



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 9, 2010

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 9, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

Mr. Phillips called the meeting to order.

M 591 10 Amend and Approve Agenda A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the Agenda by deleting “United Way of Delaware Recognition” and by deleting “Land Acquisition” and “Pending/Potential Litigation” under “Executive Session”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes The minutes of October 19, 2010 were approved by consent.

Correspondence Mr. Moore read the following correspondence:

KAREN DUFFIELD, EXECUTIVE DIRECTOR, GREATER GEORGETOWN CHAMBER OF COMMERCE, GEORGETOWN, DELAWARE.

RE: Letter regarding the success of the 2010 Wings & Wheels Festival.

DELMAR HISTORIC AND ART SOCIETY, DELMAR, DELAWARE.

RE: Letter in appreciation of grant.

CAPE HENLOPEN FOOD BASKET, NASSAU, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**Corre-
spondence
(continued)**

DELAWARE ECUMENICAL COUNCIL ON CHILDREN AND FAMILIES, WILMINGTON, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

BRIDGEVILLE SENIOR CENTER, BRIDGEVILLE, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

SEAFORD HISTORICAL SOCIETY, SEAFORD, DELAWARE.

RE: Letter in appreciation of grant.

THE WAY HOME, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**Developer
Letter of
Credit/Per-
formance
Bond
Update**

Mr. Baker discussed the County's policy on Performance Bonds and Letters of Credit for development projects. He explained that the County requires Performance Bonds and Letters of Credit for private roads, County sewer and storm water infrastructure within new developments. These Performance Bonds and/or Letters of Credit are required as security to ensure completion of the needed infrastructure. Effective several years ago, the County also began requiring Performance Bonds and/or Letters of Credit for required amenities for new applications.

Mr. Baker reported that an employee (Michelle Warren) has been dedicated to monitor the Bonds and Letters of Credit.

Mr. Baker reported that the following steps have been taken for development projects without Bonds and/or Letters of Credit due to the economic downturn:

- 1. A Committee, including representatives from Public Works, Engineering, Planning and Zoning, Finance, Administration and County attorneys meet regularly to monitor Performance Bonds and/or Letters of Credit for the projects.**
- 2. Various letters and emails have been sent and phone calls have been made to developers requesting that the Bonds and/or Letters of Credit be renewed or the work to be completed.**
- 3. Periodic on-site visits by the Public Works Department and Planning and Zoning Department have been done to verify the status of the work.**
- 4. Recently, a letter from the Assistant County Attorney has been sent regarding outstanding work:**

**Developer
Letter of
Credit/Per-
formance
Bond
Update
(continued)**

- **Giving 30 days to complete or provide securities.**
- **Threatening to hold building permits within the community until securities are attained or work is completed.**
- **Consequences of no response:**
 - ✓ **County will not approve building permits unless work is completed or Performance Bond and/or Letters of Credit are provided.**
 - ✓ **Any building lot sold to an individual before notice is received may receive a permit at the Administrator’s discretion. Any lot sold after will be denied a permit because the developer is obligated to give notice permits will not be issued.**
 - ✓ **Planning and Zoning will not accept any requests or applications for amended site plans without current security or work completed.**
 - ✓ **Before further work proceeds, a construction schedule must be submitted and approved by the County Engineering Department, Planning and Zoning Director, and County Administrator.**
 - ✓ **Permits may be issued in special limited circumstances deemed appropriate at the discretion of the County Administrator subject to a mutually-agreed plan to secure and/or complete the required infrastructure.**

Mr. Baker reported that no action is necessary on this matter and with no objection by the Council, the County will base its policy on this outline.

Council members discussed the policy outline and no opposition was expressed.

**Adminis-
trator’s
Report**

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

1. Advisory Committee on Aging and Adults with Physical Disabilities

The Advisory Committee on Aging and Adults with Physical Disabilities will be meeting on November 15th at 10:00 a.m. at the Roxana Cheer Senior Center in Frankford, Delaware. Attached is a copy of the Agenda for the meeting, which includes a guest speaker from the Delaware Department of Insurance.

