



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 18, 2008

**Call to Order**            A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 18, 2008 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Finley B. Jones, Jr.</b>	<b>President</b>
<b>Lynn J. Rogers</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>David Baker</b>	<b>County Administrator</b>
<b>Susan M. Webb</b>	<b>Finance Director</b>
<b>Hal Godwin</b>	<b>Assistant to the County Administrator</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

**M 201 08**            A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the  
**Approve**            Agenda by deleting "Land Acquisition" under Michael Izzo, County  
**Agenda**            Engineer, and by deleting "Change of Zone No. 1631, Garrett W. Herring  
(Herring Real Estate, LLC) under Old Business; and to approve the  
Agenda, as amended.

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

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

**M 202 08**            A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve  
**Approve**            the minutes of February 12, 2008.  
**Minutes**

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

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

**Caroling**            Mr. Baker reported that 20,696 food items were collected during the  
**on The**  
**Circle**            Caroling on The Circle Food Drive, as follows:

<b>Food</b>	<b>Beacon Middle School</b>	<b>1,583</b>
<b>Drive</b>	<b>Delaware Manufactured Homeowners Association</b>	<b>6,000</b>

<b>Recognition on The Circle Food Drive Recognition (continued)</b>	<b>First State Manufactured Housing Association</b>	<b>2,300</b>
	<b>Fuqua and Yori, P.A.</b>	<b>600</b>
	<b>Georgetown Elementary School</b>	<b>647</b>
	<b>General Public</b>	<b>560</b>
	<b>H. O. Brittingham Elementary School</b>	<b>666</b>
	<b>Howard T. Ennis School</b>	<b>350</b>
	<b>Long Neck Elementary School</b>	<b>145</b>
	<b>Milford Middle School</b>	<b>327</b>
	<b>Mountain Mudd</b>	<b>50</b>
	<b>North Georgetown Elementary School</b>	<b>1,783</b>
	<b>PATS Aircraft, LLC</b>	<b>475</b>
	<b>Perdue Farms</b>	<b>50</b>
	<b>Punkin Chunkin Association</b>	<b>2,000</b>
	<b>Selbyville Middle School</b>	<b>255</b>
<b>Southern Delaware School of the Arts</b>	<b>105</b>	
<b>Sussex County Council</b>	<b>1,000</b>	
<b>Sussex County Employees</b>	<b>1,800</b>	

The food items were distributed to various food pantries in the County.

Mr. Baker recognized the major contributors of the Food Drive and plaques were presented to those in attendance. The following organizations were represented at the meeting: North Georgetown Elementary School, Georgetown Elementary School, Howard T. Ennis School, Selbyville Middle School, Southern Delaware School of the Arts, Punkin Chunkin Association, Fuqua & Yori, PATS Aircraft, and County Employees (represented by Ira Hitchens).

**Appointment** Mr. Baker announced that Rodney Smith’s appointment on the Planning and Zoning Commission expired in December 2007.

**M 203 08 Appointment to Planning and Zoning Commission** A Motion was made by Mr. Cole, seconded by Mr. Rogers, to reappoint Rodney Smith to the Planning and Zoning Commission for a term of three years (until March 2011).

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

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

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

1. **Easter Holiday**

County government offices will be closed on March 21, 2008 in honor of Good Friday. County offices will reopen at 8:30 a.m. on Monday, March 24, 2008. The County Council will not meet on March 25, 2008 in honor of the Easter holiday. The next regularly

**scheduled meeting of the Sussex County Council will be held April 1, 2008.**

**2. Comprehensive Plan Update Meetings**

**Adminis-  
trator's  
Report  
(continued)**

**A workshop on the Comprehensive Plan Update will be held on Tuesday, March 18<sup>th</sup> at 6:00 p.m. at the County's West Complex Building regarding the Comprehensive Plan Update Draft. Information will be presented at this meeting to the Planning & Zoning Commission and the County Council. Public hearings will follow on April 3rd and 22nd, 2008.**

**3. Beneficial Acceptance**

**The Engineering Department has granted Beneficial Acceptance to the following project:**

**The Woodlands of Pepper's Creek, Agreement No. 666, was granted Beneficial Acceptance on March 12, 2008. The project is located on Main Street in the Dagsboro/Frankford Sanitary Sewer District, consisting of 10 Town Homes (2 Units per Town House).**

**Included with this report was a fact sheet on the project.**

**Insurance  
Bid  
Process**

**Mrs. Webb announced that every three years the County bids out its insurance. In the past, the County has used Insurance Buyers Council (IBC) to perform a risk management audit of the County's exposure; to prepare a Request for Proposals (RFP); to supervise the bidding process; and to make a recommendation to the County. Mrs. Webb reported that, this year, IBC would be performing the work at a cost of \$17,950.00.**

**Wastewater  
Agreement  
with  
Town of  
Georgetown**

**Mrs. Webb presented a Wastewater Agreement between the Town of Georgetown and Sussex County for the discharge of wastewater from the Industrial Park and Airport tenants.**

**The rate structure would be as follows:**

**First Year**

**90 percent of the Town of Georgetown In-Town Rate (\$4.06/1,000 gal)  
90 percent of the Availability Fee (\$23.40/qtr – 50,000 gal)  
Annual bill divided up by County.**

**Second and all Subsequent Years**

**Town of Georgetown In-Town Rate (\$4.51/1,000 gal)  
Availability Fee (\$26.00/qtr – 50,000 gal)  
Billed quarterly direct to the users.**

**Mrs. Webb noted that the County would pay all construction, maintenance and operating costs of its collection and transmission facilities, including the cost of connecting the facilities to the wastewater treatment and disposal facilities.**

**Wastewater Agreement with Town of Georgetown (continued)**

**In response to questions raised by the Council, Gary Tonge, Director of Utility Permits, stated that all the sites are currently metered. He noted however that some sites have large meters and small flows and for this reason, smaller meters will be installed on those sites with smaller flows.**

**Mr. Baker noted that, in accordance with the Agreement, the County guarantees payment of all outstanding billings, whether to the User or User's tenants, within thirty (30) days of receipt of the billings.**

