



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 15, 2010

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 15, 2010 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
George B. Cole	Vice President
Joan R. Deaver	Member
Samuel R. Wilson	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
J. Everett Moore, Jr.	County Attorney

Mr. Vincent was not in attendance.

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

Mr. Baker recommended the following amendments to the Agenda: Delete approval of Minutes; reverse the order of Item #1 (Appointment to the Board of Adjustment) and Item #2 (Amendment to Rules of Procedure) under Mr. Baker; defer Building Permits within Incorporated Municipalities under Eddy Parker until next week; and delete Personnel and Land Acquisition from the Executive Session.

M 313 10 Approve Agenda

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to amend the Agenda by deleting the following items:

- Approval of Minutes
- Building Permits within Incorporated Municipalities
- Personnel and Land Acquisition from Executive Session

and to leave Appointment to the Board of Adjustment and Amendment to Rules of Procedure in the original published order, and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent

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

**Corre-
spondence**

Mr. Moore read the following correspondence:

**Board of
Adjustment/
Vacancy**

RE: Email to Council President, Vance Phillips, commending County staff. Mr. Baker announced that the Council must reappoint a new member to the Board of Adjustment. He distributed a listing of prior members of the Board of Adjustment and the Planning and Zoning Commission dating back to 1967, along with lists of the members of boards and commissions with their respective political affiliations.

Mr. John G. Walsh, who has been nominated to fill the current vacancy on the Board of Adjustment, addressed the Council. Some of the highlights of his remarks are as follows:

- **Current Board of Adjustment “needs new blood”**
- **Terms should be limited**
- **Any deviation from proper procedure on appeal in court is grounds for automatic reversal**
- **Sussex County Board of Adjustment does not always follow procedure**
- **Concerned that Sussex County currently has no Land Use Planner**

The Council then interviewed Mr. Walsh.

Mr. Phillips informed Mr. Walsh that, although the County does not have a full-time Land Use Planner, Urban Research and Development Corporation is on retainer as consultant.

**M 314 10
Appointment
to Board of
Adjustment**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer making a decision on Mr. Walsh’s appointment to the Board of Adjustment until all members of the Council are present.

Motion Adopted: 4 Yeas, 1 Absent

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

Mr. Phillips raised the question to Mr. Moore, if Councilman Vincent could personally interview Mr. Walsh, rather than have him return to another Council meeting. Mr. Moore responded that a personal interview with Mr. Vincent would be appropriate. Mr. Vincent would have the option of either listening to the audio of Mr. Walsh’s interview with the Council today and/or personally meeting with him.

**Amendment
to Rules of
Procedure**

Mr. Baker stated that at the Council's request at the June 8th meeting, Mr. Moore has drafted a proposal to amend the Rules of Procedure regarding appointments to the Board of Adjustment and the Planning and Zoning Commission.

**Amendment
to Rules of
Procedure
(Con't)**

Mr. Moore noted that the only portion in the Rules of Procedure that addressed appointments was Section 16; however, this section refers only to the appointment of Council members to various boards and commissions, or committees. Mr. Moore proposed adding Section 16a for appointments to the Planning and Zoning Commission and Board of Adjustment. Mr. Moore suggested that the Council set a sufficient time period prior to making a nomination to obtain a resume from the proposed applicant/nominee, distribute the proposed questions to the proposed applicant/nominee and give Council members the opportunity to submit additional questions that would be given by Mr. Baker. He stated there should be sufficient time for the written responses to be returned to the Council for their review. Mr. Moore noted that the new rules would apply to new nominees only, not to a member who was being reappointed. Mr. Moore also noted that a 30-day time period may be too long if a vacancy occurred due to death or illness before the current term has expired.

Mr. Cole raised the consideration of possibly having an open application process whereby persons would submit applications, and it not be restricted to a Council member's appointee. He stated the applicant would have to meet the minimum requirements.

Mrs. Deaver voiced no objection to Mr. Cole's idea. Mr. Phillips felt that the Council member's appointee should be given first consideration.

