Mr. Phillips requested the deletion of Section 2, referencing a Yield Plan, from the Proposed Ordinance since it is not about superior design but rather about reducing the density of applications. There was no consensus to take this action.**

**The Council considered the addition of the following sentence in the Proposed Ordinance “The Yield Plan will not be used as any justification for cutting density.” No action was taken.**

**Mr. Phillips recommended that the Council make the Proposed Ordinance voluntary and to allow for expedited reviews.**

**Based on comments, Mr. Griffin read the proposed preliminary wording for (3) on Page 1, as follows:**

**In respect to any cluster subdivision application submitted after the effective date of this amendment and where the Applicant voluntarily elects to comply with the provisions in this Amendment implementing superior design criteria, the Planning and Zoning Commission shall determine that the following requirements are met before approving said cluster development application and in return for such election, said application would qualify for expedited review.**

**Mr. Cole stated that he did not think it was the Council’s original intent to make this amendment voluntary.**

**Mr. Phillips stated that a voluntary program would give the development community the opportunity to try it out and if it is successful, the new Council could consider making the amendment mandatory.**

**Mr. Jones declared a five minute recess.**

Mr. Jones called the Council back into session.

Mr. Griffin proposed the following change to (3) on Page 1, as follows:

Present  
and Review  
New Version  
of Draft  
Ordinance  
(continued)

- (3) In respect to any preliminary cluster subdivision application that is submitted after the effective date of this amendment, if the applicant voluntarily elects to comply with the superior design criteria contained in this amendment, the Planning and Zoning Commission shall determine that the following requirements are met before approving any preliminary plan and such application shall be approved on an expedited review basis. The superior design criteria contained in this amendment shall not apply to applications submitted under the terms of the cluster ordinance, as it existed prior to the date of this amendment, or to any application hereafter submitted where the applicant does not voluntarily elect to comply with the requirements contained in this amendment.

M 956 08  
Adopt  
Ordinance  
No. 2024

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to Adopt Ordinance No. 2024 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE IV, SECTION 115-25 TO PROVIDE CRITERIA FOR DETERMINING WHETHER A PRELIMINARY CLUSTER SUBDIVISION PLAN PROVIDES FOR A TOTAL ENVIRONMENT AND DESIGN WHICH ARE SUPERIOR TO THAT WHICH WOULD BE ALLOWED UNDER THE REGULATIONS”. FOR THE STANDARD SUBDIVISION OPTION”, as amended, with the amendments articulated by Councilman Jones and Councilman Dukes and Mr. Griffin, County Attorney, enacting the ordinance amendment as voluntary and making it effective as of January 1, 2009, and further, that the superior design criteria contained in this ordinance amendment shall not apply to applications submitted under the terms of the cluster ordinance, as that ordinance existed prior to the date of this amendment.

Motion Adopted: 5 Yeas.

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

Appeal of  
Lacrosse  
Homes  
of DE, Inc./  
Subdivision  
No. 2006-10

The Council considered the Appeal of Lacrosse Homes of DE, Inc. for Subdivision No. 2006-10.

Mr. Dukes did not participate in the discussion or vote on the Appeal.

Mr. Lank, Director of Planning and Zoning, reported that a Public Hearing was held by the County Council on October 23, 2007 on an appeal of the Sussex County Planning and Zoning Commission’s decision to deny an application of Lacrosse Homes of Delaware, Inc. for the subdivision of land (The Village at Trussum Pond) in an AR-1 Agricultural Residential District

in Little Creek Hundred, Sussex County, by dividing 213.64 acres into 320 lots (Cluster Development), located north of Road 70 (Gordy Road), 1,500 feet west of Road 72 (Wooten Road) and on both sides of Road 462 (Trussum Pond Road).

**Appeal of  
Lacrosse  
Homes  
of DE, Inc./  
Subdivision  
No. 2006-10  
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on May 24, 2007 at which time they deferred action. On June 20, 2007, the Commission deferred action again. On June 27, 2007, the Commission recommended that the application be denied with a 3-1 Vote. Mr. Lank read the Commission's reasons for denial.