**M 204 08 Approve Wastewater Agreement with Town of Georgetown**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the Sussex County Council approves the Wastewater Agreement between Sussex County and the Town of Georgetown.**

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

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

**MPHU Proposals**

**William Lecates, Director of Community Development and Housing, and Brandy Bennett, Housing Coordinator, presented the Moderately Priced Housing Unit (MPHU) Program applications which were received during the recent RFP (Request for Proposals) – Round 2.**

**Mr. Lecates stated that four applications were received and that it is their belief that all the applications meet the guidelines in accordance with the County's MPHU Ordinance. All of the submitted applications are located in Central Sussex: Ellendale, Dagsboro, and two in Georgetown. All applications are within 1/2 mile of Town Centers and within 1/2 mile of Route 113.**

**Ms. Bennett explained that under the MPHU Program, all subdivisions that apply must have a minimum of 35 units that are owner occupied and must be located in a growth area, as defined by the Comprehensive Plan of the County and the respective municipality's Comprehensive Plan; they must have public sewer and water; and a minimum of 15 percent of the total units must be MPHUs. Ms. Bennett noted that the developer receives a density bonus based on the project's income target and an expedited review through the County's Planning and Zoning process.**

**Ms. Bennett reviewed each of the four applications:**

**1- Powell Place**

**Location:** Georgetown, in a Level 1 Development Area  
**Developer:** Rodney Smith  
**Total Units:** 88 Townhomes  
**Number of Market Rate Units:** 75 (\$170,000 - \$240,000)

**MPHU  
Proposals  
(continued)**

**MPHUs:** 13 (Tier A - 6; Tier B – 6; Tier C – 1)  
**Zoning:** Currently zoned AR-1; is requesting a rezoning to CR-1.  
**Commercial:** Combination of mini-storage units and office buildings.

**Ms. Bennett stated that the positive aspects of the application are as follows:**

- The developer will be the builder and the marketing entity.
- Green building proposed.
- Live where you work – located near several employment opportunities.
- Commercial site included.
- Possible financial incentives to buyers.
- Public signatures of support.
- Low Homeowners Association fees.
- 15% MPHUs.
- Mixed use of Tiers.
- Units well integrated into the subdivision.
- Applicant already owns property.

**In regards to this application, Ms. Bennett stated that the Department is recommending approval of the application, subject to the following information:**

- More clear definition of builder relationship that will be used for the construction of the project.
- Documentation from the Town of Georgetown supporting water/sewer capacity.
- Better estimate of construction start date.
- Defined number of bedrooms for MPHUs.

**It was noted that Rodney Smith, the Applicant, is a member of the Planning and Zoning Commission and that he will recuse himself from any discussion and vote on this matter.**

**M 205 08  
Approve  
MPHU  
Application  
for Powell  
Place**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to approve the MPHU application for the Powell Place development, as described by the Office of Community Development and Housing, subject to the conditions read into the record on this date and subject to the Applicant obtaining any necessary zoning approvals and construction permits.**

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

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

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

**MPHU  
Proposals  
(continued)**

**2- Ingram Village**

**Location: Ellendale, in Level 2 Developing Area  
(Proposed Ellendale Annexation Area)**

**Developer: Beaver Properties, LLC (Doug Simpson and Dale Wheatley)**

**Total Units: 401**

**Number of Market Rate Units: 341 (\$185,000 - \$249,000)**

**MPHUs: Tier A: 60**

**Zoning: Currently zoned GR (proposed RPC overlay)**

**Ms. Bennett stated that the positive aspects of the application are as follows:**

- **60 MPHUs very well integrated into the project.**
- **Location near Ellendale.**

**Ms. Bennett stated that the only negative aspect of the application is the high homeowner fees of \$200 per year.**

**In regards to this application, Ms. Bennett stated that the Department is recommending approval of the application, subject to the following information:**

- **Number of MPHUs to be built per construction phase and the proportion to market rate units per phase.**
- **Defined relationship between developer and building entity that will be used for the construction of the project.**
- **Defined number of bedrooms for MPHUs.**
- **Defined housing types of MPHUs.**
- **Letters from the water utility source documenting its agreement to supply the project.**

**Mr. Cole expressed concern about the total number of units and a saturation of the market. He also referred to the MPHU Ordinance and the 180 day sales issue referenced therein and he stated that the MPHUs could be lost due to this time restraint.**

**Ms. Bennett stated that the Applicant proposes that the development will be constructed in phases; however, the Applicant has not yet specified how many MPHUs there would be in each phase.**

**Mr. Lecates stated that the 180 day sales issue will be addressed when the next MPHU Ordinance amendment is considered.**

**M 206 08  
Approve  
MPHU  
Application  
Ingram Vge.  
M 206 08  
(continued)**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the MPHU application for the Ingram Village development, as described by the Office of Community Development and Housing, subject to the conditions read into the record on this date and subject to the Applicant obtaining any necessary zoning approvals and construction permits.**

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

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

**MPHU  
Proposals  
(continued)**

**3- Seacoast Speedway**

**Location: Georgetown, in Future Georgetown Annexation Area  
per Comprehensive Plan**

**Developer: Seacoast Investments**

**Total Units: 195**

**Number of Market Rate Units: 156 (\$275,000 - \$350,000)**

**MPHUs: (20%) Tier A - 39**

**Ms. Bennett stated that the positive aspects of the application are as follows:**

- **39 MPHUs – 20 percent of total units.**
- **Low Homeowners Association Fees.**
- **Location near Town of Georgetown.**

**Ms. Bennett stated that the only negative aspect of the application is the integration of the units. MPHUs are supposed to be extremely integrated and not differential from the market rate units, however, the Applicant is proposing to cluster the MPHUs, which is a concern. In addition, the MPHUs were not noted on the site plan, as they should have been.**

**Ms. Bennett stated that a letter has been submitted by the Town Manager of the Town of Georgetown confirming that their property is in their Comprehensive Plan Update.**

**In regards to this application, Ms. Bennett stated that the Department is recommending approval of the application, subject to the following information:**

