



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 21, 2009

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 21, 2009, at 3:00 p.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	Councilwoman
Michael H. Vincent	Councilman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
James D. Griffin	County Attorney

Mr. Phillips called the meeting to order.

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

M 216 09 Motion Died

A Motion was made by Mrs. Deaver to amend the Agenda by deleting Old Business and to defer the three applications under Old Business for a period of one week to consider additional comments. The Motion died for the lack of a Second.

M 217 09 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the Agenda by deleting "Patricia Deptula, Assistant Director of Public Works, Cedar Creek Landing Proposed Streetlighting District" and to approve the Agenda, as amended.

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

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

Approval of Minutes

The minutes of March 17, 2009 and March 31, 2009 were approved by consent. (The March 24, 2009 minutes were approved at the meeting on April 7, 2009.)

Mr. Cole joined the meeting.

M 218 09 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the**
Adopt **Proclamation entitled “PROCLAIMING APRIL 26 THROUGH MAY 3,**
Procla- **2009 AS *SOIL STEWARDSHIP WEEK*”.**
mation

M 218 09 **Motion Adopted: 5 Yeas.**
(continued)

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

The Proclamation was presented to William Vanderwende, Chairman, and
Debbie Absher, District Coordinator, of the Sussex Conservation District.

M 219 09 **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt the**
Adopt **Proclamation entitled “PROCLAIMING THE WEEK OF APRIL 12 – 18,**
Procla- **2009, AS *NATIONAL LIBRARY WEEK*”.**
mation

Motion Adopted: 5 Yeas.

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

The Proclamation was presented to Carol Fitzgerald, County Librarian.

M 220 09 **A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt the**
Adopt **Proclamation entitled “PROCLAIMING THE MONTH OF APRIL AS**
Procla- ***FAIR HOUSING MONTH* IN SUSSEX COUNTY”.**
mation

Motion Adopted: 5 Yeas.

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

The Proclamation was presented to Steve Alexander, Delaware Association
of Realtors; Brandy Bennett, Sussex Community Development and
Housing; Ruth Briggs King, Sussex County Association of Realtors, and
other individuals.

M 221 09 **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to Adopt the**
Adopt **Proclamation entitled “PROCLAIMING APRIL 19 THROUGH APRIL 25,**
Procla- **2009 AS *NATIONAL VOLUNTEER WEEK* AND PROCLAIMING MAY 8,**
mation **2009 AS *RSVP DAY* IN SUSSEX COUNTY”.**

Motion Adopted: 5 Yeas.

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

M 222 09
Adopt
Procla-
mation

The Proclamation was presented to Mary Ann Hook who was in attendance representing the Retired and Senior Volunteer Program (RSVP).

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Proclamation entitled “PROCLAIMING APRIL 19 THROUGH APRIL 25, 2009 AS *NATIONAL VOLUNTEER WEEK* AND PROCLAIMING MAY 7, 2009 AS *FOSTER GRANDPARENT DAY* IN SUSSEX COUNTY”.

Motion Adopted: 5 Yeas.

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

The Proclamation was presented to Robin Fisher who was in attendance on behalf of Delaware Health and Social Services, the Division of State Service Centers, the State Office of Volunteerism, and the Corporation of National and Community Service.

Cedar
Valley
Home-
owners
Association
Request

Mr. Baker distributed a copy of a letter dated April 13, 2009 from David Hutt, Attorney, who represents the Homeowners Association (HOA) at Cedar Valley, a subdivision on Old Landing Road. He reported that the Covenants for the HOA include a provision that requires the County Council’s approval of any changes to the Maintenance Declaration for the HOA. The HOA is recommending that this requirement be deleted.

David Hutt was present and explained the Maintenance Declaration and Declaration of Restrictions for the Residential Planned Community (RPC) which were recorded in 2001. The Maintenance Declaration states in Paragraph 6 that “the foregoing covenants may not be modified, amended or altered in whole or in part, except by the consent of fifty-one percent (51%) of the lot owners and that of the Sussex County Council”. The Declaration of Restrictions states the homeowners can amend those restrictions by a two-thirds (2/3) vote. Mr. Hutt stated that it is unusual for the restrictive covenants of a subdivision to require that the Sussex County Council approve any modification, amendment or alteration.

Mr. Hutt advised that more than fifty-one percent (51%) of the homeowners within Cedar Valley have approved an amendment to remove the language that refers to the approval of the Sussex County Council. Prior to recording this amendment, the approval of the County Council will be necessary as the recorded declaration requires the consent of the Council.

Mr. Hutt presented a Proposed Resolution entitled “A RESOLUTION TO

ELIMINATE THE REQUIREMENTS THAT SUSSEX COUNTY COUNCIL APPROVE ALL MODIFICATIONS, AMENDMENTS OR ALTERATIONS TO CEDAR VALLEY'S MAINTENANCE DECLARATION" whereby Sussex County Council would "eliminate its review and approval of any modification, amendment or alteration of Cedar Valley's Maintenance Declaration.

Cedar Valley Home-owners Association Request

Mr. Griffin stated that he has reviewed the Proposed Resolution and that it does not in any way impact the conditions placed on the RPC approval. Mr. Griffin advised that, when the Council approved Ordinance No. 1456 in 1991, the Developer prepared and recorded the Maintenance Declaration and voluntarily added that the Maintenance Declaration could not be changed with the County Council's approval.