2. Delaware Department of Transportation Public Workshop – Patriots Way Avenue of Honor

Attached is a copy of a notice from the Delaware Department of Transportation regarding a Public Workshop to be held on Tuesday, November 16th, from 4:00 p.m. - 7:00 p.m. requesting public input on improvements to Patriot’s Way, Avenue of Honor to Stockley Branch. The proposed project, as noted, includes widening Patriot’s Way for turn lanes to the Sussex Central High School, as well as

shoulders and travel lanes.

3. **Flu Shots**

The Bayhealth Medical Center will be providing flu shots in the Sussex County Administration Building at 2 The Circle, in Georgetown, on November 12th from 9:00 a.m. – 1:00 p.m. and November 18th from 10:00 a.m. – 2:00 p.m. They are charging \$26.00 per shot to cover their costs. Attached is a flyer regarding this offering. The representatives from the Bayhealth Medical Center will be located in the atrium near the Recorder of Deeds office entrance.

Adminis-
trator's
Report
(continued)

4. **Oak Orchard River Road Project**

The County Engineering Department is working on a project to extend sewer along River Road in the Oak Orchard Sanitary Sewer District. As expected, human remains have been located in the path of this project. Approximately 11 sets of remains have been determined as needing to be removed at this time in order to continue with the project. Our contracts assumed that approximately five remains would be removed. Additional costs for the removal of an additional six sets of remains will be included in a forthcoming contract amendment. In order to continue with the project in a timely fashion, work is beginning to remove remains. Representatives from the Delaware State Historic Preservation Office, the Nanticoke Indian Tribe, Delaware Natural Resources and Environmental Control and the Smithsonian Institution have been involved in this project with the County Engineering Department. The County's consultant, John Milner & Associates, who specializes in this work, has been involved. Mr. Michael Izzo, County Engineer, will update the County Council at a future meeting on the progress of this project.

5. **Documentary on World War II Veterans from Sussex County**

A new documentary about the contributions and lives of numerous World War II veterans from Sussex County will be presented on Veterans Day, Thursday, November 11th, at 7:30 p.m. at the Delaware Tech theater in Georgetown. The documentary, "Vanishing Voices of World War II: Southern Delaware's Humble Heroes", chronicles the lives of 23 veterans who served across the globe during World War II, including one who was at Pearl Harbor and another who was at Normandy, France. The project is the work of local author, James Diehl, and filmmaker, Bill Sammons. The public is invited to attend this free event. Two more presentations will be held at 7:30 p.m., Saturday, November 13th at Laurel Wesleyan Church in Laurel and at 7:30 p.m. on Monday, November 15th at the Clayton Theater in Dagsboro. For more information, visit

www.wv2-heroes.com.

6. Substantial Completion

Adminis-
trator's
Report
(continued)

The Engineering Department granted Substantial Completion effective October 26, 2010 to Fairway Village, Phase 3B, Agreement No. 844-2. The developer is Frank Capano and the project is located on County Road 84 and County Road 368 in the Town of Ocean View in the Bethany Beach Sanitary Sewer District, consisting of 29 single-family lots. Included with this report is a fact sheet on the project.

7. Veterans Day Holiday – November 11, 2010

In honor of our veterans who have served our country to preserve our freedoms, County offices will be closed on Thursday, November 11, 2010. We wish to sincerely thank all veterans for their service to our country.

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

Pending
Manu-
factured
Homes
Ordinance
Amend-
ments

Lawrence Lank, Director of Planning and Zoning, presented the Planning and Zoning Commission's recommendations on two pending Manufactured Homes Ordinances.

In regards to the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXIV SUBSECTION 115-172 G RELATING TO CONDITIONAL USES REGARDING MANUFACTURED HOMES", Mr. Lank reported that, on October 14, 2010, the Commission recommended that the Proposed Ordinance be approved, as follows:

1. This Amendment is the result of meetings and recommendations from the Manufactured Housing Committee that included representatives from the County, Park Owners and Home Owners.
2. This Amendment clarifies regulations regarding accessory buildings in manufactured home parks, and adds Code language addressing the construction, location and dimensions of unenclosed steps, landings and handicap ramps providing access to mobile homes, which had previously been subject to size and lot coverage limitations that were often unreasonable.
3. It is recommended that Section 2, creating a new Subparagraph 13 of Section 115-172G of the Code be amended in the last sentence to read, "An existing accessory building of the same dimension, may be replaced in the same location if the accessory building was previously permitted by Sussex County and if authorized by the Park Management." As currently worded, it is

