



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 10, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 10, 2012, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Vance Phillips</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Susan M. Webb</b>	<b>Finance Director</b>
<b>Everett Moore</b>	<b>County Attorney</b>

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

#### Call to Order

Mr. Vincent called the meeting to order.

#### M 023 12 Amend and Approve Agenda

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to amend the Agenda by deleting "Approval of Minutes"; by deleting "Request to prepare and post notices for the expansion of the Millville Sanitary Sewer District (Route 26, Phase III)"; and by deleting "Executive Session - Job Applicants' Qualifications", Personnel, Pending/Potential Litigation, and Land Acquisition pursuant to 29 Del. C. §10004(b); and by deleting "Possible Action on Executive Session Items"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

#### Corre- spondence

Mr. Moore read the following correspondence:

**CONSTANCE CROSSEN, MILFORD, DELAWARE.**

**RE: Letter to Community Development in appreciation of upgrades/repairs to her home.**

**THE KING FAMILY, ELLENDALE, DELAWARE.**

**RE: Letter to Community Development in appreciation of upgrades/repairs to their home.**

Corre-  
spondence  
(continued)

**MATTIE HURST, ELLENDALE, DELAWARE.**

**RE: Letter to Community Development in appreciation of upgrades/repairs to their home.**

**ELIZABETH JENKINS, SEAFORD, DELAWARE.**

**RE: Letter to Community Development in appreciation of upgrades/repairs to her home.**

SEDAC  
Report

**Rob Rider, Chair, Sussex Economic Development Action Committee, presented the 2011 Annual Report, including a history of SEDAC and a report on the Committee's programs and ongoing efforts.**

Adminis-  
trator's

**Mr. Lawson presented the following information in his Administrator's Report:**

**1. Sussex County Local Emergency Planning Committee Meeting**

**The Sussex County Local Emergency Planning Committee meeting will be held Thursday, January 12, 2012 at 10:00 a.m. at the Sussex County Emergency Operations Center. Included with this report is a copy of the agenda for the meeting.**

**2. Delaware State Police Activity Report – November 2011**

**As per the attached Delaware State Police activity report for November, there were 3,472 total traffic arrests and 1,241 criminal arrests. Of that 1,241, 448 were felony and 793 were misdemeanor criminal arrests. Of the total hours on duty spent, 40 percent were spent on criminal investigations.**

**3. Martin Luther King, Jr. Holiday**

**County offices will be closed on January 16, 2012 in honor of the birthday of Martin Luther King, Jr. Offices will reopen on January 17, 2012, at 8:30 a.m., and the County Council meeting will occur at the usual time of 10:00 a.m.**

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

Old  
Business/

**Under Old Business, the Council discussed Conditional Use No. 1902 filed on behalf of Dorothy Garvey.**

C/U

No. 1902

The Planning and Zoning Commission held a Public Hearing on this application on June 23, 2011 at which time action was deferred. On June 14, 2011, the Commission deferred action again. On July 28, 2011, the application was denied by the Commission since the Motion to approve received two votes in support and two votes in opposition; the Motion was denied for lack of a majority vote.

Old

Business/

C/U

No. 1902

(continued)

The County Council held a Public Hearing on this application on July 19, 2011 at which time action was deferred.

Mrs. Deaver was not in attendance during the Public Hearing held on July 19, 2011. Mrs. Deaver left the room during the discussion of the application on this date.

Mr. Cole questioned if any information has changed from the Engineering Department; more specifically, “that the parcel is not capable of being annexed into a County operated Sanitary Sewer District at this time”.

Lawrence Lank, Director of Planning and Zoning, responded that the Engineering Department’s report has not changed; he stated that “the use will be served by County sewer when that service becomes available”.

Mr. Cole expressed concern about the entrance and exit to the proposed use and he expressed concern about Collins Avenue, which is directly behind the site and which the Applicant proposes to use for exiting the site (entrance to the site is proposed to be from Route 24). Mr. Lank stated that the Applicant cannot seek final approval from DeIDOT unless the application is approved by the Council.