Mr. Phillips questioned what would happen if the Council failed to appoint a new member prior to the expiration date of the current member. Mr. Moore responded by stating that the current member would continue to serve until such time as a new member is appointed.

Mr. Moore noted that the Delaware Code does not state that each council member must have an appointment to boards and/or commissions, but states that board and commission members are appointed by the Council.

It was the consensus of the Council to revisit the Rules of Procedure issue on June 29, 2010, at which time all Council members will be present.

At Mr. Phillips' request, Mr. Moore and Richard Berl, Esq., Attorney for the Board of Adjustment, will review the County Code and discuss the possibility of amending the Code to eliminate repetitive applications based upon specific aspects of the Code.

**Request for
Extension
C/U 1705**

Mr. Baker stated that a request for an extension of Conditional Use No. 1705 has been filed on behalf of The Commonwealth Group. He noted that

the extension is being requested for their Industrial Park expansion, which is adjacent to the County Industrial Park.

Lawrence Lank, Director of Planning and Zoning, noted that the Planning and Zoning Commission had granted final approval of this project, not preliminary approval, as stated in Mr. Lank's memo to Mr. Baker dated June 9, 2010. He stated that the applicant was granted final approval on April 22, 2009 and has had all agency approvals since May 4, 2009.

**Request for
Extension
C/U 1705
(Con't)**

Mr. Lank referred to a letter from The Commonwealth Group, dated June 3, 2010 in which they substantiate that they have continuously attempted to market the project; that various businesses have showed interest, but none were willing to commit to either leasing or purchasing portions of the project; that current economic conditions have restricted the ability for companies to commit to expansion; that the ability to obtain financing is nonexistent; and that the length of the approval process has hindered their ability to proceed with the project. Mr. Lank noted that there has been no activity on the project.

Mr. Cole did not agree that the reasons stated by the Commonwealth Group for not proceeding with the project are legitimate reasons for another extension.

Mrs. Deaver stated that inactivity on the project ties up the land and expressed the thought that if the conditional use were allowed to expire, perhaps it could be developed by someone else.

Mr. Wilson stated he could see both sides of the issue.

Mr. Lank stated that the Planning and Zoning Commission had granted two previous time extensions and it is now the Council's decision whether or not to grant a third extension.

**M 315 10
Defer
Action
(C/U No.
1705)**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1705, filed by The Commonwealth Group, until June 29, 2010 when all Council members will be present.

Motion Adopted: 4 Yeas, 1 Absent

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

**Request for
Extension
C/U 1668**

Mr. Lank stated that a request for an extension of Conditional Use No. 1668 has been filed on behalf of Karl M. Klink III and Melanie Klink.

Mr. Lank stated that the applicants originally made application in September 2005 for a country store and for storage of overhead doors. The Planning and Zoning Commission held a Public Hearing on October 26,

2006, at which time the application was approved. The County Council approved the application on June 12, 2007 with conditions, with one of the conditions being that the use would be limited to a country store only. Mr. Lank stated that no prior time extension had been requested, but noted that if time extensions had been granted, the application would have been void after June 12, 2010.

**Request for
Extension
C/U 1668
(Con't)**

Mr. Lank stated that the applicants were unaware of the time limit of their Conditional Use. Mr. Baker received a letter from the Klinks dated May 12, 2010 requesting that the Council grant a one-year extension to allow them time to acquire the necessary agency permits, to get site plan approval from the Planning and Zoning Commission and to start construction of their country store.

Mr. Cole noted that since the Conditional Use application was now void, it could not be extended. This was confirmed by Mr. Moore.

**M 316 10
Defer Action
(CU No.
1668)**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1668 to allow the County Attorney time to review the County Code for a possible alternative option that would allow the Council to provide the applicant some type of release from the expired application.

Motion Adopted: 4 Yeas, 1 Absent

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

**Administra-
tor's Report**

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

1. Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year Ended June 30, 2009

We are pleased to announce that the Sussex County Council has been awarded, for the eighth year, the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association. This award represents the culmination of the efforts of many County employees involved in preparing the annual financial report, our auditors, and our staff who on a day-to-day basis ensure that County finances remain strong. Susan Webb, Gina Jennings, Kathy Roth, Jeff James, and the Accounting Division deserve special thanks for their extra efforts. This reporting achievement is only awarded to those state and local governments who prepare a financial report with additional information "demonstrating a 'constructive spirit of full disclosure' to clearly communicate its financial story," as per the Government Finance Officers Association.