Pending
Manu-
factured
Homes
Ordinance
Amend-
ments
(continued)

- unclear who may have granted the previous permit.
4. It is recommended that Section 2, creating a new Subparagraph 14 of Section 115-172G of the Code be amended to insert the word “temporary” prior to the words “handicap ramps” throughout the Subparagraph; and by adding the words “for emergency needs” after the words “handicap ramps” in the first line of the sub-paragraph.
 5. It is recommended that the 4th sentence of new Subparagraph 14 be amended so that it states as follows “Temporary handicap ramps may be permitted for emergency needs upon receipt of an affidavit from a doctor on an annual basis that an emergency situation exists and shall be subject to the approval of Park Management, the Director, and the County’s Chief of Building Code”.
 6. It is recommended that a new sentence be added at the end of new Subparagraph 14 to state: “A temporary handicap ramp permitted under this Subparagraph shall be removed if the need for it no longer exists.”

In regards to the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING XXVII SUBSECTION 115-211 RELATING TO VARIANCES”, Mr. Lank reported that, on October 14, 2010, the Commission recommended that the Proposed Ordinance be approved, as follows:

1. This Amendment is the result of meetings and recommendations from a Manufactured Housing Committee that included representatives from the County, Park Owners, and Home Owners.
2. The Amendment clarifies that a neighbor to a property that has received an approved variance for the location of an accessory structure does not need to apply for his or her own variance when he or she replaces their own accessory structure with one of the same size, and as long as other setback requirements are met.
3. This recommendation is subject to the following suggestions:
 - a. There is an apparent typographical error in Section 1. It should refer to Section 115-211, not Section 115-121, as currently worded. The heading of the Ordinance correctly refers to Section 115-211.
 - b. Council should consider inserting the words “as previously permitted by Sussex County” to the Ordinance. This would make it consistent with the requirements of the Ordinance Amendment for Conditional Uses Manufactured Homes, which allows the replacement of an existing accessory, building, but only if it was previously permitted by Sussex County.
 - c. Because this Amendment still requires all setback requirements to be met, and only avoids the need for a

variance regarding building separation, this should be clarified.

- d. It is suggested that the amendment be redrafted to incorporate these changes, so that it now reads as follows:

H. In a Manufactured Home Park, if an adjoining site received a variance for building separation from Sussex County, no variance for building separation caused by the adjoining site's variance shall be required for the replacement of an existing accessory structure previously approved by Sussex County, as long as all setback requirements are met and the replacement structure is of the same size and on the same footprint.

Pending
Manu-
factured
Homes
Ordinance
Amend-
ments
(continued)

Mr. Lank reported to the Council that, on October 12, 2010, the County Council held Public Hearings on these Ordinance Amendments at which time action was deferred and the record was left open for receipt of the recommendation of the Planning and Zoning Commission. The Council also stipulated that, following the introduction of the Commission's recommendation to the County Council, that the record would remain open for a period of ten (10) working days for written public comments. In accordance with the Council's stipulation, the public record will remain open until the close of business on November 24, 2010.

M 592 10
Confirm
Receipt
of Recom-
mendation
of the P&Z
Commission
Regarding
Pending
Manu-
factured
Homes
Ordinances

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, confirming that the recommendation of the Planning and Zoning Commission has been received on the Proposed Ordinances entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXIV SUBSECTION 115-172 G RELATING TO CONDITIONAL USES REGARDING MANUFACTURED HOMES" and "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING XXVII SUBSECTION 115-211 RELATING TO VARIANCES" and that written public comments will be received for a period of ten (10) working days, until the close of business on November 24, 2010.

Motion Adopted: 5 Yeas.

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

Public
Hearing/
Assessment
Rolls for
Johnson's
Corner &
Woodlands
of Millsboro

A Public Hearing was held on the Assessment Rolls for the Johnson's Corner and the Woodlands of Millsboro Sanitary Sewer Districts. The Assessment Rolls are the records from which the annual service and assessment charges will be billed; the records are kept in the Utility Billing Department. Mrs. Webb explained that the proposed annual service charges and assessment charges are for the period November 9, 2010 through June 30, 2011.