- **Letters from the water and sewer utility sources documenting their agreement to supply the project.**
- **Defined relationship between the developer and building entity that will be used for the construction of the project.**
- **Number of MPHUs to be built per construction phase.**
- **Designated MPHU lots on the site plan to ensure proper integration of the units.**
- **Defined number of bedrooms for MPHUs.**

- **Defined housing types of MPHUs.**

**Ms. Bennett stated that the Department’s recommendation of approval of this proposal is pending the approval of the Georgetown’s Comprehensive Plan Update.**

**M 207 08  
Approve  
MPHU  
Application  
for Seacoast  
Speedway**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to approve the MPHU application for the Seacoast Speedway development, as described by the Office of Community Development and Housing, subject to the conditions read into the record on this date and subject to the Applicant obtaining any necessary zoning approvals and construction permits.**

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

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

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

**MPHU  
Proposals  
(continued)**

**4- Moorings of Pepper’s Creek**

**Location: Dagsboro (approximately 100 feet from town limits) in Environmentally Sensitive Developing Area.**

**Developer: HKS Properties, LLC (Ocean Atlantic Associates)**

**Total Units – 195**

**Number of Market Rate Units – 156 (\$275,000 - \$350,000)**

**MPHUs: (20%) Tier A – 39**

**Zoning: Currently zoned AR-1 (RPC proposed)**

**Ms. Bennett stated that the positive aspects of the application are as follows:**

- **Detailed and organized proposal.**
- **18 percent of the total units are MPHUs.**
- **Units are very integrated into the development.**
- **A variety of housing types.**
- **Three separate phases with detailed information about the number of units in each phase.**
- **Homeowners Association fees are low.**
- **Amenities include a pool and tot lot.**
- **Location is close to town limits.**
- **Financial incentive to the home buyer (3 percent seller’s credit at closing).**
- **Mixed use of tiers.**

**Ms. Bennett stated that the project would be contingent on the receipt of letters from the water and sewer utility companies documenting their agreement to supply the project.**



**Mr. Cole questioned if there is a time component placed on the MPHU proposals.**

**(continued) Ms. Bennett responded that if they do not follow their construction timeline as submitted in the contract, the County can terminate the contract and release them from the program.**

**Mr. Cole stated that an analysis needs to be performed on absorption rates.**

**M 208 08**  
**Approve**  
**MPHU**  
**Application**  
**for**  
**Moorings**  
**of Pepper’s**  
**Creek**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to approve the MPHU application for the development known as the Moorings of Pepper’s Creek, as described by the Office of Community Development and Housing, subject to the conditions read into the record on this date and subject to the Applicant obtaining any necessary zoning approvals and construction permits.**

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

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

**The Executive Session was postponed until later in the meeting.**

**Public**  
**Hearing**  
**on**  
**Proposed**  
**Ordinance**  
**Relating to**  
**Storm**  
**Water**  
**Protection**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION, TO PROTECT CRITICAL AREAS FROM ACTIVITIES AND SUBSTANCES THAT MAY HARM WATER QUALITY OR SUBTRACT FROM OVERALL WATER QUANTITY”.**

**Public comments were heard.**

**Gary Stabley, a Lewes resident and President of the Lewes Board of Public Works, stated that Mr. Holt previously testified (in regards to the first draft of the ordinance) that the City of Lewes would like to have the 150 foot radius. Mr. Stabley noted that this is not included in the Proposed Ordinance. He stated that the City of Lewes is concerned about water quality especially since they are close to the ocean and they could possibly have salt water contamination in their wells. He also stated that it is incumbent on “us” to protect source water.**

**In response to questions raised by the Council, Mr. Baker stated that the Proposed Ordinance includes a 100 foot safe zone for larger wells and a 20 foot safe zone for smaller wells. (It was noted that DNREC recommends 150 feet for both.)**

**Kevin Burdette of McCrone, Inc. in Milton commented on the Proposed**

**Ordinance, as follows:**

**1- Amend Section 89-4 to read as follows:**

Public  
Hearing  
on  
Proposed  
Ordinance  
Relating to  
Storm  
Water  
Protection  
(continued)

**15. Safe Zone:** Shall be an area that shall be free of any structures, which would require a County Building Permit, excluding structures for the Well, Water Distribution or Treatment. This area shall be maintained in a grass or natural vegetative state. Vehicular traffic should be limited in this area to include only emergency or maintenance vehicles, however; Multi-Modal Paths, Biking Paths, Walking Trails and Golf Cart Paths may be allowed in designated portions of the Safe Zone.

**2- Section 89-6 – Paragraph C-2 and D-1 should be changed to read identically, as follows:**

A Safe Zone of no less than a one-hundred foot (100') radius from the well shall be maintained. This Safe Zone may include building and access associated with the well, water distribution and treatment facilities and their related maintenance. No unrelated facilities/structures shall be located within the Safe Zone without the County Council approval; however, Multi-Modal Paths, Biking Paths, Walking Trails or Golf Cart Paths shall be allowed in the outer 50 % of the Safe Zone.

**3- Section 89-6 – Paragraph F1 and F2**

Behind the words “tax parcel”, add the following “, or combination of multiple tax parcels for a project.”

**4- Section 89-6 – Change Paragraph F-3 to read as follows:**

For all new construction where the impervious surfaces exceed 60 percent of the tax parcel, or combination of multiple tax parcels for a project, and where the level of post-development recharge is less than pre-development recharge, all structures shall be required to discharge roof drains into underground recharge systems or permeable surfaces that allow the discharges to infiltrate into the ground. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.

**5- Section 89-7 – Paragraphs A-1 and A-2**

Behind the words “tax parcel”, add the following “, or combination of multiple tax parcels for a project.”

**6- Section 89-7 – Paragraph A3**

For all new construction where the impervious surfaces exceed 60 percent of the tax parcel, or combination of multiple tax parcels for a project, and

Public  
Hearing  
on  
Proposed  
Ordinance  
Relating to  
Storm  
Water  
Protection  
(continued)

where the level of post-development recharge is less than pre-development recharge, all structures shall be required to discharge roof drains into underground recharge systems or permeable surfaces that allow the discharges to infiltrate into the ground. Efforts to mitigate discharges to impervious surfaces shall count towards the formula used to compute post-development mitigation of any discharges.