We wish to thank our employees for their important efforts in achieving this award again. Attached is a copy of the certificate and a press release by the Government Finance Officers Association.

2. Sussex County, Delaware – Where to Retire

Administra-
tor's Report
(Con't)

As per the attached article in the magazine Where to Retire for July/August 2010, Sussex County, Delaware, is listed as one of "10 Terrific Four-Season Places With Good Buys." Information is provided in the article about Sussex County, our beaches, recreation opportunities, retail opportunities, and location that help contribute to make Sussex County a great place to live.

3. Delaware Department of Transportation Public Workshop – US 113 Intersection Improvements

As per the attached notice, on Monday, June 21, from 4:00 to 7:00 p.m., the Delaware Department of Transportation will be holding a public workshop at the Millsboro Volunteer Fire Company regarding the preliminary design for improvements to various intersections along US 113 in Sussex County in the Millsboro and Ellendale areas.

4. Substantial Completion

The Engineering Department granted Substantial Completion to Henlopen Landing – Phase 4, Agreement No. 517-1, on June 10, 2010. The developer is Bridle Ridge Properties, L.L.C., and the property is located south of the intersection of County Roads 275 and 285 at Five Points in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of 46 single-family homes. Included with this report is a fact sheet on the project.

New Bank
Accounts

Susan M. Webb, Finance Director, requested adoption of a Resolution by the Council, which would authorize four new bank accounts to be opened with Delaware National Bank for new grant funding for the County's housing program, which is allocated to Sussex County each year in CDBG, NSP, HPG and Home funds.

M 317 10
Adopt
R 017 10

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to adopt Resolution No. R 017 10 entitled "RESOLUTION TO AUTHORIZE THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE DELAWARE NATIONAL BANK BEARING THE SIGNATURES OF ANY TWO OF VANCE PHILLIPS, PRESIDENT; MICHAEL H. VINCENT, VICE PRESIDENT OR SUSAN M. WEBB, FINANCE DIRECTOR AND A SIGNATURE MAY BE A FACSIMILE PROVIDED WHEN ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL"

Motion Adopted: 4 Yeas, 1 Absent.

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

**Escrow
Reserves
Development
Corporation**

Mrs. Webb stated that an escrow account will be opened with Wilmington Trust Co. under the name of Sussex County Council Escrow Reserves Development Corporation. She explained this is a Line of Credit Bond that the County has called on the Reserves Development property since it is due to expire soon. Mrs. Webb noted that the County is currently in litigation with the Reserves and the trust agreement is being set up in an escrow account with the County as the Trustee. She noted that the money will remain in the escrow account until such time as the case is resolved.

**M 318 10
Adopt
R 018 10**

A motion was made by Mr. Wilson, seconded by Mrs. Deaver, to adopt Resolution No. R 018 10 entitled “A RESOLUTION AUTHORIZING THE SUSSEX COUNTY COUNCIL TO APPROVE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL ON DEPOSIT WITH THE WILMINGTON TRUST COMPANY BEARING THE SIGNATURES OF ANY TWO OF VANCE PHILLIPS, PRESIDENT; MICHAEL H. VINCENT, VICE PRESIDENT OR SUSAN M. WEBB, FINANCE DIRECTOR AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL”

Motion Adopted: 4 Yeas, 1 Absent.