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

**M 593 10
Adopt
Assessment
Rolls**

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, based on the recommendation of the County Engineer and Finance Director, and for the reasons stated during the Public Hearing, the Sussex County Council hereby adopts the Assessment Rolls for the Johnson’s Corner Sanitary Sewer District and the Woodlands of Millsboro Sanitary Sewer District for the period November 9, 2010 through June 30, 2011.

**M 593 10
(continued)**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Proposed
Ordinance
Amending
Annual
Operating
Budget/
Johnson’s
Corner &
Woodlands
of Millsboro**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2011 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE JOHNSON’S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT”.

Mrs. Webb reviewed the proposed changes to the Budget in regards to the Johnson’s Corner Sanitary Sewer District and Woodlands of Millsboro Sanitary Sewer District, which are attached to the Proposed Ordinance as Exhibit A. The Exhibit shows the changes to the Fiscal Year 2011 Budget and reflects the revenues and expenditures of the districts.

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

**M 594 10
Adopt
Ordinance
No. 2154**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2154 entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2011 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE JOHNSON’S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT”.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Annual
Service
Charges
and Rates/
Johnson’s**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING THE ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR TRANSMISSION AND/OR TREATMENT FOR THE JOHNSON’S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT”.

**Corner &
Woodlands
of Millsboro**

Mrs. Webb advised that the purpose of the Proposed Ordinance is to set the actual rates for the Johnsons Corner Sanitary Sewer District and the Woodlands of Millsboro Sanitary Sewer District:

Johnson’s Corner Sanitary Sewer District

Annual Service Charge - \$246.00 per EDU

**Public
Hearing
(continued)**

Woodlands of Millsboro Sanitary Sewer District

Annual Service Charge – \$808.00 per EDU

**Annual Assessment Rate - for transmission and/or treatment,
per billable front foot - \$.48**

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

**M 595 10
Adopt
Ordinance
No. 2155**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2155 entitled “AN ORDINANCE ESTABLISHING THE ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR TRANSMISSION AND/OR TREATMENT FOR THE JOHNSON’S CORNER SANITARY SEWER DISTRICT AND WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT”.

Motion Adopted: 5 Yeas.

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

Requests

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

**M 596 10
Community
Grant**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to give \$300.00 from Mr. Phillips’ Community Grant Account to Polly Branch Extended McCabe Court Civic Association for their After School Enrichment Program.

Motion Adopted: 5 Yeas.

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

**M 597 10
Community
Grant**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$500.00 from Mr. Vincent’s Community Grant Account to the City of Seaford Department of Parks and Recreation for football league expenses.

Motion Adopted: 5 Yeas.

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

M 598 10 A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$500.00
Community Grant from Mr. Vincent's Community Grant Account to the Downtown Seaford Association for Christmas parade expenses.

M 598 10 Motion Adopted: 5 Yeas.
(continued)

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

M 599 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give
Community Grant \$5,000.00 from Mr. Wilson's Community Grant Account to the Historic Georgetown Association for the restoration of Georgetown's First Firehouse.

Motion Adopted: 5 Yeas.

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

M 600 10 A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give \$400.00
Community Grant from Mr. Vincent's Community Grant Account to Boy Scout Troop 95 for Matthew Goins' Eagle Scout Project.

Motion Adopted: 5 Yeas.

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

Public Hearing/ A Public Hearing was held to consider extending the Oak Orchard Sanitary
Oak Sewer District to include parcels of land containing 492 acres (Ferry Cove)
Orchard along Route 24 east of the Town of Millsboro. The Ferry Cove project
SSD/ contains 391 single-family lots; the project obtained site plan approval on
Ferry February 20, 2007. On March 30, 2010, the Engineering Department
Cove approved a Concept Sewer Plan for Ferry Cove.

Extension John Ashman, Director of Utility Planning, explained that, on October 5,
2010, two options for expansion were presented to the Council for
consideration: (Option No. 1) an annexation that includes a larger portion
of the remaining planning area for Oak Orchard and (Option No. 2) to only
annex the area that would encompass the contiguous (pan-handle) path to
serve the Ferry Cove Project. Option No. 2 was approved by the Council.

Mr. Ashman reported that two written comments were received – one from a property owner outside of the plan area and one from a real estate agent; comments were not in support of or in opposition to the project.

Public comments were heard.