Mr. Phillips asked Legal Counsel to research whether or not the Council can place a condition on the approval of the application requiring that the Applicant would be responsible for the shared maintenance of Collins Avenue.

Mr. Cole expressed concern that approving the application could establish a precedent for commercial activity in the area.

Mr. Cole also asked staff to research the possibility of requiring the parcel to tie into the County sewer system and to the Engineering Department’s comments.

M 024 12

Defer

Action

on

C/U

No. 1902

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to defer action on Conditional Use No. 1902 filed on behalf of Dorothy Garvey to allow time for the County Attorney to research how the Council can place a condition on the application (if approved) that would require the Applicant to share the burden of maintenance on Collins Avenue and to allow time for staff to obtain clarification on connection to County sewer.

Motion Adopted: 5 Yeas.

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

**Old Business** Under Old Business, the Council considered Conditional Use No. 1883 filed on behalf of Margaret Taylor.

**Old Business/  
C/U  
No. 1883  
(continued)** The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 at which time action was deferred. On March 24, 2011, action was deferred again. On April 28, 2011, the Commission recommended that the application be denied.

The County Council held a Public Hearing on this application on March 29, 2011 at which time action was deferred and the Council required that the Applicant supply the County with a septic evaluation and documentation regarding the holding tank process.

Lawrence Lank, Director of Planning and Zoning, reported that information was received from DNREC and previously distributed to the Council. Mr. Lank provided highlights of the report: the overall rating is satisfactory with concerns there was no ponding on the system; the tank appears to be 1,000 gallons; the age of the system is a concern and the location; the holding tank was approved and has a contract with Roto-Rooter; there have been no repairs reported to the system.

Mr. Cole questioned if the Applicant pursued the recommendation of the Planning and Zoning Commission to get determination from the Board of Adjustment as to the number and location of any non-conforming dwellings on the property before seeking any more Conditional Uses for additional dwellings on the property. Mr. Lank stated that the Applicant did not and he reported that this application was filed following the issuance of a violation on the multi-family use of the property. Mr. Lank noted that it was determined that the mobile home on the property was valid and that the issue was the number of units in the old building on the property.

**M 025 12  
Adopt  
Proposed  
Ordinance/  
C/U  
No. 1883  
DENIED** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.989 ACRE, MORE OR LESS” (Conditional Use No. 1883) filed on behalf of Margaret Taylor.

**Motion Denied:** 4 Nays, 1 Yea.

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

**Reasons For Denial**            **Reasons for denial included agreement with the concerns and the Findings of the Planning and Zoning Commission; concerns regarding the number of units requested; that the Applicant did not follow up with the Board of Adjustment, that there are wastewater concerns; the setback from the road; and that there are unanswered issues.**

**Comments**                    **Mr. Phillips asked that the County’s Code Enforcement Officers to be sensitive in regards to this issue; that there are people living on the site and that he does not want to see anyone evicted and that the County needs to work very closely with the owner to proceed through the Board of Adjustment process.**

**Public Hearing/ Proposed Ordinance/ Disability Benefits**            **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY RELATING TO DISABILITY BENEFITS FOR SUSSEX COUNTY EMPLOYEES”.**

**Karen Brewington, Director of Human Resources, explained that the Proposed Ordinance extends survivor’s benefits to survivors of any individual who, at the time of his or her death, is receiving benefits from an approved Sussex County Long Term Disability Plan.**

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

**M 026 12 Defer Action on Proposed Ordinance/ Disability Benefits**            **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY RELATING TO DISABILITY BENEFITS FOR SUSSEX COUNTY EMPLOYEES” and to leave the record open for receipt of a recommendation from the Personnel Board.**