M 223 09 Adopt Resolution No. R 012 09

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Resolution No. R 012 09 entitled "A RESOLUTION TO ELIMINATE THE REQUIREMENTS THAT SUSSEX COUNTY COUNCIL APPROVE ALL MODIFICATIONS, AMENDMENTS OR ALTERATIONS TO CEDAR VALLEY'S MAINTENANCE DECLARATION".

Motion Adopted: 5 Yeas.

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

Request from Town of Bethel/ Building Code Agreement

Mr. Baker presented a request from the Town of Bethel asking that the County's Building Code Department handle their residential and commercial building code inspections. The Town approved an Ordinance in February authorizing this request. The County currently handles inspections for fourteen municipalities in the County and all inspections are based on the County's Building Code requirements. Mr. Baker reported that the County receives fees from the applications received by the municipalities and that the fees are as per the County's fee schedule.

M 224 09 Enforce Building Code for Town of Bethel

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, that Sussex County enforce the County Building Code for the Town of Bethel, as per the Town's request.

Motion Adopted: 5 Yeas.

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

Administrator's Report

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

1. **South Coastal Library Reopening**

Adminis-
trator's
Report
(continued)

The South Coastal Library in Bethany Beach reopened on April 20, 2009. The library has been expanded by 10,000 square feet, doubling its size. Additional space will provide more room for computers, books, and meetings.

We wish to thank the Friends of the South Coastal Library for their assistance in raising private money totaling nearly \$2 Million, combined with funds from the State of Delaware of almost \$3 Million, and \$1.5 Million from the Sussex County Council. We would also like to thank the library staff and County Engineering Department for completing this project.

2. **Rehoboth Beach Film Society – Change of Zone No. 1634**

The Rehoboth Beach Film Society has agreed to withdraw their application for Change of Zone No. 1634. This application will be replaced by a conditional use application to operate an administrative office at the same location.

3. **Beneficial Acceptance**

The Engineering Department has granted Beneficial Acceptance to the following projects:

- Herring Pointe, Agreement No. 484, was granted Beneficial Acceptance on April 13, 2009. The developer is Herring Pointe Development, Inc., and the project is located on the north side of Route 278 in the Angola Neck Sanitary Sewer District, consisting of a 165-lot subdivision.
- The Preserves at Jefferson Creek – Phase 2, Agreement No. 903, was granted Beneficial Acceptance on April 14, 2009. The developer is Muddy Neck, L.L.C., and the project is located on County Road 363, 1/4 mile south of Muddy Neck Road in the South Bethany Sanitary Sewer District, consisting of 38 townhouse units.
- The Preserves at Jefferson Creek – Phase 3, Agreement No. 904, was granted Beneficial Acceptance on April 14, 2009. The developer is Muddy Neck, L.L.C., and the project is located on County Road 363, 1/4 mile south of Muddy Neck Road in the South Bethany Sanitary Sewer District, consisting of 12 townhouse units and 32 single-family condos.

Included with this report was a fact sheet on each of the projects.

4. **Delaware Solid Waste Authority Report – March 2009**

During March 2009, 20,260 pounds of recycling material were

collected at the County's West Complex site in cooperation with the Delaware Solid Waste Authority.

**Community
Grant
Policy
Community
Grant
Policy
(continued)**

Mrs. Webb presented the Discretionary Community Grant Policy:

- The annual fiscal budget will set the funding level each year for discretionary community grants.
- Council members must receive a grant request letter and place it on the agenda if they are interested in providing funding.
- The Finance Director may make a recommendation to pull the grant from the agenda or to defer funding if more information on the grant on the recipient is needed.
- All grants are voted on at County Council meetings.
- Payment is made to an organization when the minutes of the Council meeting have been approved that reflect the Council's action on that particular grant request.
- Unless otherwise requested, the grant checks are given to Robin Griffith, who then mails the check to the appropriate organization along with a letter of transmittal.
- The grantee must be a non-profit organization, group or agency.
- If the organization is not physically located in Sussex County, the purpose of the grant must be on the behalf of Sussex County residents.
- If the organization is a church or of a religions nature, the grant purpose must provide benefit to the whole community.

**M 225 09
Approve
Discre-
tionary
Community
Grant
Policy**

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to approve the Discretionary Community Grant Policy, as presented.

Motion Adopted: 5 Yeas.

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

**Delaware
National
Bank
Lease
Agreement**

Mr. Godwin discussed the County's Lease to Delaware National Bank for office space at the West Complex. The County and Delaware National Bank have been in discussions regarding the Bank relinquishing space to the County. Mr. Godwin reported that the Bank has preliminarily agreed to give back to the County the use of 2,100 square feet, with security improvements. However, P. Randolph Taylor, President and CEO of the

Bank, has asked if the County would agree to an option to extend the lease for an additional five years at the end of the current term, which expires in 2011. Mr. Taylor has indicated that the County's decision on this matter will not have a bearing on their decision to relinquish floor space.

**Delaware
National
Bank
Lease
(continued)**

The Council discussed the County's space needs over the next five to ten years. Russell Archut, Engineering Department, provided a quick review of the space needs assessment which was discussed in detail at the February 24, 2009 Council meeting, including current space allocations and offices that are proposed to be moved around to relieve the need for office space in the Administration Building and to eliminate the need for renting space in the Tunnell & Raysor Building.