Mr. Burdette stated that this is a complicated Ordinance because it not only addresses Excellent Recharge Areas but also Wellhead Protection Areas for wells that are coming on-line all the time and that there is constantly going to be changes to the maps. For this reason, he asked the Council to consider the following:

**7- Section 89-8 – Add Paragraph E**

Within 45 days of the Adoption of this Ordinance, the Sussex County Engineering Department (SCED) shall present to the County Council recommended Policy and Procedures for submission of the required documents for processing a proposed Development Project as it applies to this Ordinance for the Council's approval. Within 18 months of the Adoption of this Ordinance, the County Council will modify this Ordinance to include Submission Procedures as a portion of this Ordinance. Recognizing that there may be needs to address unanticipated situations at the time of Adoption, the SCED will continue to refine the anticipated Submission Procedures during the 18-month period, to allow for an orderly progression in the submission process.

Mr. Burdette stated that he is suggesting that the County's policies and procedures be developed in-house, as they will constantly be changing. If this is done, the Council would not have to amend the Ordinance every time they find something that needs to be changed. He noted that there are no set procedures within the Proposed Ordinance as to who has to be contacted to verify if a Wellhead Protection Area lies within the submission of a proposed subdivision nor does it designate when someone has to check if the Wellhead Protection Area is there. Mr. Burdette expressed concern about Preliminary and Site Plan approvals.

Mr. Burdette stated that he is suggesting the inclusion of Paragraph E to Section 89-8 to give the Council the flexibility to allow the Engineering Department to administer policies and procedures for up to an 18 month period; at the end of the 18 months, the Policies and Procedures could be adopted into the Ordinance.

Lastly, Mr. Burdette suggested the following change to allow the Engineering Department to establish rules.

**8- Section 89-13 – Effective Date (change this Section to read as follows):**

**This Ordinance shall become effective 60 days following its adoption.**

**Mr. Burdette clarified that all of these recommendations are his own and not those of the Source Water Protection Citizen and Technical Advisory Committee.**

**Public  
Hearing  
on  
Proposed  
Ordinance  
Relating to  
Storm  
Water  
Protection  
(continued)**

**Rich Collins, Positive Growth Alliance, stated that he believes this Ordinance would create more “red tape”. He stated that there is no definition for an “Unconfined Aquifer”; that many of the definitions in the Proposed Ordinance could change based on DNREC’s interpretation at any given time; that Page 6 (F-4) and Page 7 (B) are confusing; and that Page 8 (§ 89-8 A) seems to state that anything that anyone does might involve a County review. Mr. Collins spoke in opposition to micro-management. He stated that DNREC still has the responsibility for providing safe water. Mr. Collins advised that one of the major water utility companies has told him that they have never had a well go dry and they are absolutely not concerned about needing a 5-Year Time of Travel protection to keep their major wellheads from going dry. Mr. Collins asked the Council to consider the ramifications of the Proposed Ordinance.**

**R. C. Willin, a resident of Seaford and member of the Source Water Protection Citizen and Technical Advisory Committee, stated that he was speaking as a citizen and not as a member of the Committee.**

**Mr. Willin stated that no other County in the State has been required to have the 5-Year Time of Travel delineation in Wellhead Protection Areas (for unconfined aquifers). He stated that it will cause tremendous difficulty in administration; that it will affect a significant amount of real estate within the County; and that it will have a tremendous impact on the citizens of Sussex County. Mr. Willin recommended that the 5-Year Time of Travel should be limited to something less. He also stated that, if the Council believes the 5-Year Time of Travel is necessary to provide for proper water quality and quantity in Wellhead Protection Areas, then he would ask that the Council impose another ordinance that will obligate the purveyor (public or private) to assume the responsibility of the wellhead area as well as the cost.**

**Doug Rambo of DNREC asked that the Council maintain a 150 foot radius Wellhead Protection Area. He stated that a 100 foot Safe Zone is a start but it is not the entire Wellhead Protection Area, as recommended. Mr. Rambo advised that DNREC has no major concerns with the Proposed Ordinance, as written. In addition, he advised that the Department does not oppose the 60 day Time of Travel delineation in Section 89-6 D-2 as it is more protective than what they are offering and it enlarges the Wellhead Protection Area. Lastly, in Section 89-06 C, DNREC supports the 5 Year Time of Travel in the unconfined aquifer (which the Committee also supports).**

**Mr. Rambo clarified that there are specific areas in Kent and New Castle Counties with a 5 Year Time of Travel delineation since those wells pump**

greater than 50,000 gallons in the unconfined aquifers.

Mr. Rambo reported that DNREC plans to update the maps twice a year in June and December and that the counties and municipalities will be notified of the updates.

Public  
Hearing  
on  
Proposed  
Ordinance  
Relating to  
Storm  
Water  
Protection  
(continued)

David Baker reported that DNREC has agreed to enter into a Memorandum of Agreement with the County to insure that wells are sited in accordance to the County's Safe Zone requirements.

Wayne Baker, a resident of Lewes and member of the Source Water Protection Citizen and Technical Advisory Committee, stated that he was speaking as a citizen and not as a member of the Committee.

Mr. Baker stated that the major two issues are wellhead protection and water, which DNREC oversees, and that the Council's job is land use. He spoke in opposition to the 5-Year Time of Travel because people will buy property and be unaware that they will have to receive water service from a purveyor. Mr. Baker stated that the Committee did not support the 5-Year Time of Travel.

The Public Hearing was closed.

M 209 08  
Defer  
Action on  
Proposed  
Ordinance  
Relating  
to Source  
Water  
Protection

A Motion was made by Mr. Cole, seconded Mr. Rogers, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO ADOPT CHAPTER 89, SOURCE WATER PROTECTION, TO PROTECT CRITICAL AREAS FROM ACTIVITIES AND SUBSTANCES THAT MAY HARM WATER QUALITY OR SUBTRACT FROM OVERALL WATER QUANTITY".

Motion Adopted: 4 Yeas, 1 Absent.