**Public
Hearing/
Oak
Orchard
SSD/
Ferry
Cove
Extension
(continued)**

Monroe Hite III of DelDOT and Project Manager for the Route 113 North-South Study, explained the Department’s position in regards to the Ferry Cove development. Mr. Hite explained that, in the Millsboro area, DelDOT has preliminarily identified a recommended preferred alternative for the Route 113 Bypass; this alignment goes through the Ferry Cove property. Mr. Hite noted that the developer of the project has worked with DelDOT as far as phasing in their development so that only the later phases would be affected by the proposed alignment. Mr. Hite stated that DelDOT’s concerns include: (1) that there isn’t much room to move the alignment west and (2) the Nature Conservancy property is an issue if the alignment is moved east. Mr. Hite stated that “the developer wishes to continue with the development, which is fine”. Mr. Hite stated that DelDOT is opposed to the development; however, if the Council approves the annexation, DelDOT will work to adjust their project.

It was noted that the Ferry Cove project has received Preliminary Approval and an entrance approval from DelDOT. It was further noted that the County has been working with the Developer of Ferry Cove since 2003.

Richard Demmitt, Developer and property owner, stated that he was working on this project prior to DelDOT starting their project and DelDOT’s previous plans didn’t show the road going through the Ferry Cove property, it showed it going through other properties. Later, he learned that DelDOT was making the Ferry Cove project as one of the options for the new roadway. Mr. DeMeo stated that his Preliminary Site Plan approval was conditioned that (1) he work with DelDOT to reserve an area for the road, which he has done and (2) the parcel become a part of the Oak Orchard Sanitary Sewer District. Mr. Demmitt stated that he has spent hundreds of thousands of dollars on engineering for the project.

Ralph Plitko, Engineer (Atlantic Group) for the Ferry Cove project, stated that they have been working diligently to get the plans for the project completed. He reported that they have approval for the stormwater management plans, DelDOT’s approval, the sewer concept has been approved, and the roads have been designed. He stated that the next step is to finish the pump station design and off-site force main.

Mr. Moore responded to questions/concerns raised by Mr. Cole by stating that this Public Hearing is for the purpose of considering the extension of the Sanitary Sewer District and not for the purpose of taking a position on DelDOT’s road project; action by the Council does not commit the County to supporting or opposing the bypass.

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

**M 601 10
Adopt
R 026 10/
OOSSD
Ferry Cove
M 601 10
(continued)**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Resolution No. R 026 10 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE OAK ORCHARD SANITARY SEWER DISTRICT (OOSSD) TO ENCOMPASS A CERTAIN PIECE, PARCEL, OR TRACT OF LAND THAT IS CONTIGUOUS TO THE OOSSD, ALONG STATE OF DELAWARE ROUTE 24 (JOHN J. WILLIAMS HIGHWAY) EAST OF THE TOWN OF MILLSBORO, BEING IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas.

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

**Additional
Business**

Under Additional Business, Robert Hemmerich of Lewes raised the following concerns and questions: (1) following the Ad Hoc Meetings, other recommendations were made by Dixie Boucher that have never been addressed and she questioned if the Ad Hoc Committee will be reconvened, (2) when will the Board of Adjustment appointments be considered, and (3) changes following the Council’s workshop with the Board of Adjustment.

Mr. Phillips stated that the Council will discuss the Ad Hoc Committee and the possibility of it reconvening at the November 16th Council meeting.

Mr. Moore reported that a draft ordinance regarding administrative variances has been written since the Workshop and that the draft has been circulated to Lawrence Lank, Vincent Robertson and Rick Berl.

It was the consensus of the Council to direct Mr. Baker to prepare a report for presentation at the next Council meeting.

**M 602 10
Go Into
Executive
Session**

At 11:35 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel matters.

Motion Adopted by Voice Vote.

**Executive
Session**

At 11:40 a.m., an Executive Session of the Sussex County Council was held in the Third Floor Conference Room for the purpose of discussing personnel matters. The Executive Session concluded at 12:15 p.m.

**M 603 10
Reconvene
Regular
Session**

At 12:20 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted by Voice Vote.

Action No action was required on Executive Session items.

M 604 10 At 12:23 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to
Recess recess until 1:30 p.m. Motion Adopted by Voice Vote.

The Council reconvened at 1:30 p.m.