**Motion Adopted:        5 Yeas.**

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

**Public Hearing/ Proposed Ordinance/ Disability Benefits**            **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 29 OF THE CODE OF SUSSEX COUNTY RELATING TO DISABILITY BENEFITS FOR SUSSEX COUNTY EMPLOYEES”.**

**Karen Brewington, Director of Human Resources, explained that the Proposed Ordinance corrects a typographical (spelling) error in Ordinance No. 2223 and authorizes disabled employees under Sussex County’s short-term disability plan to accrue holiday time, if applicable.**

**M 027 12**                    **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action**

**Defer  
Action on  
Proposed  
Ordinance/  
Disability  
Benefits**

**on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 29 OF THE CODE OF SUSSEX COUNTY RELATING TO DISABILITY BENEFITS FOR SUSSEX COUNTY EMPLOYEES” and to leave the record open for receipt of a recommendation from the Personnel Board.**

**M 027 12  
(continued)**

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

**Public  
Hearing/  
Proposed  
Annexation  
of the  
Angola  
Neck  
SSD**

**A Public Hearing was held to consider extending the boundary of the Angola Neck Sanitary Sewer District to include two parcels of land, consisting of ± 3.3 acres, east of the Town of Millsboro. Rob Davis (representing the Engineering Department) reported the following: (1) that the parcels are located along Camp Arrowhead Road and are contiguous to the existing district; (2) that the properties were provided sewer laterals as part of the original construction for the Angola Neck Sanitary Sewer District; (3) that the current owners would like to move the existing home from Parcel 2 to Parcel 1 and live there while they build a new home on Parcel 2; and (4) the owner of the parcels will be responsible for system connection charges of \$3,546.00 per EDU.**

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

**M 028 12  
Adopt  
R 002 12**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Resolution No. R 002 12 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE ANGOLA NECK SANITARY SEWER DISTRICT (ANSSD) TO INCLUDE TWO (2) PARCELS OF LAND, EAST OF THE TOWN OF MILLSBORO, BEING SITUATE IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE”.**

**Motion Adopted: 5 Yeas.**

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

**Legal  
Counsel**

**Everett Moore, County Attorney, left the meeting and Vince Robertson, Assistant County Attorney, joined the meeting.**

**Public  
Hearing/  
Proposed  
Ordinance/  
Bond or  
Per-  
formance  
Guaranty**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, SECTION 99-32, OF THE CODE OF SUSSEX COUNTY TO ALLOW A LANDOWNER TO PERFORM SITEWORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSITING A BOND OR PERFORMANCE GUARANTY”.**

**This Ordinance Amendment carves out an exception to the land**

**development bonding requirements for a landowner constructing improvements on his or her own land. No lots can be transferred and no building permits will be issued until the work is complete or the guaranties are provided.**

**Public  
Hearing/  
Proposed  
Ordinance/  
Bond or  
Per-  
formance  
Guaranty  
(continued)**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this Ordinance Amendment on December 15, 2011. At that time, Vince Robertson, Assistant County Attorney, advised the Commission that the Amendment was originally discussed administratively and he summarized the bonding needs for projects to proceed with construction; that the proposed Amendment carves out an exception to the land development bonding requirements for a landowner constructing improvements on his or her own land; that no lots can be transferred and no building permits will be issued until the work is complete or the guaranties are provided; and that building permits are easier to police than the transfer of properties. Mr. Robertson also stated that the Amendment could include amended language in Subsection D ( i ) by deleting “approved” and replacing it with “substantial completion”; by adding a sentence at the end of the existing language “In the event no bond or other guaranty is provided, a Notice in the form acceptable to the County Attorney shall be recorded in the Office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or other guaranty is provided as required by this Section”; and that the Ordinance be reviewed by the County Council two (2) years after its adoption for effectiveness.**

**Mr. Lank reported that, on December 15, 2011, the Commission recommended that the Ordinance Amendment be approved with the following suggestions:**