**M 226 09
Decline
Renewal
of
Delaware
National
Bank
Lease**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to inform Delaware National Bank that the County will not be renewing the Bank's Lease for the use of office space at the West Complex once the Lease expires in 2011.

Motion Adopted: 5 Yeas.

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

**Wastewater
Agreement**

Mr. Godwin presented a Wastewater Agreement for the Council's consideration.

**M 227 09
Execute
Wastewater
Agreements/
Bethany
Bay**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council execute Construction Agreement No. 05-06G, between Sussex County Council and Linder & Co., for wastewater facilities to be constructed at Bethany Bay, located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yeas.

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

**Legislative
Update**

Mr. Godwin presented the following legislative update:

Senate Bill No. 7 (Eminent Domain Bill) – This Bill was signed into law by the Governor on April 7, 2009.

Senate Bill No. 48 - This Bill relates to the Sussex Conservation District and appears to be a housekeeping Bill. This Bill will not hamper the County's ability to maintain its appointee on the Board.

Senate Bill No. 49 – This Bill enables the use of rooftop solar systems on privately owned residential dwellings by limiting the use of covenants or other restrictions beginning January 1, 2010 (but does not impact restrictions in effect prior to then).

Mr. Godwin stated that Sussex County does not support this Bill since it removes individual property rights.

Legislative
Update
(continued)

Senate Bill No. 57 and 58 - Both Bills will change the Freedom of Information Act, making some of the regulations more restrictive.

Mr. Godwin stated that he needs advice on what position the Council wishes to take on this proposed legislation.

Senate Bill No. 59 – This Bill will require certain changes to the Building Code as they relate to energy efficiency.

Mr. Baker and Mr. Godwin did take issue with some items in the Bill and sent a letter to the sponsor of the Bill (Senator McDowell), outlining their concerns. In addition, Mr. Baker and Mr. Godwin asked to be included in the discussions on this Bill.

House Bill No. 106 – This Bill relates to the Delaware Open Space Council and how they allocate funds.

Mr. Godwin stated that he needs advice on what position the Council wishes to take on this proposed legislation.

Mr. Godwin stated that he is watching five Bills that pertain to New Castle County only (House Bill Nos. 79, 80, 81, 82, and 83). He stated that they are Bills relating to land use and he suggested that the Council become familiar with these Bills in case they are considered for Sussex County in the future. Mr. Godwin stated that the spirit of these Bills are a concern as they add more requirements on land use issues, i.e. schools, DelDOT, DNREC, and subdivision approvals. Mr. Godwin also commented on House Bill No. 124 which pertains to New Castle County and which is a gun control Bill pertaining to County owned or leased land.

Millville
Expansion
of the
BBSSD/
Contract
No.
05-06B

Michael Izzo, County Engineer, reviewed a Change Order to Contract 05-06B, Millville Expansion of the Bethany Beach Sanitary Sewer District, Banks Harbor, Mill Run and Miscellaneous Southern Extensions. Mr. Izzo explained that Substantial Completion was previously issued to Teal Construction for this project. Since that time, an accounting of the quantities of the project was performed and this Balancing Change Order submitted for final quantity adjustments; the result is a credit Change Order in the amount of \$947.23.

M 228 09
Approve
Balancing

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Whitman, Requardt and Associates, LLP, that the Balancing

**Change Order/
Millville
Expansion
BBSSD** **Change Order for Sussex County Contract No. 05-06B, Banks Harbor, Mill Run and Miscellaneous Southern Extensions with Teal Construction, Inc. be approved, which decreases the Contract by the amount of \$947.23 for a new Contract total of \$3,909,055.77, contingent upon the receipt of approval from the Financial Assistance Branch, Delaware Department of Natural Resources and Environmental Control.**

**M 228 09
(continued)** **Motion Adopted: 4 Yeas, 1 Absent.**

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

Mr. Cole was out of the room during the discussion and the vote.

**Millville
Expansion
of the
BBSSD/
Contract
No.
05-06D** **Michael Izzo, County Engineer, requested that Substantial Completion be granted to Teal Construction for Contract No. 05-06D, Millville Expansion of the Bethany Beach Sanitary Sewer District, Northwest Subdivisions and Railway Road North, Mr. Izzo stated that the work has been completed; however, he noted that he would be reporting back to the Council with a Balancing Change Order once an accounting of the quantities of the project has been performed and submitted.**

**M 229 09
Grant
Substantial
Completion/
Millville
Expansion
of the
BBSSD/
Contract
No. 05-06D** **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, and the County Engineering Department, that the Sussex County Council grant Substantial Completion, effective March 26, 2009, for Contract No. 05-06D, Millville Expansion of the Bethany Beach Sanitary Sewer District, Northwest Subdivisions and Railway Road North to Teal Construction, Inc. and that final payment be made and any held retainage be released in accordance with the terms and conditions of the Contract documents.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Cole was out of the room during the discussion and the vote.

Mr. Cole rejoined the meeting.