On February 26, 2008, the Council considered the Appeal under Old Business. On that date, a Motion was made by Mr. Cole and seconded by Mr. Rogers, to reaffirm the decision of the Planning and Zoning Commission for Subdivision No. 2006-10. The Motion failed with a vote of 2 Yeas, 2 Nays, and 1 Absent (Dukes).

The Council once again considered the Appeal.

**M 957 08  
Overturn  
Decision  
of P&Z  
Commission  
/Appeal of  
Lacrosse  
Homes  
of DE, Inc./  
Subdivision  
No. 2006-10**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to overturn the decision of the Planning and Zoning Commission on Subdivision No. 2006-10 filed by Lacrosse Homes of DE, Inc., based on the fact that the Planning and Zoning Commission erred in their reasons for denial and they misapplied terms of the Subdivision Ordinance. (This Motion approves Subdivision No. 2006-10.)

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

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

Mr. Dukes rejoined the meeting.

**Requests**

The Council considered grant requests.

**M 958 08  
Amend  
Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to amend the Agenda to add the following under Grant Requests: Bridgeville Community Action Agency and Boys Scouts of America.

**Motion Adopted: 3 Yeas, 2 Nays.**

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

**M 959 08**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$5,000.00

**Motion Adopted: 5 Yeas.**

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

**M 964 08** A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$2,500.00  
**Community** (\$2,000.00 from Mr. Jones' Community Grant Account and \$500.00 from  
**Grant** Mr. Dukes' Community Grant Account) to Delaware Ducks Unlimited for  
**M 964 08** the 2009 Greenwing Event.  
**(continued)**

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

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

**M 965 08** A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,000.00  
**Community** from Mr. Jones' Community Grant Account to Coverdale Crossroads  
**Grant** Community Council for after-school programs.

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

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

**M 966 08** A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$7,000.00  
**Community** from Mr. Jones' Community Grant Account to the Historic Georgetown  
**Grant** Association for the Kimmeytown Project.

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

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

**M 967 08** A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$5,000.00  
**Community** (\$2,000.00 from Mr. Jones' Community Grant Account and \$1,000.00 each  
**Grant** from Mr. Cole's, Mr. Dukes' and Mr. Phillips' Community Grant  
Accounts) to the Senior League Softball World Series (Delaware Division  
III) for the 2009 World Series event.

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

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

**M 968 08** A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$2,000.00  
**Community** from Mr. Jones' Community Grant Account to the Town of Greenwood for

**Grant**                      **Christmas light expenses.**

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

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

**M 969 08**                **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$3,000.00**  
**Community**            **from Mr. Jones' Community Grant Account to the Georgetown Historical**  
**Grant**                   **Society for programs and projects.**

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

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

**M 970 08**                **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give**  
**Community**            **\$3,000.00 from Mr. Jones' Community Grant Account to the Bridgeville**  
**Grant**                   **Historical Society for programs and projects.**

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

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

**M 971 08**                **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,000.00**  
**Community**            **(\$200.00 from each Community Grant Account) to Sussex Technical High**  
**Grant**                   **School for their Science Fair.**

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

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

**M 972 08**                **A Motion was made Mr. Rogers, seconded by Mr. Cole, to give \$1,000.00**  
**Community**            **from Mr. Rogers' Community Grant Account to the Town of Slaughter**  
**Grant**                   **Beach for park improvements.**

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

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

**M 973 08**                **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$1,000.00**  
**Community**            **(\$200.00 from each Community Grant Account) to the Sussex Cyclists for**

**Grant                    safety equipment**

**MOTION            Motion Denied:            3 Nays, 2 Yeas.**  
**DENIED**

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

**M 974 08            A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$1,500.00**  
**Community        (\$1,000.00 from Mr. Rogers' Community Grant Account and \$500.00 from**  
**Grant                Mr. Cole's Community Grant Account) to the Sussex Cyclists for safety**  
**equipment.**