- 1. That Subsection D ( i ) be amended to reference “substantial completion” instead of “approved”.**
- 2. That the Ordinance be amended to include the following sentence at the end of the existing language: “In the event no bond or other guaranty is provided, a Notice in the form acceptable to the County Attorney shall be recorded in the Office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or guaranty is provided as required by this Section”.**
- 3. That the Ordinance be reviewed by Council two (2) years after its adoption for effectiveness.**

**Mr. Lank reported that the following correspondence has been received since the Public Hearing before the Commission: one letter in support and 29 letters in opposition. All of the correspondence was received by email with the exception of one. Mr. Lank presented the correspondence to the Council members for their review.**

**Mr. Robertson clarified that the Proposed Ordinance does not eliminate**

Public  
Hearing/  
Proposed  
Ordinance/  
Bond or  
Per-  
formance  
Guaranty  
(continued)

**bonding; that the bonding requirements in Chapter 99 are designed to protect third parties; and that the Proposed Ordinance only postpones bonding requirements until there would be third parties involved. Mr. Robertson explained that a developer could perform work on his own property until such point that the developer wants a building permit or wants to transfer a lot; at that point, a bond or letter of credit would have to be posted. Mr. Robertson stated that this benefits developers by allowing them to perform some of the work themselves and reduce the cost of the bond for the remaining work. In regards to how the County would know the amount of the remaining work, Mr. Vincent stated that, for both sewer work and site work, the County has agreements that have been developed (the Ordinance 38 Agreement and the Road Agreement). Mr. Robertson further explained that prior to any transfer or building permit, the appropriate department of the County would inspect the project, prepare an estimate of the remaining work, and inform the developer of the amount of bonding required; and that the developer would have to post a bond for 125 percent of that amount.**

**Mr. Robertson explained that the County will not be able to process requests for building permits or deed transfers over night and the Ordinance 38 Agreement and the Road Agreement forms will both reference some period of time that will be needed to inspect the status of an unbonded project to determine the cost of what still needs to be done.**

**Public comments were heard.**

**Peter Pagani of Milton spoke in opposition to the proposal. He stated that the purpose of bonding is to protect third parties; that owners of properties are often partnerships; that this proposal would weaken protections for third parties; that the proposal would shift risk to those that eventually purchase lots; that third parties may assume risk that they don't know about; and that he urges the Council to not allow this exception.**

**Esther Shelton, Sussex County League of Women Voters, spoke in opposition to the proposal. She stated that the League is concerned about poor construction and uncompleted projects; that the proposal would open itself to lawsuits; that the League is opposed to the proposal and asks that the record remain open for further comment. Ms. Shelton submitted written comments, which were made a part of the record.**

**Gordon Giersch of Milton spoke in opposition to the proposal. He stated that residents are the ones left "holding the bag"; that residents may be required to complete the work that a developer does not finish and he referenced Ocean Atlantic and the Reddenwood Subdivision; that the proposal will dilute the Code further; and that he questions who the Council represents, builders or citizens and homeowners.**

**Michael Gilseman, Sr. of Lewes spoke in opposition to the proposal. He stated that in the development in which he resides, the Bond will not be**

enough to complete the necessary work; that the homeowners are the ones that suffer; that the County should increase bonding amounts; that homeowners need protection from developers that walk away from their responsibilities; and that laws are needed to protect homeowners. Mr. Gilsenan submitted written comments into the record.