**Argo
Glade
Subdivision
Completion/
Bid Results** **Bob Jones, Project Engineer, presented the bid results for Sussex County Project No. 08-06, Argo Glade Subdivision Completion. The Engineer's estimate for the project was \$75, 836.00. Mr. Jones reported that nine bids were received with the apparent low bidder being A-Del Construction Co., Inc. in the amount of \$61,066.00.**

Mr. Jones reported that the Argo Glade Subdivision is a 25 lot subdivision. Last year, funds were drawn from the Letter of Credit to complete the project. The scope of work consisted of completing minor roadway drainage improvements, overlaying the final course of surface hot mix, and doing the necessary as-builts, as required by the County and the Sussex Conservation District.

**M 230 09
Award
Bid/
Argo
Glade
Subdivision
Completion** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 08-06, Argo Glade Subdivision Completion, be awarded to A-Del Construction Co., Inc. of Newark, Delaware, at the bid amount of \$61,066.00.**

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/Z
No. 1627/
P.G.S.
Properties,
LLC** **The Council considered three Change of Zone applications filed on behalf of P.G.S. Properties, LLC.**

In regards to Change of Zone No. 1627, the Planning and Zoning Commission held a Public Hearing on this application on January 22, 2009 at which time they deferred action. On February 12, 2009, the Commission recommended that the application be approved.

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

The County Council held a Public Hearing on this application on February 10, 2009 at which time action was deferred.

Mr. Lank reviewed a letter that was received by the County Council from the Town of Dagsboro, dated February 3, 2009 in which the Town stated its disagreement with the County over the rezoning of this property which lies adjacent to Town boundaries.

**M 231 09
Adopt
Ordinance
No. 2041
(C/Z
No. 1627)** **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2041 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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.77 ACRES, MORE OR LESS" (Change of Zone No. 1627) filed on behalf of P.G.S. Properties, LLC.**

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

Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Abstained;

**Mr. Phillips, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea**

**C/Z
No. 1672** **In regards to Change of Zone No. 1672, the Planning and Zoning Commission held a Public Hearing on this application on February 12, 2009 at which time they recommended that the application be approved.**

**C/Z
No. 1672
(continued)** **Mr. Lank read a summary of the Commission's Public Hearing.**
The County Council held a Public Hearing on this application on March 17, 2009 at which time action was deferred.

**M 232 09
Adopt
Ordinance
No. 2042
(C/Z
No. 1672)** **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2042 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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 7.13 ACRES, MORE OR LESS" (Change of Zone No. 1672) filed on behalf of P.G.S. Properties, LLC.**

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

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

**C/Z
No. 1673** **In regards to Change of Zone No. 1673, the Planning and Zoning Commission held a Public Hearing on this application on February 12, 2009 at which time they recommended that the application be approved.**

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

The County Council held a Public Hearing on this application on March 17, 2009 at which time action was deferred.

**M 233 09
Adopt
Ordinance
No. 2043
(C/Z
No. 1673)** **A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2043 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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 0.64 ACRE, MORE OR LESS" (Change of Zone No. 1673) filed on behalf of P.G.S. Properties, LLC.**

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

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

Mr. Wilson, Yea

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

M 234 09 **A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$250.00**
Community **from Mr. Phillips’ Community Grant Account to Delmar High School for the**
Grant **Destination Imagination Team.**

M 234 09 **Motion Adopted: 5 Yeas.**

(continued)

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

Request **The grant request from Diamond State Swoop Girls Softball Team was**
Tabled **tabled.**

M 235 09 **A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$500.00**
Community **from Mr. Phillips’ Community Grant Account to the Greater Millsboro**
Grant **Chamber of Commerce for project expenses.**

Motion Adopted: 5 Yeas.

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

M 236 09 **A Motion was made by Mr. Wilson, seconded by Mrs. Cole, to give \$300.00**
Community **(\$200.00 from Mr. Wilson’s Community Grant Account and \$100.00 from**
Grant **Mrs. Deaver’s Community Grant Account) to Milford Senior Center for**
 bus repairs.

Motion Adopted: 5 Yeas.

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

M 237 09 **A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give**
Community **\$500.00 from Mr. Vincent’s Community Grant Account to the Woodland**
Grant **Ferry Association for festival expenses.**

Motion Adopted: 5 Yeas.

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

Introduction **Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE**
of Proposed **TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM**

Ordinance	DENSITY RESIDENTIAL DISTRICT FOR A PRIVATE CLUB TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,033 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1836) filed on behalf of Rehoboth Beach Film Society. The Proposed Ordinance will be advertised for Public Hearing.
Introduction of Proposed Ordinance	Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.71 ACRES, MORE OR LESS” (Change of Zone No. 1646) filed on behalf of Overbrook Acres, LLC, c/o Fred A. Chappell. The Proposed Ordinance will be advertised for Public Hearing.
Additional Business/ Sandy Spence	Under Additional Business, Sandy Spence of Lewes invited the Council members to a luncheon sponsored by the League of Women Voters of Sussex County on April 30th. At that meeting, Councilman Vincent will speak on the Nanticoke River dredging project. Mrs. Spence also referenced comments made by Mr. Godwin in regards to legislation affecting New Castle County. She asked the Council members to review the legislation carefully as she believes some of them would be helpful if they also applied to Sussex County.
M 238 09 Go Into Executive Session	At 4:45 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to personnel, potential/pending litigation and land acquisition. Motion Adopted by Voice Vote.
Executive Session	At 4:46 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the County Council Chambers for the purpose of discussing issues relating to personnel, potential/pending litigation and land acquisition. The Executive Session concluded at 5:50 p.m.
M 239 09 Reconvene	At 5:51 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted by Voice Vote.
M 240 09 Recess	At 5:52 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess until 6:00 p.m. Motion Adopted by Voice Vote.
Public Hearing/ C/Z No. 1636	A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND

REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.259 ACRES, MORE OR LESS” (Change of Zone No. 1636) filed on behalf of Mark L. Mumford.