Public A Public Hearing was held on the Proposed Ordinance entitled “AN
Hearing/ ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1
C/U NEIGHBORHOOD BUSINESS DISTRICT FOR A MULTI-FAMILY
No. 1860 DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A
CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE
HUNDRED, SUSSEX COUNTY, CONTAINING 8,140 SQUARE FEET,
MORE OR LESS” (Conditional Use No. 1860) filed on behalf of John F.
and Lorry A. Luikart.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 14, 2010 at which time they recommended that the application be approved with the following conditions:

1. Only two residential units shall be constructed upon the property.
2. The development shall be served as part of a Sussex County Sanitary Sewer District.
3. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill, on, off, or to the property shall only occur during the hours between 8:00 a.m. and 6:00 p.m.
4. The Conditional Use must be substantially underway within three years or it will become void.
5. The Applicant shall obtain an entrance permit from DelDOT and comply with all DelDOT requirements.
6. The Site Plan shall be subject to the approval of the Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 14, 2010.)

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

Mr. Lank distributed an Exhibit Booklet previously provided by the Applicant.

Mr. Lank reported that, on this date, seven additional letters were received in support of the application. Copies of the letter were distributed to the Councilmembers and made a part of the record of the Public Hearing.

Robert Witsil, Attorney, was present with the Applicant, John F. Luikart.

Public
Hearing/
C/U
No. 1860
(continued)

Mr. Witsil submitted a revised package with additional letters of support, totaling 14 letters of support. They stated that the Luikarts purchased the property two years ago; that in 2009 when the application was filed with the County, they checked with the President of the Sussex Shores Homeowners Association who indicated that the Board of Directors was not in opposition to the application; that, at this time, the Board is taking a position neither in favor of or in opposition to this application; that since the application was filed, the Luikarts have purchased the property under the name of JLLL, LLC and that they are the principals of the LLC; that they are proposing to build a small duplex which will replace an existing business (Shorty's); that the commercial building is dilapidated; that the lot is considered to be within the Sussex Shores Beach Association commercial district; that the change is necessary because the B-1 District does not provide for multi-family structures without this Conditional Use approval; that it is for the minimal Conditional Use approval that they could seek; that the applicants could build an equally sized commercial structure pursuant to the same setbacks, however, that would not be the best use of the property nor in the best interest of the community; that the lot is adjacent to or in close proximity to Evans Insurance, Crowley Real Estate, Bethany Family Medical Center, and several condominium projects; that the Sussex Shores zoning restrictions state that there is a specific 8 foot setback for all lots west of the 10 foot alley; that this parcel is west of the 10 foot alley; that this project will exceed this requirement with a 10 foot setback; that they have looked around the Bethany Beach area and found a building design that they may duplicate with similar construction; that the building would be in compliance with Sussex Shores height limitations; that they have no problem with the conditions recommended by the Planning and Zoning Commission; that some of the letters of support are from Board Members of the Sussex Shores Homeowners Association even though they do not represent the opinion of the Board; that there is a Restrictive Covenant in the Sussex Shores By-Laws that reference interior rear yard setbacks (25 foot) as well as the setback from the 10 foot alley; and that the Luikarts have lived in the community since 1998.

Public comments were heard.

Perry Psaros of Sussex Shores, Immediate Past President of Sussex Shores Homeowners Association and a full time resident, stated that he was not speaking for the community; that he does not know the position, if any, of the current Board; that the previous Board had no objection to this project; and that he would prefer townhouses versus a commercial use.

The Public Hearing was closed.

M 605 10
Adopt
Ordinance
No. 2156
(C/U)

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to Adopt Ordinance No. 2156 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING

No. 1860) AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8,140 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1860) filed on behalf of John F. and Lorry A. Luikart, with the following conditions:

**M 605 10
Adopt
Ordinance
No. 2156
(C/U
No. 1860)
(continued)**

- 1. Only two residential units shall be constructed upon the property.**
- 2. The development shall be served as part of a Sussex County Sanitary Sewer District.**
- 3. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill, on, off, or to the property shall only occur during the hours between 8:00 a.m. and 6:00 p.m.**
- 4. The Conditional Use must be substantially underway within three years or it will become void.**
- 5. The Applicant shall obtain an entrance permit from DelDOT and comply with all DelDOT requirements.**
- 6. The Site Plan shall be subject to the 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, Absent; Mr. Vincent, Yea;
Mr. Phillips, Yea**

[Mr. Cole did not participate in the Public Hearing or the vote on Conditional Use No. 1860.]