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

**Introduction
of
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE AMENDING ORDINANCE NO. 2098 AND AUTHORIZING THE ISSUANCE OF UP TO \$10,475,000 OF GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE INLAND BAYS REGIONAL WASTEWATER FACILITY AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”

**RFP Results/
Professional
Consulting
Services to
Update the
All Hazards
Emergency**

Hal Godwin, Deputy County Administrator, reminded the Council that it had previously approved a Request for Proposal to review and update Sussex County’s Emergency Operations Plan. Mr. Godwin reported that five proposals had been received and, as required by Delaware State Code, an Emergency Operations Plan Committee was formed, which evaluated the proposals submitted. The committee interviewed Techtonic, which it

Operations Plan for Sussex County	<p>felt was the most qualified, and recommended it for the Council's consideration. Mr. Godwin noted that Techtonic was also the lowest bidder.</p> <p>Joseph Thomas, Director of Emergency Operations Center, stated that Techtonic has a vast array of experience in writing and re-writing Emergency Operations Plans and that they have experience in dealing with jurisdictions similar to Sussex County with municipalities that have a small administrative structure. Mr. Thomas stated that the committee was unanimous in its decision to choose Techtonic.</p>
RFP Results/ (Con't)	<p>Mr. Godwin noted that the review committee included Joe Thomas, Robbie Murray, Emergency Medical Services Department; Rodney Marvel, Engineering; Eddy Parker, Director of Assessment; and Mr. Godwin.</p>
M 319 10 Approve Consulting Services to Update the All Hazards Emergency Operations Plan for Sussex County	<p>A motion was made by Mr. Cole, seconded by Mr. Wilson, to accept the recommendation of the Emergency Operations Plan Committee to authorize Techtonic Engineering and Surveying Consultants, P.C. to review and update Sussex County's current Emergency Operations Plan at a cost of \$35,000.</p> <p>Motion Adopted: 4 Yeas, 1 Absent.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Absent; Mr. Phillips, Yea</p>
Legislative Update	<p>Hal Godwin, Deputy County Administrator, presented the following information in his Legislative Update:</p> <p><u>Senate Bill 132:</u> Introduced in 2009. Would require that any zoning ordinance considered by Council must first be reviewed by the State Planning Office.</p>
M 320 10 No Opposition to SB 132	<p>A motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council would not oppose Senate Bill 132, as long as it is only a review and does not take longer than 20 days.</p> <p>Motion Adopted: 2 Yea, 2 Nay, 1 Absent</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Nay; Mr. Cole, Yea; Mr. Vincent, Absent; Mr. Phillips, Nay</p> <p>Mr. Moore noted that the language of SB Bill 132 is confusing, as one portion states that "all Land Use Ordinances adopted" would be reviewed by the State Planning Office; another portion of the Bill states they would be reviewed "prior to approval or adoption" by the County.</p>
M 321 10 Clarification of SB 132	<p>A motion was made by Mr. Cole, seconded by Mrs. Deaver, to direct Mr. Godwin to obtain clarification of Senate Bill No. 132.</p>

Motion Adopted: 4 Yeas, 1 Absent

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

**Legislative
Update
(Con't)**

House Bill 300: Amendment to Freedom of Information Act. States that requests for information through FOIA, must be answered within 10 days. Does not state information requested must be supplied within that time. Extension beyond 10 days must be requested if unable to produce requested information by that time; must have justifiable reason.

**M 322 10
Request
Additional
Time to
Produce
Information
For FOIA
Requests**

A motion was made by Mr. Wilson, seconded by Mr. Cole, to authorize Mr. Godwin to oppose HB 300 and to request a longer time period than 10 days to supply requested information through the Freedom of Information Act.

Motion Adopted: 4 Yeas, 1 Absent

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

HB 333: Allows County to enforce sewer connections through the J. P. Court.

SB 240: Includes cat to list of domestic animals. Pending legislation to give County responsibility to adjudicating all infractions of incidents classified under the dangerous dog bill.

SB 265: Farmers nuisance bill. Farm Bureau, farmers and legislators are working together on this Bill.

SB 292: Draft legislation would reschedule County tax assessment date so tax records would be closed and tax bills would be mailed shortly thereafter in order to avoid rebilling as a result of recent property transfer. Now in Senate.

HB 449: Planning and Zoning appointments would be based on council district rather than representative district. Passed the House.

HB 402 & HB 407: Agriculture Bills have passed the House.

HB 419: Dangerous Dogs Amendment. Council is not opposing.