**Public
Hearing/
C/Z
No. 1636
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on March 26, 2009 at which time they deferred action. On April 16, 2009, the Commission recommended that the application be denied for the following reasons:

- 1. The Applicant has not shown that the proposed change in zone is compatible with the County’s Land Use Plan.**
- 2. It is not appropriate to rezone a property that is only ¼ acre in size to CR-1 given the DelDOT commercial entrance requirements, parking requirements, stormwater management requirements, and commercial setback requirements that would affect the property if rezoned to CR-1.**
- 3. The Applicant has not clearly stated the basis for the change in zone or what the potential or proposed use would be, particularly in light of the small size of the parcel and the limitations on the use caused by its small size.**
- 4. While there may be commercial or business uses on the opposite side of Route 9, the property around this site is zoned AR-1. A change in zone to CR-1 with the uses permitted under that zoning district would not be consistent with zoning and uses of the surrounding property.**

(See the minutes of the meeting of the Planning and Zoning Commission dated March 26 and April 16, 2009.)

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

Mark Mumford was present and stated that the site is located at the corner of Route 9 and Church Street; that he purchased the property seven years ago; that the neighborhood has changed dramatically in those seven years; that there is a Lowes and several other commercial businesses nearby; that he and his brother have done work to recapture the property; that they took care of the sewer connection; that traffic does back up on Route 9 and on Church Street; that there are no residential structures near this site with the exception of one, which is 3 lots away; that every property is vacant with the exception of the one residence; that the site is not appropriate for residential use due to traffic and noise in the area; that the best use of the site would be a small commercial property, possibly a small convenience store or bank; that the site has egress on Route 9 and Church Street; that the property is adjacent to a church; and that he would not be opposed to the Council’s down-zoning this property to B-1.

Mr. Mumford submitted photos of like properties in Sussex County that have small structures.

Mr. Mumford stated that, prior to this meeting, he was unaware of the Planning and Zoning Commission's recommendation of denial and the reasons for their recommendation.

Public comments were heard.

**Public
Hearing/
C/Z
No. 1636
(continued)**

Betty Deacon of Sandy Brae stated that the communities along Plantation Road have been presented a plan by DelDOT whereby they are planning to cul-de-sac Route 9.

Jules Jackson spoke in opposition to the project and referenced (1) the Planning and Zoning Commission's recommendation of denial, (2) engineering and utility issues; and (3) the historically African American and Native American Community. Ms. Jackson also referenced the Applicant's statement that the site is not near other residences and she stated that this is a highly inaccurate statement. Ms. Jackson also stated that increasing commercial use in this area will be a further detriment to the area.

The Public Hearing was closed.

**M 241 09
Motion
Withdrawn**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on the Change of Zone No. 1636 filed on behalf of Mark L. Mumford.

Mr. Cole and Mrs. Deaver withdrew their Motions.

**M 242 09
Adopt
Proposed
Ordinance

(Motion
Denied)**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt 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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.259 ACRES, MORE OR LESS" (Change of Zone No. 1636) filed on behalf of Mark L. Mumford.

Motion Denied: 5 Nays.

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

**M 243 09
Allow
Applicant
to Reapply
(Mark L.
Mumford)**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to allow Mark L. Mumford to reapply and to authorize the County to expedite his application.

Motion Adopted: 5 Yeas.

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

**Mr. Phillips, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea**

**Public
Hearing/
C/Z
No. 1638
Public
Hearing/
C/Z
No. 1638
(continued)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.19 ACRES, MORE OR LESS” (Change of Zone No. 1638) filed on behalf of Christopher and Leslie Corrado.

The Planning and Zoning Commission held a Public Hearing on this application on March 26, 2009 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 26, 2009.)

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

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

Christopher Corrado was present with John Tracy, Attorney, and Stephen McCabe of George, Miles & Buhr, LLC. They stated that they are proposing to rezone approximately 3.0 acres on Holland Glade Road from AR-1 to CR-1; that the site is 600 feet northeast of Route One at the boundary line of the C-1 Zone and Highway Corridor Overlay Zone; that the Applicant purchased the property in 1990; that the Applicant also owns the 3 adjoining parcels within the C-1 Zone; that the proposed rezoning is consistent with the Comprehensive Land Use Plan, the State Strategies, and the Zoning Ordinance; that the area around the site is mixed in uses, with a City of Rehoboth water treatment facility to the southeast, a church to the northeast, and outlets to the northwest across Holland Glade Road and to the southwest across Route One; that the site is located in a Growth Area; that the site is located within an Investment Level 3 Area according to the State Strategies; that the State has voiced no objections in their PLUS response; that there are no impacted protected resources on site, i.e. wetlands, forest, floodplain, etc.; that according to DelDOT, access to Holland Glade Road will be likely; that they will meet all of DelDOT’s requirements; that the site is surrounded by C-1 zoning on three sides and a church on the fourth side; that a by-pass was originally intended in the area between the church and this site, and that an easement exists on the church site; that the Pastor of the Epworth Church to the northeast has voiced no objections; that they propose to integrate the lots owned by the Applicant and to develop the site as combined; that central sewer and water are available; that part of the site is in an excellent ground water recharge area and a well-head protection area; that green technology will be utilized in the

development of the site; and that less than 50% of the site will be impervious.