Mr. Cole rejoined the meeting.

**Public
Hearing/
C/U
No. 1861**

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 TO PARK/STORE CONSTRUCTION EQUIPMENT AND MATERIALS, AND LIGHT DUTY METAL FABRICATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.622 ACRES, MORE OR LESS” (Conditional Use No. 1861) filed on behalf of Absher Construction, Inc.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 14, 2010 at which time they recommended that the application be approved with the following conditions:

- 1. The use shall be limited to the parking and storage of the Applicant’s construction equipment, material and vehicles, as well as light-duty metal fabrication.**
- 2. The hours of operation shall be limited to Monday through**

Public
Hearing/
C/U
No. 1861
(continued)

Saturday, 8:00 a.m. to 5:00 p.m.

3. **One lighted sign shall be permitted, not to exceed 32 square feet per side.**
4. **No more than 10 vehicles associated with the business shall be permitted at any one time.**
5. **Any outside storage of materials shall be screened from view of neighboring properties.**
6. **The location of any dumpsters shall be shown on the Final Site Plan, and any dumpsters shall be screened from view of neighboring properties.**
7. **The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated October 14, 2010.)

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

Rick Absher was present with William Chasanov, Attorney. They stated that Mr. Absher operates a construction business and needs to store and park construction equipment and materials; that he proposes to perform some light duty metal fabrication; that the use will benefit the residents and the farmers in the area; that the ten letters of support show that Mr. Absher is and has been a good neighbor; that the Applicant does some minor repair work on the site; that 95 percent of his work is performed off-site; and that his wife has been sick for some time and he wants to be on the site as much as possible.

M 606 10
Adopt
Ordinance
No. 2157
(C/U
No. 1861)

A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to Adopt Ordinance No. 2157 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO PARK/STORE CONSTRUCTION EQUIPMENT AND MATERIALS, AND LIGHT DUTY METAL FABRICATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.622 ACRES, MORE OR LESS” (Conditional Use No. 1861) filed on behalf of Absher Construction, Inc., with the following conditions:

1. **The use shall be limited to the parking and storage of the Applicant’s construction equipment, material and vehicles, as well as light-duty metal fabrication.**
2. **The hours of operation shall be limited to Monday through Saturday, 8:00 a.m. to 5:00 p.m.**
3. **One lighted sign shall be permitted, not to exceed 32 square feet per side.**
4. **No more than 10 vehicles associated with the business shall be permitted at any one time.**
5. **Any outside storage of materials shall be screened from view of**

neighboring properties.

- 6. The location of any dumpsters shall be shown on the Final Site Plan, and any dumpsters shall be screened from view of neighboring properties.**
- 7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

M 606 10
(continued)

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

Public
Hearing/
C/U
No. 1864

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 COUNTRY MARKET WITH BBQ, ICE CREAM, AMISH MEATS/CHEESE/BAKED GOODS AND THE SALE OF PRODUCE, NURSERY STOCK, FLOWERS, AND ITEMS ASSOCIATED WITH GARDENING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.32 ACRES, MORE OR LESS OF A 14.92 ACRE TRACT” (Conditional Use No. 1864) filed on behalf of Dawn’s Country Market.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on October 14, 2010 at which time they deferred action. On October 28, 2010, the Commission recommended that the application be approved with the following conditions:

- 1. Sales shall only occur during daylight hours.**
- 2. The use shall be limited to a country market with barbeque, ice cream, Amish meats/cheese/baked goods, produce, nursery stock, flowers and other items generally associated with farm markets, produce sales and gardening.**
- 3. The use shall not become a general retail store or convenience store and it shall maintain its agricultural appearance and theme at all times.**
- 4. Unless required by DelDOT, there shall not be any entrance to the property from Route One.**
- 5. The Applicant’s shall comply with all DelDOT requirements, including Entrance Permits.**
- 6. The Final Site Plan shall show all parking required by the Sussex County Zoning Code.**
- 7. The project shall comply with all County Engineering, DNREC, State Board of Health, and other applicable requirements regarding bathroom and sewer facilities.**
- 8. The Final Site Plan shall show the location of all proposed uses on the property.**
- 9. There shall not be any structures, parking, produce, products or**

Public
Hearing/
C/U
No. 1864
(continued)

- displays of any kind within the front or side yard setbacks.
10. Any dumpsters shall be screened from view of neighboring properties and roadways.
 11. Any security lighting shall be screened from view so that it does not shine on neighboring properties or roadways.
 12. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 13. This Conditional Use shall become null and void unless substantially underway within three (3) years of the date of approval by the County Council.
 14. Final Site Plan approval shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated October 14 and 28, 2010.)