HB 442: Amends Title 26 of Delaware Code which would cost NCCo its authority in defining where sewer could go unless a pipe was already in the ground. Needs clarification in the language of this bill. Currently would affect only NCCo but they are requesting Sussex County support to oppose.

Sussex County takes no position at this time.

HB 465: Would move Recorder of Deeds to a state agency.

HJR 12: Resolution recommends that Recorder of Deeds would no longer be an elected office.

HB 468: Would move Register of Wills to a state agency.

Legislative
Update
(Con't)

HJR 13: Resolution recommends that Recorder of Deeds would no longer be an elected office.

Mr. Godwin stated that HB 465, HJR12, HB 468 and HJR13 are due in committee hearings tomorrow, June 16th and urged Council members to attend the hearings to voice their opposition to these bills.

Draft Bill: Provides relief from storm water management fees imposed on property owners who do not currently discharge storm water directly into storm water conveyance system constructed, maintained or operated by the local government or conservation district imposing the fee. Fees currently charged in violation of this section are rescinded.

HB 466: Amends existing law regarding specifications for the humane handling, care and treatment of dogs to include restrictions on tethering dogs between 11:00 p.m. and 6:00 a.m. and when there is inclement weather.

The Council opposes HB 466.

HB 419: Mr. Phillips questioned the Council's position on the "Dangerous Dog Amendment" (HB 419) and was informed by Mr. Godwin that he had opposed this Bill in Committee, stating it was an unfunded mandate, but later in the day he was told not to oppose the Bill. He noted that the Bill remains in the House and is on today's agenda.

Mr. Phillips voiced his concern with the state mandating dog control regulations in which they have no financial interest.

M 323 10
Oppose
HB 419

A motion was made by Mr. Cole, seconded by Mrs. Deaver to oppose HB 419 regarding the Dangerous Dog Amendment.

Motion Adopted: 4 Yeas, 1 Absent.

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

SB 268 States that every political subdivision in the State of Delaware, including county, city and municipal governments shall enforce the

International Mechanical Code (IMC) and the International Fuel Tax Code (IFT) as adopted or modified by the State Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration examiners.

The County is opposed to that portion of the Bill which relates to plumbing inspections by the County.

**M 324 10
Adopt
R 016 10
Housing
Preservation
Grant**

Mr. Phillips requested a daily legislative update from Mr. Godwin through memos to Council members while the General Assembly is in session.

A motion was made by Mrs. Deaver, seconded by Mr. Cole, to adopt R 016 10 entitled “A RESOLUTION ENDORSING PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING DAVID B. BAKER, COUNTY ADMINISTRATOR, TO SUBMIT PREAPPLICATION”

Motion Adopted: 4 Yeas, 1 Absent.

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

**Lochwood
Streetlight-
ing Modifi-
cations**

Patricia Deptula, Assistant Director of Public Works, stated that the Council had approved the Lochwood Streetlighting District Modifications on March 30, 2010. She noted that County Code states that approval must be done by resolution. Mrs. Deptula stated that the Lochwood development had requested 20 additional street lights and the relocation of one existing street light at the entrance of the development; however, on March 30, 2010 a letter was received from the Lochwood Property Owners Association requesting that the relocation portion of their request not be included.

**M 325 10
Adopt
Resolution
No. R 019 10**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to adopt R 019 10 entitled “A RESOLUTION PROVIDING MODIFICATION OF THE LOCHWOOD STREETLIGHTING DISTRICT”.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Grant
Requests**

Mrs. Webb presented the following grant requests for Council’s consideration:

**M 326 10
County
Council
Grant**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500 from County Council Grants to the Minority Leadership Alliance for scholarship fundraiser.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 327 10
Community
Grant**

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$5,000 (\$2,500 from Mr. Cole's Community Grant Account and \$2,500 from Mr. Phillip's Community Grant Account) to the Lower Sussex Little League for a new sound system.

**M 327 10
(Con't)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 328 10
Community
Grant**

A motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$500 (\$100 from each Community Grant Account) to First State Community Action Agency for its Capital Campaign.