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

Estuary  
Project  
Agreement/  
Bayard  
Expansion  
of the  
Miller  
Creek  
SSD

John Ashman, Director of Utility Planning, referenced the Bayard Expansion of the Miller Creek Sanitary Sewer District, which was approved by the Council on February 12th. He advised that the next step is the execution of an Escrow Agreement for the Estuary Project with Williams Creek Development, LLC, Sandler at Double Bridges, LLC, and Palisades Land, LLC. The Agreement establishes the reimbursement of funds to the County for the projects' proportionate share. To date, the County has received \$521,750.00 to be held in escrow and the project has been annexed, prompting a payment of \$689,700.00 in reimbursement costs.

Mr. Ashman reported that on May 15, 2007, the Council authorized the execution of Amendment No. 39, dated July 7, 2006, to its original Contract with Whitman, Requardt, and Associates, LLP, to provide the final design services for the Bayard Expansion Area Regional Pumping Station, force main, and associated regional sewers.

**M 210 08**            **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the**  
**Execute**            **Sussex County Council President is hereby authorized to execute an Escrow**  
**Escrow**            **Agreement with Williams Creek Development, LLC, Sandler at Double**  
**Agreement**        **Bridges LLC and Palisades Land LLC, as presented on March 18, 2008.**

**M 210 08**            **Motion Adopted:        4 Yeas, 1 Absent.**

**Execute**            **Vote by Roll Call:     Mr. Cole, Yea; Mr. Phillips, Yea;**  
**Escrow**            **Mr. Dukes, Absent; Mr. Rogers, Yea;**  
**Agreement**        **Mr. Jones, Yea**  
**(continued)**

**SCRWF**            **Douglas Stewart, Project Engineer, presented Change Order No. 6 to the**  
**Project**            **South Coastal Regional Wastewater Facilities Project, Treatment Upgrade**  
**C/O**                **No. 2.**

**M 211 08**            **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon**  
**Approve**            **the recommendation of the County’s Consulting Engineer, Stearns &**  
**Change**            **Wheler, LLC, and the Sussex County Engineering Department, that**  
**Order/**             **Change Order No. 6 for Sussex County Contract No. 02-12B, South Coastal**  
**SCRWF**            **Regional Wastewater Facilities Treatment Upgrade No. 2 with C. O. Falter**  
**Treatment**        **Construction Corporation be approved in the amount of \$45,209.50, which**  
**Upgrade**            **increases the Contract total amount, including previously approved Change**  
                          **Order Nos. 1 through 5, inclusive, from \$15,269,648.67 to \$15,314,858.67,**  
                          **contingent upon the approvals of the U.S. Department of Agriculture, Rural**  
                          **Development, and the Financial Assistant Branch, Delaware Department of**  
                          **Natural Resources and Environmental Control.**

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

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

**Old**                **Under Old Business, the Council considered Conditional Use No. 1719 filed**  
**Business**        **on behalf of Daniel D. Ruppert, Jr.**  
**(C/U**

**No. 1719)**        **The Planning and Zoning Commission held a Public Hearing on this**  
                          **application on January 24, 2008 at which time they deferred action. On**  
                          **February 14, 2008, the Commission recommended that the application be**  
                          **approved with conditions.**

**The County Council held a Public Hearing on this application on February**  
**12, 2008 at which time they deferred action.**

**M 212 08**            **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt**  
**Adopt**             **Ordinance No. 1956 entitled “AN ORDINANCE TO GRANT A**  
**Ordinance**        **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**  
**No. 1956**         **RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICE SPACE TO**  
**(C/U**                **BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND**

**No. 1719) BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.62 ACRES, MORE OR LESS” (Conditional Use No. 1719) filed on behalf of Daniel D. Ruppert, Jr., with the following conditions:**

**M 212 08  
Adopt  
Ordinance  
No. 1956  
(C/U  
No. 1719)  
(continued)**

- 1. The use of the property shall be limited to a small home occupation-style bookkeeping business and a contractor’s office.**
- 2. There shall be no manufacturing allowed on the site.**
- 3. There shall be no materials associated with the Conditional Use stored outside on the premises.**
- 4. In addition to the Applicant’s personal vehicles, only one vehicle owned by the Applicant and associated with the business use shall be permitted on the property.**
- 5. As stated by the Applicant, no signage shall be permitted.**
- 6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
- 7. The Final Site Plan shall show specifically the section of the dwelling to be utilized for the bookkeeping and contracting offices. The Applicant described this to be approximately 1,000 square feet in size during the Public Hearing.**
- 8. The Final Site Plan shall show all parking and driveway areas as well as building entrances dedicated to the business use.**

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

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

**M 213 08  
Defer  
Old  
Business**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer on the remaining three Proposed Ordinances under “Old Business” until after the Public Hearings scheduled for 1:30 p.m.**

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

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

**Requests**

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

**M 214 08  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$500.00 from Mr. Jones’ Councilmanic Grant Account to the Georgetown Fire Department for their Fundraiser Golf Tournament.**

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

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

**Mr. Jones, Yea**

**M 215 08**      **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give**  
**Y.A. Grant**      **\$200.00 from Mr. Jones' Youth Activity Grant Account to the Boy Scout**  
                         **Troop 95 for insurance costs.**

**M 215 08**      **Motion Adopted:      4 Yeas, 1 Absent.**

**Youth**  
**Activity**  
**Grant**  
**(continued)**

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

**M 216 08**      **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give**  
**Council-**      **\$100.00 (\$50.00 each from Mr. Jones' and Mr. Phillips' Councilmanic**  
**manic**      **Grant Account) to Sussex Central High School for athletic programs.**  
**Grant**

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

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

**M 217 08**      **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$500.00**  
**Youth**      **(\$100.00 from each Youth Activity Grant Account) to the Del-Mar-Va**  
**Activity**      **Council, Inc., BSA for jamboree expenses.**  
**Grant**

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

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

**M 218 08**      **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$1,500.00**  
**Community**      **from Mr. Cole's Community Investment Grant Account to Rehoboth Beach**  
**Investment**      **Main Street, Inc. for the July 4th fireworks show.**  
**Grant**