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

Exhibit Booklets, which were provided by the Applicant on this date, were distributed to the Council. Mr. Lank reported that, also on this date, a petition in support of the application was submitted. The Exhibit Booklet and petition were made a part of the record of the Public Hearing.

An email was received on this date from Nancy Monahan in opposition to the application. She stated that the use is a major commercial operation; that the application deserves serious consideration as to whether it should be allowed in the AR District; that this is a use that would be better suited in an area zoned for commercial use; and that the operation has been in use without prior approval from the County.

An email was received on this date from Karen Bowers Falk in support of the application. She stated that this use provides agriculture related activities for families and offers a unique educational agri-tourism experience for residents and visitors.

Dawn and Wally Goff, the Applicants, were present on behalf of the application. They stated that they operate a country market located on Route 1 and Cave Neck Road; that they grow their own produce; that they have pigs; that they have their own meat and sell local meat and cheese, jams, jellies, pickles; local artwork from Milton; woodwork from Long Neck and Harbeson; blankets from Milton; jewelry from Milton; that they would like to add some vendors that would compliment a country farm atmosphere; that the barns have been restored and they would like to keep the same appearance as the existing buildings; that they propose to display local artwork; that they want to provide a place where the community can come and enjoy the animals, have birthday parties, purchase local goods; that they have provided u-pick pumpkins and hay rides for pre-school and school visits; that the petition that was submitted contains 650 signatures and 2 letters; that they are aware that they need an entrance approval from

DelDOT; that they anticipate an entrance on Cave Neck Road; and that they propose an ice cream parlor and that they would like for it to remain open until 9:00 p.m.

Public comments were heard.

Ivory Hopkins, Pastor, spoke in support of the application. He stated that he visits the site to purchase goods and to enjoy the environment and that Sussex County is diverse and that this market benefits the community.

**Public
Hearing
(continued)**

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

**M 607 10
Adopt
Ordinance
No. 2158
(C/U
No. 1864)**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2158 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COUNTRY MARKET WITH BBQ, ICE CREAM, AMISH MEATS/CHEESE/BAKED GOODS AND THE SALE OF PRODUCE, NURSERY STOCK, FLOWERS, AND ITEMS ASSOCIATED WITH GARDENING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.32 ACRES, MORE OR LESS OF A 14.92 ACRE TRACT” (Conditional Use No. 1864) filed on behalf of Dawn’s Country Market, with the following conditions:

- 1. Sales shall only occur during daylight hours.**
- 2. The use shall be limited to a country market with barbeque, ice cream, Amish meats/cheese/baked goods, produce, nursery stock, flowers and other items generally associated with farm markets, produce sales and gardening.**
- 3. The use shall not become a general retail store or convenience store and it shall maintain its agricultural appearance and theme at all times.**
- 4. Unless required by DelDOT, there shall not be any entrance to the property from Route One.**
- 5. The Applicant’s shall comply with all DelDOT requirements, including Entrance Permits.**
- 6. The Final Site Plan shall show all parking required by the Sussex County Zoning Code.**
- 7. The project shall comply with all County Engineering, DNREC, State Board of Health, and other applicable requirements regarding bathroom and sewer facilities.**
- 8. The Final Site Plan shall show the location of all proposed uses on the property.**
- 9. There shall not be any structures, parking, produce, products or displays of any kind within the front or side yard setbacks.**
- 10. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- 11. Any security lighting shall be screened from view so that it does not**

shine on neighboring properties or roadways.

12. One lighted sign, not to exceed 32 square feet per side, shall be permitted.

13. This Conditional Use shall become null and void unless substantially underway within three (3) years of the date of approval by the County Council.

14. Final Site Plan approval shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**M 607 10
(continued)**

Motion Adopted: 5 Years.

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

**M 608 10
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 2:33 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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