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

M 244 09
Adopt
Ordinance
No. 2044
(C/Z
No. 1638)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2044 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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.19 ACRES, MORE OR LESS” (Change of Zone No. 1638) filed on behalf of Christopher and Leslie Corrado.

Motion Adopted: 5 Yeas.

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

Public
Hearing/
C/U
No. 1770

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 53.32 ACRE BORROW PIT EXPANSION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 94.89 ACRES, MORE OR LESS” (Conditional Use No. 1770) filed on behalf of Stockley Materials, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on March 26, 2009 at which time they deferred action. On April 16, 2009, the Commission recommended that the application be approved with the following conditions:

1. No materials shall be brought from off the site for processing, mixing or similar purposes.
2. Water or a water truck shall be available to control dust from road traffic when conditions require.
3. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
4. The entrance to the borrow pit shall be from Road 318, at the site of the current pit entrance.

**Public
Hearing/
C/U
No. 1770
(continued)**

5. The hours of operation for the business on this site shall only occur between the hours of 7:30 a.m. to 6:00 p.m. Monday through Friday and 7:30 a.m. until 2:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
6. No materials shall be stored on any access roads or within any buffer area.
7. There shall be no more than 150 loads of materials hauled from the site on any given day.
8. No fuel shall be stored on-site for borrow pit operations.
9. No dredging activities shall be permitted on the site.
10. No dewatering activities will occur on site.
11. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
12. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.
13. Before any excavation begins in the expanded area, an Environmental Impact Study will be conducted and presented with the Final Site Plan.
14. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. The Applicant shall notify the Office of Planning and Zoning in writing prior to April 1 of each year as to the status of the reclamation and reclamation plans for the following year.
15. The Applicant shall comply with all State and County erosion and sediment control regulations.
16. Markers and signs shall be placed at appropriate locations to designate pit areas.
17. A buffer shall be maintained along the perimeter of all boundaries of at least 100 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees.
18. Every 5 years after the start of excavation, the Office of Planning and Zoning may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all

regulations.

19. The Applicant shall also comply with all of the requirements set forth in Section 115-72B of the Sussex County Zoning Ordinance.

20. It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).

21. The excavation area shall not exceed 53.32 acres.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 26 and April 16, 2009.)

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

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

Mark Dunkle, Attorney, was present with Ken Adams, President of Melvin L. Joseph Construction and Stockley Materials, LLC, and James Willey, Professional Engineer, of George, Miles & Buhr, LLC.

Mr. Dunkle stated that they gave a full presentation before the Planning and Zoning Commission which was written into the record of the Commission's Public Hearing and summarized by Mr. Lank at this meeting. Mr. Dunkle stated that this application is for the expansion of an existing borrow pit; that the existing borrow pit is substantially completed; that all buffers exceed regulations; that the entrance will remain as presently located; that the existing entrance is well maintained; that the primary business of the company is fill material; that the company provides a lot of fill material for road and shoulder work to DelDOT; that a need exists for materials for road construction; that the use is a permitted Conditional Use; that the use is for the use of fill dirt in construction of residential, commercial and road construction; that the proposed site is centrally located in the County; that the application will not have an adverse affect on nearby properties, public facilities or public highways; that the buffer strips will be landscaped; that the landscaping will be maintained within a 30-foot wide strip within the proposed 100-foot wide buffer; that 25 feet is the proposed excavation depth; that in visualizing the pit area a viewer will see landscaping, a berm, gradual slopes down to the water, and a water depth not to exceed 25 to 30 feet; that the existing pit will blend into the proposed pit; that DelDOT did not object to the application and did not require a Traffic Impact Study; that they engaged Duffield Associates to confirm that there wouldn't be any problem with the wells in Fish Hook Mobile Home Park as a result of this operation; that they have included a map in their Exhibit Book that shows the flow of the groundwater to the mobile home park which does not come from the borrow pit and therefore, would not affect the wells; that Duffield

**Public
Hearing/
C/U
No. 1770
(continued)**

Associates determined that there would be no negative impact; that the residents of the mobile home park are in support of this application; that alarms will be installed on all on-site trucks and equipment; that the noise will not disturb the neighbors; and that, in the record, there is a DVD that explains the white sound reversing alarm which is only heard in the zone of danger.

Public
Hearing/
C/U
No. 1770
(continued)

Mr. Dunkle stated that they agree with the conditions recommended by Commission with the exception of Condition No. 5 which states that “The hours of operation for the business on this site shall only occur between the hours of 7:30 a.m. to 6:00 p.m. Monday through Friday and 7:30 a.m. until 2:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.” Mr. Dunkle asked that this condition be amended, as follows: “The hours of operation for the business on this site shall only occur between the hours of 6:30 a.m. to 6:00 p.m. Monday through Friday and 6:30 a.m. until 12:00 Noon on Saturdays. There shall not be any borrow pit activity on Sundays.”