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 329 10
Authorize
Executive
Session**

At 12:22 p.m. a motion was made by Mr. Wilson, seconded by Mr. Cole, to recess the Regular Session and to go into Executive Session for the purpose of discussing pending/potential litigation.

Motion adopted by Voice Vote.

**Executive
Session**

At 12:23 p.m. an Executive Session was held in the Caucus Room of the Council Chambers for the purpose of discussing pending/potential litigation. The Executive Session ended at 12:55 p.m.

**M 330 10
Reconvene**

At 12:56 p.m. a motion was made by Mr. Cole, seconded by Mrs. Deaver to come out of Executive Session and to recess until 1:30 p.m..

**Public
Hearing
(C/U No.
1831**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL RETAIL GUN SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS (Conditional Use No. 1831) filed on behalf of Mark Derrickson

The Planning and Zoning Commission held a Public Hearing on this application on May 27, 2010 at which time the Commission recommended approval of the application with eleven conditions.

(Refer to the minutes of the meeting of the Planning and Zoning Commission dated May 27, 2010 for additional information on the application).

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing, which the Council had previously received.

**Public
Hearing
(C/U No.
1831)
(Con't)**

Mr. Lank distributed Exhibit Books which had been provided by the applicant.

Timothy Willard, Attorney, was present on behalf of the applicant. Mr. Willard stated that the gun shop is 11' x 15'; that there are three parking spaces; that it is located in an environmentally-sensitive developing district; that retail and office uses are appropriate in the Sussex County Land Use Plan; and that no Traffic Impact Study was required by the Department of Transportation. Mr. Willard stated that Mr. Derrickson does hold a Federal Firearms License, which allows him to retail firearms; that he has a State of Delaware Business License; and that he is licensed in the State of Delaware to carry a concealed deadly weapon. Mr. Willard stated that in order for Mr. Derrickson to stock firearms, he is required to have a Conditional Use. He noted that the property will be alarmed; that each door will be deadbolted; that any opening with glass will have bars on it; the property will be lighted; and that all firearms will have trigger locks and will be stored in a gun safe. Mr. Willard also noted that the applicants reside on the property and that they will be the sole proprietors of the gunshop.

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

**M 331 10
Adopt
Ordinance
No. 2125
(C/U No.
1831)**

A motion was made by Mr. Cole, seconded by Mr. Deaver, to adopt Ordinance No. 2125 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL RETAIL GUN SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS (Conditional Use No. 1831) filed on behalf of Mark Derrickson, with the following conditions:

1. There shall be no more than one unlighted sign on the premises, not to exceed six (6) square feet in size per side, and one sign on the building, not to exceed four (4) square feet in size.
2. The 11.5 feet by 15 feet gun shop shall be limited to retail sales of guns, knives, ammunition and related accessories.
3. The Final Site Plan shall contain a delineated parking plan and the site

itself shall have all parking spaces clearly marked.

4. Any and all dumpsters shall be screened from view of neighboring properties.
5. No firearms shall be discharged on site.
6. The Applicant shall comply with all DelDOT requirements regarding entrance and roadway improvements associated with the project.
7. The shop shall contain one outside door for customers and a window, both with deadbolt locks, bars and alarms. The solid interior door shall also have a deadbolt lock with alarm. The shop shall house a gun safe for storage.
8. Security lights shall be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.
9. Hours of operation shall be limited to 10:00 a.m. until 5:00 p.m. Monday through Friday and 10:00 a.m. until 1:00 p.m. on Saturday and Sunday.
10. The owner and operator shall have all necessary Federal and State licensing and permitting required for retail sales of firearms and shall be the only employee.
11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent.

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

M 331 10
Adopt
Ordinance
No. 2125
(C/U No.
1831)
(Con't)

Public
Hearing
(C/Z No.
1683)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A B-1 NEIGHBORHOOD BUSINESS DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.28 ACRES, MORE OR LESS (Change of Zone No. 1683) filed on behalf of J. G. Townsend, Jr. & Co.

A Public Hearing was held by the Planning and Zoning Commission on this application on May 27, 2010 at which time action was deferred. On June 10, 2010 the Commission discussed this application under Old Business and recommended approval.