**Motion Adopted:    4 Yeas, 1 Nay.**

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

**M 975 08            A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$300.00**  
**Community        from Mr. Rogers' Community Grant Account to the People to People**  
**Grant                Ambassador Program for Kaitlyn Ohrt's participation in the Summer**  
**Program.**

**Motion Adopted:    4 Yeas, 1 Nay.**

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

**M 976 08            A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$2,000.00**  
**Community        from Mr. Rogers' Community Grant Account to the Milton Cemetery**  
**Grant                Improvement Company, Inc., c/o Delaware Community Foundation, to**  
**support improvements and general operating needs.**

**Motion Adopted:    4 Yeas, 1 Nay.**

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

**M 977 08            A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$1,000.00**  
**Community        from Mr. Rogers' Community Grant Account to the New Hope Recreation**  
**Grant                and Development Center in Ellendale for building renovations.**

**Motion Adopted:    4 Yeas, 1 Nay.**

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

**M 978 08**  
**Community Grant**      **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$2,000.00 from Mr. Rogers' Community Grant Account to Dalmatian Rescue of Delaware, Inc. for veterinary costs.**

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

**M 978 08**  
**(continued)**      **Vote by Roll Call:      Mr. Cole, Yea; Mr. Phillips, Nay;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**M 979 08**  
**Community Grant**      **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$1,000.00 from Mr. Rogers' Community Grant Account to Milton Garden Club for operating expenses.**

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

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

**M 980 08**  
**Community Grant**      **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$3,500.00 (\$2,000.00 from Mr. Jones' Community Grant Account, \$1,000.00 from Mr. Rogers' Community Grant Account, and \$500.00 from Mr. Cole's Community Grant Account) to Delaware Technical & Community College Alumni Association for scholarship funding.**

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

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

**M 981 08**  
**Community Grant**      **A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$1,000.00 from Mr. Jones' Community Grant Account to the Bridgeville Community Action Agency for Christmas baskets for the needy.**

**Motion Adopted:      5 Yeas.**

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

**M 982 08**  
**Community Grant**      **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$2,000.00 from Mr. Jones' Community Grant Account to the Boy Scouts of America for programs and projects.**

**Motion Adopted:      5 Yeas.**



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

**M 983 08** A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give  
**Community** \$2,000.00 from Mr. Jones' Community Grant Account to the Delaware  
**Grant** Rural Water Association for general operating expenses.

**M 983 08** Motion Adopted: 5 Yeas.  
**(continued)**

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

**Introduction** Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE  
**of Proposed** TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX  
**Ordinances** 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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.04 ACRES, MORE OR LESS " (Change of Zone No. 1677) filed on behalf of Old Towne Point, LLC., c/o Craig Hudson.

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.45 ACRES, MORE OR LESS" (Change of Zone No. 1678) filed on behalf of Byrum Farm, LLC.

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 15.44 ACRES, MORE OR LESS" (Change of Zone No. 1679) filed on behalf of Sealadel Industrial Park.

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 98.8 ACRES, MORE OR LESS" (Change of Zone No. 1680) filed on behalf of Sealadel Industrial Park.

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL

**OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,611 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1820) filed on behalf of Rheumatology Consultants of DE, P.A.**

**Introduction  
of Proposed  
Ordinances  
(continued)**

**Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.98 ACRES, MORE OR LESS” (Conditional Use No. 1821) filed on behalf of John F. Corcoran, et. al.**

**Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 36,097 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1822) filed on behalf of Michael P. Mulligan.**

**Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SMALL ENGINE REPAIR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.052 ACRES, MORE OR LESS” (Conditional Use No. 1823) filed on behalf of Raymond W. and Nancy A. Scull.**

**Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR A MEDICAL CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.857 ACRES, MORE OR LESS” (Conditional Use No. 1824) filed on behalf of Ellendale Community Civic Improvement Association, Inc.**

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

**M 984 08  
Adjourn**

**A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn the meeting at 7:35 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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