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

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

**M 219 08**      **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give**  
**Community**      **\$5,700.00 to the Town of Dewey Beach from Mr. Cole's Community**  
**Investment**      **Investment Grant Account for the Read Avenue Project.**  
**Grant**

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

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



**Mr. Jones, Yea**

- Introduction of Proposed Ordinance**  
**Introduction of Proposed Ordinance (continued)**  
**Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTINUING CARE RETIREMENT COMMUNITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.85 ACRES, MORE OR LESS, OF A 54.87 ACRE TRACT” (Conditional Use No. 1790) filed on behalf of Martha’s Light, LLC. The Proposed Ordinance will be advertised for Public Hearing.**
- Additional Business**  
**Under Additional Business, Daniel Kramer made comments regarding DNREC.**
- M 220 08**  
**Go into Executive Session**  
**At 12:34 p.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing land acquisition.**  
**Motion Adopted: 4 Yeas, 1 Absent.**  
**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Absent; Mr. Rogers, Yea; Mr. Jones, Yea**
- Executive Session**  
**At 12:35 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 land acquisition.**
- M 221 08**  
**Come out of Executive Session and Reconvene Regular Session**  
**At 1:09 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.**  
**Motion Adopted: 4 Yeas, 1 Absent.**  
**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Absent; Mr. Rogers, Yea; Mr. Jones, Yea**
- M 222 08**  
**Recess**  
**At 1:10 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**
- Reconvene**  
**Mr. Jones called the Council back into session at 1:37 p.m.**
- Public Hearing (C/Z No. 1655)**  
**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 86.83 ACRES, MORE**

**OR LESS” (Change of Zone No. 1655) filed on behalf of Chad A. and Tami, and Matthew Mitchell.**

**Public  
Hearing  
(C/Z  
No. 1655)  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2008 at which time the Commission recommended that the application be approved.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated February 28, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.**

**The Council found that Chad and Tami Mitchell were present on behalf of their application. They stated that they want to rezone the property so that they can apply for inclusion into an Agricultural Preservation District.**

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

**M 223 08  
Adopt  
Ordinance  
No. 1957  
(C/Z  
No. 1655)**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 1957 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 86.83 ACRES, MORE OR LESS” (Change of Zone No. 1655) filed on behalf of Chad A. and Tami, and Matthew Mitchell.**

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

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

**Mr. Rogers rejoined the meeting.**

**Public  
Hearing  
(C/U  
No. 1762)**

**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 PLUMBING BUSINESS AND RELATED STORAGE AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.623 ACRES, MORE OR LESS” (Conditional Use No. 1726) filed on behalf of Leonard A. Stutzman.**

**The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2008 at which time the Commission**

**recommended that the application be approved with conditions.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated February 28, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Public  
Hearing  
(C/U  
No. 1762)  
(continued)**

**Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.**

**The Council found that Leonard and Beatrice Stutzman were present on behalf of the application. They stated that they submitted the application because someone filed a complaint, which they believe is due to the hand carved sign in their front yard advertising a plumbing business; that no business is transacted on the site; that the storage building already exists; that the building is used for storage of lawn and garden equipment, miscellaneous woodworking, excess plumbing supplies and a place to park a pickup truck and trailer; that there is no outside storage; and that they are in agreement with the conditions recommended by the Commission.**

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

**M 224 08  
Adopt  
Ordinance  
No. 1958  
(C/U  
No. 1726)**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 1958 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PLUMBING BUSINESS AND RELATED STORAGE AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.623 ACRES, MORE OR LESS" (Conditional Use No. 1726) filed on behalf of Leonard A. Stutzman, with the following conditions:**

- 1. Vehicles and trailers associated with the use shall only be stored in the designated parking area.**
- 2. The existing sign shall remain on the property.**
- 3. No outside storage shall be allowed on the premises.**
- 4. The tax ditch and its easement areas shall be shown on the Final Site Plan.**
- 5. There shall be no more than two employees.**
- 6. The hours of operation shall be from 7:30 a.m. to 4:30 p.m.**
- 7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

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

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

**Defer**

**In regards to the next scheduled Public Hearing, Conditional Use No. 1728,**

**Public  
Hearing**

filed on behalf of MTC Properties, it was noted that no one was present on behalf of the application. For this reason, it was the consensus of the Council to defer the Public Hearing until the end of the meeting.

**Public  
Hearing  
(C/U  
No. 1729)**

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 MULTI-FAMILY DWELLING STRUCTURES (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43,558 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1729) filed on behalf of Page Melson.

The Planning and Zoning Commission held a Public Hearing on this application on March 5, 2008, at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 5, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

The Applicant submitted an Exhibit Booklet.

Page Melson was present with Tim Willard, Attorney. Mr. Willard stated that this is an application for a 2-bedroom garage apartment with cooking facilities on a property located in Harbeson; that Mr. Melson’s dwelling is located on this site at the front of the property; that the garage structure was torn down, rebuilt and enlarged; that the garage is 30 x 40 and located at the back of the property; that he has renovated the property; that he wants to use part of the garage as an apartment; that the building is designed to look like a garage; that the bottom of the building is for cars; that the area has a mixture of uses and zonings; that the Comprehensive Plan does not recognize Harbeson as a developing area; however, the Comprehensive Plan Update that is currently being worked on does recognize Harbeson as a developing area; that the use will not adversely affect the area since there are mixed uses in the area including a store, church, commercial properties, and heavy industrial; that this would provide affordable housing; that his intention is to have one family in the apartment; and that the apartment would be 700 sq. ft.

Mr. Willard submitted a petition with approximately 12 signatures of area residents in support of this application.