Mr. Dunkle stated that they have submitted their own conditions of approval under Tab 10 in the Exhibit Book. He referenced Proposed Condition No. 15 which states “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 that phrase is defined by the Department of Natural Resources and Environmental Control, or any successor. Upon confirmation by the Department of Natural Resources and Environmental Control of the owner’s 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.”

In response to questions from the Council, Mr. Dunkle stated that (1) there has been no recommendation for a fence and that given the size of the buffer and the berm and the sloped sides, they do not believe fencing is necessary and (2) there is no reclamation plan for the existing borrow pit since the use is grandfathered.

In response to questions raised by the Council, Ken Adams stated that the existing pit was for 9 acres; that it was a pre-existing non-conforming conditional use; that once they exhaust the 9 acres, the excavation of the proposed area will tie in to the existing pit area; and that the 3:1 slope would be incorporated into the existing borrow pit. Mr. Cole suggested that this be incorporated into the proposed conditions. Mr. Lank suggested that Proposed Condition No. 12 be amended as follows: “The existing and proposed borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at

any point.”

Public comments were heard.

Jim Baxter of Georgetown spoke in support of the application. He stated that there is a need in Sussex County for the soil from the existing and proposed borrow pit; that this type of soil cannot be found in the coastal area; and that the conditions proposed will control the operation.

Public
Hearing
(continued)

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

M 245 09
Approve
Amended
Conditions
for C/U
No. 1770

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to approve the four conditions, as amended:

Conditions No. 5

“The hours of operation for the business on this site shall only occur between the hours of 6:30 a.m. to 6:00 p.m. Monday through Friday and 6:30 a.m. until 12:00 Noon on Saturdays. There shall not be any borrow pit activity on Sundays.”

Conditions No. 12

“The existing and proposed borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.”

Condition No. 14

“A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. The Applicant shall notify the Office of Planning and Zoning in writing prior to April 1 of each year as to the status of the reclamation and reclamation plans for the following year. The Final Site Plan shall depict the existing and proposed pits, as combined.”

Condition No. 18

“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 that phrase is defined by the Department of Natural Resources and

Environmental Control, or any successor. Upon confirmation by the Department of Natural Resources and Environmental Control of the owner's 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."

M 245 09
(continued)

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea

M 246 09
Adopt
Ordinance
No. 2045
(C/U
No. 1770)

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Ordinance No. 2045 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 53.32 ACRE BORROW PIT EXPANSION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 94.89 ACRES, MORE OR LESS" (Conditional Use No. 1770) filed on behalf of Stockley Materials, LLC, with the following conditions:

- 1. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- 2. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- 3. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- 4. The entrance to the borrow pit shall be from Road 318, at the site of the current pit entrance.**
- 5. The hours of operation for the business on this site shall only occur between the hours of 6:30 a.m. to 6:00 p.m. Monday through Friday and 6:30 a.m. until 12:00 Noon on Saturdays. There shall not be any borrow pit activity on Sundays.**
- 6. No materials shall be stored on any access roads or within any buffer area.**
- 7. There shall be no more than 150 loads of materials hauled from the site on any given day.**
- 8. No fuel shall be stored on-site for borrow pit operations.**
- 9. No dredging activities shall be permitted on the site.**

**M 246 09
Adopt
Ordinance
No. 2045
(C/U
No. 1770)
(continued)**

- 10. No dewatering activities will occur on site.**
- 11. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
- 12. The existing and proposed borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.**
- 13. Before any excavation begins in the expanded area, an Environmental Impact Study will be conducted and presented with the Final Site Plan.**
- 14. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. The Applicant shall notify the Office of Planning and Zoning in writing prior to April 1 of each year as to the status of the reclamation and reclamation plans for the following year. The Final Site Plan shall depict the existing and proposed pits, as combined.**
- 15. The Applicant shall comply with all State and County erosion and sediment control regulations.**
- 16. Markers and signs shall be placed at appropriate locations to designate pit areas.**
- 17. A buffer shall be maintained along the perimeter of all boundaries of at least 100 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees.**
- 18. 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 that phrase is defined by the Department of Natural Resources and Environmental Control, or any successor. Upon confirmation by the Department of Natural Resources and Environmental Control of the owner's 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.**
- 19. The Applicant shall also comply with all of the requirements set forth in Section 115-72B of the Sussex County Zoning Ordinance.**

20. It is recommended that County Council require performance guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).

21. The excavation area shall not exceed 53.32 acres.

**M 246 09
(continued)**

Motion Adopted: 5 Yeas.

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

**Public
Hearing
(C/U
No. 1771)**

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 MINI-STORAGE UNITS AND BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 8.449 ACRES, MORE OR LESS” (Conditional Use No. 1771) filed on behalf of Harry Murphy.

The Planning and Zoning Commission held a Public Hearing on this application on March 26, 2009 at which time they recommended that the application be approved, with the following conditions:

- 1. There shall not be any on-site boat or RV repairs. All boats and RVs shall be stored under roof.**
- 2. There shall not be any outside storage of building materials or other construction materials within the project.**
- 3. Any security lights shall be screened downward to avoid shining on neighboring properties or roadways.**
- 4. One lighted sign, not to exceed 32 square feet in size, shall be permitted. The proposed sign location shall be shown on the Final Site Plan.**
- 5. The location of a dumpster shall be shown on the Final Site Plan.**
- 6. Access to the facility shall be through a gate operated by key or code system.**
- 7. The driveway and parking areas outside of the storage buildings shall be stoned or paved.**
- 8. Stormwater management shall be maintained on site and shall be subject to the approval of the Sussex Conservation District.**

9. A landscape buffer of native vegetation shall be installed along the perimeter of the site, to screen the project from neighboring residential properties. The Final Site Plan shall contain a landscaping plan for the buffer areas and shall show a schedule of construction for the buffer areas and also the type of vegetation to be installed.