**Public  
Hearing/  
Proposed  
Ordinance/  
Bond or  
Per-  
formance  
Guaranty  
(continued)**

**Doug Simpson of Bridgeville spoke in support of the proposal. He stated that no one is asking for lot/home buyers to face more risk; that this is just an opportunity for a developer to put in infrastructure without paying extra fees on top of the cost of installation; that this reduction in bonding is only for work that will already be done; that the County needs affordable housing; that Banks are requiring cash and it is difficult for developers to obtain bonds; that this proposal would eliminate the need for a developer to front the money for infrastructure and money for bonds; that without this proposal, the cost of homes are increased and the value of homes is being raised by regulation.**

**John Walsh of Rehoboth Beach spoke in opposition to the proposal. He stated that oversight is not what it should be; that without bonding, inspection areas of government have to keep track to make sure that things are done properly; that the County will have to keep a closer eye; that this is a critical/chronic problem; that if the ordinance amendment is adopted, it should be sunsetted; that a pressing need has not been demonstrated; and that there is a potential for additional work for the County.**

**Dale Wheatley of Bridgeville spoke in support of the proposal. He stated that there will be no additional risk; that inspections will be required; and that no houses will be sold until a bond has been secured.**

**Dan Kramer of Bridgeville questioned if the Council can legally amend the Proposed Ordinance to include a sunseting date of 2 years and that he doubts it; that the proposal allows a landowner to build a road and sewer after the property has already been approved for development; and that the landowner cannot sell any portion of the property so no one is being hurt.**

**Pat Leon of Milton spoke in opposition to the proposal. She stated that she is concerned with the tracking of the sale of properties; that the proposal will weaken the system of protection; and that she questions what happens when the bond expires.**

**Bobbie Hemmerich of Lewes spoke in opposition to the proposal. She referenced the Extreme Makeover Project and she questioned if the project was bonded and she questioned the County's oversight of the project.**

**Mr. Robertson read a letter into the record from Valerie Cloutier of Lewes in opposition to the Proposed Ordinance.**

**The Council discussed the Proposed Ordinance.**

Mr. Cole suggested deferring action on the Proposed Ordinance for the purpose of considering a sunset provision.

(continued) Mr. Robertson suggested that the following sentence be added (at the end of Subsection D): “This Ordinance and this Subsection D of Section 99-32 of the Chapter 99 of the Code of Sussex County shall automatically sunset and expire 2 years from the date of its adoption.”

The Public Hearing was closed.

M 029 12  
Adopt  
Ordinance  
No. 2230/  
Bond or  
Per-  
formance  
Guaranty

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2230 entitled “AN ORDINANCE TO AMEND CHAPTER 99, SECTION 99-32, OF THE CODE OF SUSSEX COUNTY TO ALLOW A LANDOWNER TO PERFORM SITEWORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY, as amended, as follows:

Chapter 99, Section 99-32 of the Code of Sussex County is hereby amended to add a new subsection D immediately following subsection C:

**99-32 Bonds and Guarantees**

**D Notwithstanding the preceding subparts of this Section, no performance bond or other guaranty shall be required for improvements required by the application of this Chapter upon lands owned by the party seeking to construct the improvements. Provided however, that no lots shall be sold or transferred and no residential Building Permits or Zoning Permits shall be issued until: (i) all required improvements are constructed and receive substantial completion; or (ii) a bond or guaranty is posted in accordance with subparts A, B and C of this Section. In the event no bond or performance guaranty is provided, a Notice in the form acceptable to the County Attorney shall be recorded in the Office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or other guaranty is provided as required by this section. This Ordinance and this Subsection D of Section 99-32 of Chapter 99 of the Code of Sussex County shall automatically sunset and expire 2 years from the date of its adoption.**

Motion Adopted: 4 Yeas, 1 Nay.

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

Legal Counsel Vince Robertson, Assistant County Attorney, left the meeting and Everett Moore, County Attorney, rejoined the meeting.