It was noted into the record that, since the zoning is MR Medium Density

**Residential and a garage apartment is proposed, and since the building was not reconstructed on the original footprint, the application will have to go to the Board of Adjustment for a side yard variance. In addition, the application will be subject to DNREC's approval.**

**Public  
Hearing  
(C/U  
No. 1729)  
(continued)**

**Public comments were heard.**

**Page Melson, Jr. spoke in support of the application. He stated that he has been living in the subject garage apartment; that there are other apartments in the area; and that his father, the Applicant, has greatly improved the appearance of the property.**

**Harold David Johnson, Jr., a resident of Harbeson Road, spoke in support of the application. He stated that Mr. Melson has improved the overall appearance of the neighborhood.**

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

**M 225 08  
Defer  
Action  
(C/U  
No. 1729)**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to defer action on Conditional Use No. 1729 filed on behalf of Page Melson.**

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

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

**Public  
Hearing  
(C/U  
No. 1730)**

**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 MULTI-FAMILY DWELLING STRUCTURES (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 20,000 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1730) filed on behalf of Page Melson.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 5, 2008, at which time the Commission deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated March 5, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.**

**The Applicant submitted an Exhibit Booklet.**

**Public  
Hearing  
(C/U  
No. 1730)  
(continued)**

**Page Melson was present with Tim Willard, Attorney. Mr. Willard stated that this is an application for a 30 x 30 two bedroom garage apartment on a property located in Harbeson; that the proposal does not adversely affect the area; that it provides an alternative housing alternative; that the building previously had plumbing and was hooked up to a septic system; that all necessary DNREC approvals will be obtained; and that this application is similar to Conditional Use No. 1729 and the same arguments apply.**

**It was noted that a variance will be needed from the Board of Adjustment due to the setbacks of the garage.**

**Public comments were heard.**

**Page Melson, Jr. spoke in support of the application. He stated that there are other apartments in the area and that his father, the Applicant, has greatly improved the appearance of the property.**

**Harold David Johnson, Jr., a resident of Harbeson Road, spoke in support of the application. He stated that Mr. Melson has improved the overall appearance of the neighborhood.**

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

**M 226 08  
Defer  
Action  
(C/U  
No. 1730)**

**A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action on Conditional Use No. 1730 filed on behalf of Page Melson.**

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

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

**Public  
Hearing  
(C/U  
No. 1728)**

**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 AN OFFICE STORAGE AND STEEL TRUSS MANUFACTURING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 24.83 ACRES, MORE OR LESS” (Conditional Use No. 1728) filed on behalf of MTC Properties.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 5, 2008, at which time the Commission deferred action.**

(See the minutes of the meeting of the Planning and Zoning Commission dated March 5, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

**Public  
Hearing  
(C/U  
No. 1728)  
(continued)**

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

The Council found that Matthew Metz of Charles D. Murphy Associates was present on behalf of the application. He stated that the application is for the expansion of the existing All Span steel and truss manufacturing facility to allow for current and future growth; that there will be two phases and that the first phase will include the offices and the smaller warehouse, related parking, fire lanes, and stormwater management facilities and the second phase will include additional parking and a warehouse with related stormwater management facilities expansions; that the northern portion of the site will remain as farmland; that the closest structure to wetlands will be 150 feet away; that there is an existing structure in the southwest corner of the site which will be used temporarily as offices during the initial stages of construction and upon completion of the office building, it will be used for office storage; that the existing entrance will be closed per DelDOT; and that a cross access easement along the entire frontage for future access to neighboring parcels has been required by DelDOT.

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

**M 227 08  
Defer  
Action  
(C/U  
No. 1728)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Conditional Use No. 1728 filed on behalf of MTC Properties.

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

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

**Old  
Business/  
Proposed  
Ordinance  
Relating to  
Garage/  
Studio  
Apartments**

Under Old Business, the Council considered the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE A GARAGE/STUDIO APARTMENT AND TO PERMIT SUCH APARTMENTS WITH PARKING AS SPECIAL EXCEPTIONS IN AR-1, AR-2 AND MR DISTRICTS".

The Planning and Zoning Commission held a Public Hearing on this Ordinance Amendment on July 28, 2005 at which time they recommended that the Proposed Ordinance be denied due to concerns expressed about parking, enforcement, the number of people that could live in an 800 square foot apartment, and the lack of need. There was a consensus of the Commission that the conditional use process for multi-family use is preferred.

The County Council held a Public Hearing on this application on August 16, 2005 at which time they deferred action and left the record open for sixty days for written comments from agencies and the County's legal staff.

Old  
Business  
(continued)

Mr. Cole stated that the Proposed Ordinance will provide affordable housing opportunities; will provide homeowners with a potential to derive additional income from their residences; and that the homeowners may use income generated from the rental of garage apartments to pay for upgrades to their residences.

Mr. Cole stated that interested parties will still have to go through a Public Hearing process before the Board of Adjustment for the approval of this Special Use Exception.

M 228 08  
Adopt  
Ordinance  
No. 1959  
(Garage/  
Studio  
Apartments)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1959 entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE A GARAGE/STUDIO APARTMENT AND TO PERMIT SUCH APARTMENTS WITH PARKING AS SPECIAL EXCEPTIONS IN AR-1, AR-2 AND MR DISTRICTS".

Motion Adopted: 4 Yeas, 1 Absent.

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

Old  
Business/  
Proposed  
Ordinance  
Relating  
to Lot  
Main-  
tenance

Under Old Business, the Council considered the Proposed Ordinance entitled "AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV, SECTION 115-191 RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM".

The Planning and Zoning Commission held a Public Hearing on this Ordinance Amendment on November 8, 2007 at which time they deferred action. On January 24, 2008, the Commission recommended that the Proposed Ordinance be denied.

The County Council held a Public Hearing on this application on November 27, 2007 at which time they deferred action.