(Refer to the minutes of the Planning and Zoning Commission dated May 27, 2010 and June 10, 2010).

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

Public
Hearing
(C/Z No.
1683)
(Con't)

Mr. Lank distributed Exhibit Books that had been provided by the applicant.

Paul Townsend, President of J. G. Townsend, Jr. & Company, was present, along with Dennis Schraeder, Attorney, on behalf of the applicant. Mr. Schraeder stated that the property is located on the northwest side of Old Landing Road opposite its intersection with Airport Road that it is adjacent and in close proximity to several commercial and business uses zonings; i.e. Rehoboth Mall, Atlantic Liquors, Wal-Mart, fast-food restaurants, and multi-family projects. He stated that the property contains mixed zoning of AR-1, B-1 and C-1; that the total acreage is 10.28 acres; that, given the surrounding real estate development and commercial activities, it is no longer useful as agricultural land; that the property is in the environmentally-sensitive developing district; that it is in a Level 2; that it is adjacent to a public highway served by the West Rehoboth Sanitary Sewer District and by public water; and that there are no delineated wetlands on site and no other site issues. Mr. Schraeder stated the Department of Transportation had contacted the applicant about dedicating a proposed right-of-way for the completion of a relief route between Route 24 and Route 274. J. G. Townsend, & Co. will donate sufficient right-of-way to enable a new roadway to be built. Mr. Schraeder stated that the intent of the applicant is to remove an agricultural piece of land that can no longer be used for that purpose and create a commercial zone classification so it can be sold for commercial use.

Mr. Cole asked Mr. Schraeder to justify why the rezoning of this property is appropriate. Mr. Schraeder responded by stating that commercial zoning is consistent with all the surrounding tracts of land that are already zoned commercial and that is no longer compatible with the neighborhood to remain in agricultural use.

There were no public comments.

The Public Hearing and the public record were closed.

M 332 10
Adopt
Ordinance
No. 2126
(C/Z No.
1683)

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to adopt Ordinance No. 2126 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A B-1 NEIGHBORHOOD BUSINESS DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.28

ACRES, MORE OR LESS (Change of Zone No. 1683) filed on behalf of John G. Townsend, Jr. & Co.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing
(C/Z No.
1668 and
C/Z 1669)**

Mr. Lank, Director of Planning and Zoning, stated that the Applicants had requested that the applications of Change of Zone No. 1668 and Change of Zone No. 1669 be combined for the purpose of presentation. He noted that the decisions for each application must be made separately.

A Public Hearing was held on the Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 58.55 ACRES, MORE OR LESS (Change of Zone No. 1668) filed on behalf of CB Twin Cedars, LLC

A Public Hearing was held on the Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.79 ACRES, MORE OR LESS (Change of Zone No. 1669) filed on behalf of CB Twin Cedars, LLC

The Planning and Zoning Commission held a Public Hearing on these applications on May 27, 2010 at which time action was deferred and the record left open for 10 days for receipt of the final comments from PLUS, and for an additional 10 days for a response by the applicant to the PLUS comments.

Mr. Lank stated that no additional correspondence had been received since May 27, 2010.

Refer to the minutes of the Planning and Zoning Commission dated May 27, 2010.

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

Exhibit Books provided by the applicant were distributed.

Public
Hearing
(C/Z No.
1668 and
C/Z 1669)
(Con't)

Mr. Lank reported that correspondence had been received from William David and Karen Simpson, owners of Lost Lands RV Park, stating no objection to the projects, but asking that the developer make known to the their customers and tenants that the Lost Lands RV Park exists at the project's rear border, and that they are requesting that the developer give careful consideration to the drainage on the project; that they hope that the drainage will not adversely affect the RV sites; and that the customers and tenants should be advised that hunting activities exists on the RV Park acreage and surrounding lands. Mr. Lank stated that Stephanie Hansen, Attorney representing the applicant, had submitted copies of a petition signed by landowners in the area voicing support for the projects.