Additional Under Additional Business, Dan Kramer of Bridgeville stated that it should

**Business**                    **be mandatory that each Council member read every regulation that the County has. Mr. Kramer questioned why, at times, when the Council approves something, the Council then tells the Applicant that he has to go to the Board of Adjustment for a variance and he stated that the Ordinance requiring this should be corrected.**

**M 030 12**                    **At 12:12 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to recess until 1:30 p.m.**

**Recess**

**Motion Adopted:        5 Yeas.**

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

**M 031 12**                    **At 1:38 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene the Regular Session.**

**Reconvene**

**Motion Adopted:        5 Yeas.**

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

**Public Hearing/  
C/U  
No. 1916**                    **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A HOTDOG / HAMBURGER VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 24,743 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1916) filed on behalf of Tim Elder.**

**The Planning and Zoning Commission held a Public Hearing on this application on December 15, 2011 at which time the Commission recommended that the application be approved with the following conditions:**

- A. The use shall be limited to a temporary hotdog/hamburger stand.**
- B. The hotdog/hamburger stand shall not be permanently located on the site, and shall be removed or relocated to the rear of the building when not in use.**
- C. The hours of operation shall be 10:00 a.m. to 5:00 p.m., seven days per week.**
- D. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- E. This Conditional Use shall automatically expire upon the issuance of a Certificate of Compliance/Certificate of Occupancy for any permanent structure on the property.**

See the minutes of the meeting of the Planning and Zoning Commission, dated December 15, 2011.

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

**Public  
Hearing/  
C/U  
No. 1916  
(continued)**

The Council found that Tim Elder was present on behalf of his application and he stated that he owns the property and that it is in a LLC and that he proposes to use the hotdog cart temporarily while renovating the Workman's Store building.

The Council discussed the proposed use and the idea of allowing the hotdog cart on a permanent basis.

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

Mr. Cole suggested that the Council consider a draft ordinance on vendors that includes a definition of vendors.

**M 032 12  
Amend  
Conditions/  
C/U  
No. 1916**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to amend the conditions recommended by the Planning and Zoning Commission by deleting Condition B and Condition E.

**Motion Adopted: 5 Yeas.**

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

**M 033 12  
Amend  
Condition/  
C/U  
No. 1916**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to amend the conditions recommended by the Planning and Zoning Commission by amending Condition A, as follows: "The use shall be limited to a food vending cart."

**Motion Adopted: 5 Yeas.**

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

**M 034 12  
Adopt  
Ordinance  
No. 2231/  
C/U  
No. 1916**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2231 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A HOTDOG / HAMBURGER VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 24,743 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1916) filed on behalf of Tim Elder, subject to the following conditions:

- A. The use shall be limited to a food vending cart.
- B. The hours of operation shall be 10:00 a.m. to 5:00 p.m., seven days per week.
- C. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**M 034 12**  
(continued)

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing  
(C/U  
No. 1917)**

**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 BEAUTY SALON, BARBER SHOP, AND SPA TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 17,228.6 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1917) filed on behalf of Roosevelt Domond.**

**The Planning and Zoning Commission held a Public Hearing on this application on December 15, 2011 at which time the Commission deferred action.**

**(See the minutes of the Planning and Zoning Commission dated December 15, 2011.)**

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

**Mr. Lank provided copies of letters received in opposition to the application.**

**The Council found that Roosevelt Domond was present and he stated in his presentation that the dwelling on the property is actually three apartments; that two units will be rented and he would like to convert one unit to a barbershop, beauty salon and spa; that he wants to make sure there is no noise generated by the use; that he proposes to fence the property; that the use will benefit the community; that he would remove the barbershop use if necessary; that he plans to live in one of the units; and that no other businesses are located in the area, only a church.**

**Mr. Lank noted that two of the Commission’s concerns is fencing and parking location, which would be addressed by Final Site Plan approval (if the application is approved).**

**Public comments were heard.**

Fred Adams and Virgil Klepper spoke in opposition to the project. They stated that the property is located on the edge of an AR District; that there is a church in the area; that they are concerned about parking and fear that it will spill out on the streets; that traffic is a concern; that they are concerned that it will be a congested corner; and that they are concerned about the number of school children and school buses in the area.

(continued)

The Public Hearing was closed.