Mr. Griffin explained that the County's current Ordinance found in Chapter 80 of the Code is proposed to be repealed because, when it was adopted many years ago, it placed the responsibility for policing matters



- Old Business/ Proposed Ordinance Relating to Lot Maintenance (continued)**
- related to lot maintenance with the County’s Transfer Station Division and the County no longer has a Transfer Station Division. The Proposed Ordinance would place the jurisdiction of this under the Zoning Ordinance and enforcement would be by the Planning and Zoning Department. Mr. Griffin noted that a current provision in the Zoning Ordinance states that no more than two automotive vehicles or trailers of any type without current license plates shall be parked or stored on any residentially zoned property (other than in a completely enclosed building). The draft ordinance expands on the vehicles and trailers component to include boats and watercraft.
- The Council discussed the Proposed Ordinance and considered separating the comprehensive ordinance into two separate ordinances with lot maintenance and prohibited growths to be addressed in an ordinance separate from issues regarding parking, storing and maintenance of vehicles, and boats and trailers (as recommended by the Planning and Zoning Commission).
- M 229 08**  
**Defer Action (Failed)**
- A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on the Proposed Ordinance relating to Lot Maintenance.
- Motion Failed: 2 Yeas, 2 Nays, 1 Absent.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Nay; Mr. Dukes, Absent; Mr. Rogers, Yea; Mr. Jones, Nay**
- Old Business/ Proposed Ordinance Relating to Lot Maintenance (continued)**
- The Council continued its discussion on the Proposed Ordinance.
- Alan Holloway of the County Constables Office was in attendance to respond to questions raised by the Council.
- Mr. Jones expressed concern about (1) not allowing unlicensed vehicles on vacant lots and (2) the amount of the fines.
- Mr. Cole stated that the Council has heard from the public that there is a need for this ordinance.
- M 230 08**  
**Defer Action on Proposed Ordinance Relating to Lot Maintenance**
- A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV, SECTION 115-191 RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM”.

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

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

**Request  
from  
County  
Attorney  
for Infor-  
mation  
from  
Council**

**Mr. Griffin asked the Council members for a list of changes that they would like to have made to the Proposed Ordinance regarding Lot Maintenance. He stated that, his understanding after the discussion on this date, is to make the following amendments: no vehicles permitted on a vacant lot unless it is more than 1 acre in size; a definition of antique or vintage cars to be addressed, as defined by State law; that the Ordinance would apply only to Town Centers and developing areas; to make clear that the Ordinance refers to noxious weeds; and to reference grasses that are excluded, e.g. Joe-Pye Weed. The Council members were asked to submit any additional comments to Mr. Griffin by April 1st. Mr. Griffin noted that it may be possible to amend the Proposed Ordinance without having to hold a new Public Hearing if Council's suggested changes are less restrictive than what is proposed.**

**Old  
Business/  
Proposed  
Ordinance  
Relating  
to Forested  
Buffers**

**Under Old Business, the Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III, TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS".**

**The Planning and Zoning Commission held a Public Hearing on this Ordinance Amendment on November 29, 2007 at which time they recommended that the Proposed Ordinance be approved.**

**The County Council held a Public Hearing on this application on December 4, 2007 at which time they deferred action and left the record open for an undetermined period of time.**

**Shane Abbott, Assistant Director of Planning and Zoning, reported that the only additional comments that were received regarding the Proposed Ordinance were from (1) Preston Dyer, who submitted a written copy of the comments he made during the Public Hearing on December 4th and (2) Kevin McBride of Morris and Ritchie Associates, who submitted a written copy of the comments he made during the Public Hearing on December 4th. These comments were previously distributed to the Council. In addition, the Council was previously provided with a copy of the ANSI planting standards which were referenced during the Public Hearing on December 4th.**

**David Baker reported that a letter was received from John Austin of Rehoboth Beach. Mr. Baker summarized the letter and the letter was made a part of the record.**

**Old  
Business/  
Proposed  
Ordinance  
Relating  
to Forested  
Buffers  
(continued)**

**The Council discussed the Proposed Ordinance and considered forested and landscaped buffer along roadways.**

**Mr. Phillips reiterated his support of roadway buffering for the purpose of shielding the public's view; however, he stated that he believes there should be some flexibility which would allow developers to do this by other mechanisms than only a forested buffer.**

**The Council asked Mr. Griffin to come up with some language so that the buffer area adjacent to the roadway frontage could be something other than a 30 foot forested or landscaped buffer pending approval of the Planning and Zoning Commission during the site plan process.**

**M 231 08  
Recess**

**At 3:35 p.m., a Motion was made by Mr. Cole, seconded by Mr. Rogers, to recess for ten minutes. Motion Adopted by Voice Vote.**

**Reconvene**

**Mr. Jones called the Council back into session at 3:46 p.m.**

**Old  
Business/  
Proposed  
Ordinance  
Relating  
to Forested  
Buffers  
(continued)**

**Mr. Griffin stated that, prior to the recess, the Council asked him to come up with language that would give the Planning and Zoning Commission some leeway to approve something for the 30 foot buffer area adjacent to the roadway frontage that would be something other than forested or landscaped buffer.**

**Mr. Griffin suggested that the following be inserted at the end of Section 99-5, as follows:**

**K. "Notwithstanding any other provisions of this Section, the Planning and Zoning Commission shall be authorized to approve a plan for the roadway frontage of a development, which may include features such as berms, fences, walls, golf courses, landscaping, trees, paths, open areas or any combination thereof, which is designed and certified to by a Licensed Delaware Landscape Architect and reviewed by the State Forester to be placed within the 30 foot buffer area for the purpose of making the development less visual from the roadway."**

**Mr. Griffin stated that he would submit this proposed amendment, in writing, to the Council members for consideration.**

**Mr. Cole referred to Page 4, Section 99-16-D, which states that the 30 foot wide forested and/or landscaped buffer strip required by Section 99-5 shall be provided along the outer perimeter of any boundary of a residential major subdivision or development of four or more lots that is adjacent to agricultural farmland. Mr. Cole requested that the following words be**

**stricken: “that is adjacent to agricultural farmland”. There was no consensus for this suggestion.**

**Mr. Phillips stated that he would like for Councilman Dukes to be involved in the discussion and decision on this Proposed Ordinance.**

**M 232 08  
Defer  
Action  
on the  
Proposed  
Ordinance  
Relating to  
Forested  
Buffers**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III, TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS”.**

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

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

**M 233 08  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 3:57 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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

**Workshop**

**The Sussex County Council and the Planning and Zoning Commission held a Workshop at 6:00 p.m. on March 18, 2008 to discuss a summary of the Draft Land Use Plan Update. The meeting was held at the County’s West Complex Building on Route 113 in Georgetown. The meeting was open to the public. No action was taken.**