Stephanie Hansen, Attorney with Young, Conaway, Stargatt & Taylor was present today with Roger Black of CB Twin Cedars, LLC. Scott Aja, Professional Engineer with McCrone, Inc.; Keith Rudy, Professional Engineer with Landmark Engineering/JCM Environmental; and Amy Nazdrowicz, Environmental Scientist with Landmark Engineering/JCM Environmental were also present on behalf of the applicant.

Ms. Hansen stated that Twin Cedars is the applicant, owner of the property, and anticipate being the builder and the developer of this project. She stated that the total project is 64.34 acres located near Roxana, Delaware. Ms. Hansen stated that the property is currently improved by three apartment buildings containing approximately 50 apartments, 49 of which are vacant (one unit occupied by a caretaker); that the apartments would be demolished if the applications are approved; that Twin Cedars would like to build 120 multi-family units, which would be apartments or condominiums; 45 town homes, 34 duplexes for a total of 199 dwelling units, and two commercial buildings on the commercially-zoned portion of the property; that the property is zoned GR and C1; that the combination of the two applications would re-zone a portion of the existing GR and C-1 to GR-RPC and a portion of GR and C-1 to CR-1; that the total acres of the zoned GR-RPC would be 58.55 acres; that the CR-1 would be 5.79 acres; that the entire site is part of the Environmentally-Sensitive Developing District; that the site is located in the Johnsons Corner Sanitary Sewer District; that public water would be supplied by Artesian Water Company; that Zion Church Road is a Major Collector road according to DelDOT; that according to the State Strategies for Policies and Spending, the site is located in an Investment Level 4; that it is not clear why the site is located in a Level 4 since development continues to take place, public water and public sewer are available and since Zion Church Road is a Major Collector road; that the development plans for the project have been revised to accommodate PLUS comments; that two commercial buildings are planned, containing approximately 38,175 square feet.

Scot Aja, Vice President of McCrone, Inc., stated that there are 199 dwelling units; that the net density is approximately 3.8 units per acre; that the project plan meets the parking and setback requirements of the County Code; that the total open space is 37.8 acres; that amenities include a

clubhouse, two pools, multi-purpose courts and open fields for recreation; that the project exceeds all buffer regulations; that sidewalks and street lights are provided; that the site is located in the Roxana Volunteer Fire Company district; that it is located in the Indian River School District; and that the project will be completed in four phases.

Public
Hearing
(C/Z No.
1668 and
C/Z 1669)
(Con't)

Keith Rudy, of Landmark Engineering/JCM Environmental, stated that the existing tax ditch, which is located within 200 feet of Zion Church Road, will be relocated to a more central portion of the site to improve drainage of the site and that the realignment will also help alleviate drainage issues that will be encountered by the Hampden Park subdivision, which is located adjacent to the site; that the relocation will allow utilization of the frontage of the property; and that it allows for the provision of adequate capacity and conveyance from an existing subdivision that has no storm water management provisions; that in addition to the relocation of the tax ditch, two storm water management ponds are proposed.

Ms. Hansen noted that, as a result of the last PLUS comments that were received in November 2009, there are four major differences between the plan that PLUS last saw and the current plan.

Amy Nazdrowickz, of Landmark Engineering/JCM Environmental, reported on the Environmental Assessment and Public Facility Evaluation for the project.

Roger Black, of CB Twin Cedars, LLC, stated that he has received a letter of support for the project from adjacent property owners and residents. He addressed the septic problems that existed on the property at the time Twin Cedars purchased it and stated that the system that was in place at that time will no longer be used and that the apartment buildings currently on the property are now vacant and will remain vacant.

There was no one present in support of or in opposition to this application.

The Public Hearing was closed.

M 333 10
Defer Action
on C/Z No.
1668 & C/Z
No. 1669

A motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on C/Z No. 1668 and C/Z No. 1669 filed on behalf of CB Twin Cedars, LLC.

Motion Adopted: 4 Yeas, 1 Absent

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

M 334 10
Adjourn

A motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn the meeting at 3:15 p.m.

Motion adopted by Voice Vote.

Respectfully submitted,

Gaye King
Administrative Secretary