**M 035 12**  
**Defer**  
**Action/**  
**C/U**  
**No. 1917**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1917.

**Motion Adopted: 5 Yeas.**

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

**Public**  
**Hearing/**  
**C/U**  
**No. 1918**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6,000 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1918) filed on behalf of Anthony S. Nerlinger.

The Planning and Zoning Commission held a Public Hearing on this application on December 15, 2011 at which time the Commission recommended that the application be approved with conditions.

(See the minutes of the Planning and Zoning Commission dated December 15, 2011.)

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

Mr. Lank provided copies of letters in opposition to this application.

The Council found that Tony Nerlinger was present and he stated in his presentation that he is the equitable owner of the property and he has a contract on the property; that he is requesting the same conforming use approval and variance that was granted to a majority of the 200 townhouse community of Tower Shores; that a majority of the uses are more dense than his proposal; that he is proposing to construct a building for a multi-family dwelling structure (2 unit) similar to the condominium building immediately adjacent to the south side of the site; that the deck will be constructed to go down and back towards the house and not the beach; that he plans on retaining ownership of one of the townhouses for a long time;

**and that he plans to keep the property in front of the house un-touched.**

**Mr. Cole questioned the requirement for the setback variance in the front. Mr. Nehrlinger stated that it is for the purpose of preserving the dune and for moving the structure as far away from the oceanfront as possible.**

**Public  
Hearing/  
C/U  
No. 1918  
(continued)**

**Mr. Moore stated that this matter was discussed by the Board of Adjustment on January 9<sup>th</sup> and the Applicant was present. The Board of Adjustment deferred action on the matter pending the County Council's decision.**

**Public comments were heard.**

**Margaret Lester, President of the Board of Directors of Tower Shores, stated that Mr. Nehrlinger does not own the property yet; that they are not opposed to a duplex and they are trying to restrict construction to duplexes in Tower Shores; that there is concern about the destruction of the dune; that there is a very large dune on the property and that when a structure was built on the adjacent property, that dune was lost; that storms come through the Four Winds and SunRay (duplexes); that the other oceanfront properties have a bulkhead or barrier; and that they are in conflict with DNREC and County regulations in regards to what can be put under the houses to keep the dunes from washing out; and that another concern is the number of cars as there is no extra parking available in Tower Shores; and that the Applicant will still need to obtain approval from Tower Shores.**

**The Public Hearing was closed.**

**M 036 12  
Close  
Record/  
C/U  
No. 1918**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to close the public record and public comments on Conditional Use No. 1918.**

**Motion Adopted: 5 Yeas.**

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

**M 037 12  
Adopt  
Ordinance  
No. 2232/  
C/U  
No. 1918**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2232 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6,000 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1918) filed on behalf of Anthony S. Nerlinger, contingent on the following conditions:**

**A. Only two (2) units shall be constructed upon the property.**

**M 037 12  
Adopt  
Ordinance  
No. 2232/  
C/U  
No. 1918  
(continued)**

- B. The development of this property shall comply with all County and DNREC setbacks and building restriction lines.**
- C. The units shall be served as a part of a Sussex County Sanitary Sewer District.**
- D. The developer shall comply with all requirements of the Sussex County Engineering Department for connection to the Sewer District.**
- E. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 8:00 a.m. and 6:00 p.m.**
- F. The project shall be served by central water.**
- G. This recommendation is contingent upon consideration by the County Board of Adjustment and issuance of a 10 foot variance from the required 30 foot front yard setback and a variance to allow two (2) multi-family units on a 6,000 square foot lot.**
- H. The site plan shall be subject to review and approval of the Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

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

**Request/  
Draft  
Ordinance**

**Mr. Cole asked Mr. Lawson and Mr. Lank to review/develop the definition of a vendor and to draft an ordinance requiring vendors to submit applications to the Board of Adjustment.**

**M 038 12  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 2:43 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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