Public
Hearing
(C/U
No. 1771)
(continued)

10. A fence, with vinyl slats to screen the use from neighboring properties, shall be installed around the perimeter of the project. The fence shall be on the inside of the buffer. The buffer shall be maintained on a regular basis.
11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 26, 2009.)

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

Mr. Lank reported that, since the Public Hearing before the Commission, emails were received from Mark Donovan and Lynn Jester in opposition to the application.

In response to questions raised by the Council regarding the private road, Mr. Lank responded that, according to testimony, it is a private road that serves several parcels and a HI-1 District (construction company).

Harry Murphy of Charles D. Murphy Associates, Inc. was present on behalf of the application and on behalf of the owner, Charles Auman. Mr. Murphy stated that the plan submitted to the Council represents an alternate scenario depicting eighteen (18) buildings and approximately 106,000 square feet of mini-storage and boat and RV storage; that it could take years before all of the units can be built, and that all of the units may never be built; that the proposed gravel parking area, the stormwater management area, the landscaping buffer, and security fencing will be installed at the on-set of the project; that only one or two storage units will be built at the start; that as units are rented, additional storage units will be constructed, based on the demand for storage units; that the security fencing will encompass the entire site; that an electronic gate will be provided at the entrance and it will be located on the inside of the proposed landscaped buffer; that the Applicant is willing to install the landscaping on either side of the fence; that a landscaping plan for the proposed buffer will be provided with the Final Site Plan; that the Applicant will install vinyl strips in the chain-link fencing for additional screening; that there will be security lighting on the site, either pole mounted directional lighting or wall mounted on the storage units; that the Applicant is willing to do whatever is necessary to work with his neighbors to have as little impact as possible;

Public
Hearing
(C/U
No. 1771)
(continued)

that the Applicant bought the property as an investment and does not intend to farm the property; that if the Conditional Use is not granted, the Applicant will propose a residential subdivision for single family residential dwellings, most likely moderate to low income dwellings due to the adjacent industrial site; that the site is appropriate for mini-storage buildings since the adjacent industrial site is occupied by Christiana Excavation and used as a construction yard; that it is his understanding that rock-crushing is going to take place at the construction site; that the mini-storage buildings will be the typical metal units; that the open pole buildings will be utilized for RV and boat storage; that there may be some outside storage of RVs and boats until all of the buildings have been completed; that the gravel parking area will be improved with crusher-run material; that Phase I will include one pole building and 2 mini-storage buildings; that the landscaping areas will be 10 to 15 feet in width; that no mechanic work will be permitted; that the intent of the project is for storage only; that someone will be on-site daily; that the site will be accessible by key-code or a card system 24 hours per day; that the Applicant would like to install a small lighted sign at the entrance; that the gate will not be a beeping gate; that, if approved, a dumpster location will also be depicted on the site plan; that this is the first attempt of the Applicant to operate a mini-storage facility; that mini-storage is in demand due to the current economic conditions; that a large number of people live in condominiums and apartments and have a need for storage; that there are several thousand lots and homes proposed in the Milford area that will also need storage; that the plan is preliminary only and no topographic study has yet been performed; that they may need to add a drainage swale along the eastern boundary line to capture run-off and send it to the pond in the back of the property; that the swale would be installed inside the fence and the buffer; that the site is not appropriate for residential use due to its proximity to the construction yard; and that the paved, private road is not maintained and he does not know who has maintenance responsibilities.

Public comments were heard.

There were no public comments in support of the application.

Tom Jester, Lynn Jester, James Sinclair, Jennifer Jester and Joe Wiley spoke in opposition to the application. They stated that Swain Road (the private road) started out as a dirt path, then a black-top path; that Swain Road is only a 19 1/2 foot wide road; that they are concerned about the narrowness of this road; that the intersection of Swains Private Road and Marshall Street is dangerous; that the majority of the construction equipment for the construction business goes out on State Road; that the mini-storage building would create a traffic and safety hazard and would be especially dangerous for residents in the area; that they currently have a quiet and safe neighborhood; that the use will cause a decline in property values; that they are concerned about contaminants leaking into the ground and affecting well water; that the mini-storage business is a 24 hours a day and seven days a week business; that this type of business will bring crime

**Public
Hearing
(continued)**

to the area; that a mini-storage facility would attract people from outside their community; that they are concerned about police response time; that the residents must be considered above the HI-1 use in the area; that there is no demand for additional mini-storage units in the area; that domestic and drug issues occur at mini-storage sites and therefore, they should be located within a municipality where a police department is nearby; that such a use is not desirable for a community; that the applicant should purchase commercial property for the use; and that the proposal is not in the best interest of the residents.

The Public Hearing was closed.

**M 247 09
Defer
Action/
C/U
No. 1771**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1771 filed on behalf of Harry Murphy.

Motion Adopted: 5 Yeas.

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

**M 248 09
Adjourn**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to adjourn at 8:03 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council