

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 5, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 5, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Gina Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Joan R. Deaver, Councilwoman, was absent.

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 372 13
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting “Executive Session – Land Acquisition pursuant to 29 Del. C. §10004(b)” and “Possible Action on Executive Session Items”; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

Minutes

The minutes of July 22, 2014 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**KEITH ADAMS, CHIEF OPERATING OFFICER, DELMARVA
CLERGY UNITED IN SOCIAL ACTION.**

**RE: Letter in appreciation for the opportunity to give a presentation at the
July 22nd Council meeting.**

**First
State
Community
Action
Agency**

**The Council presented a check in the amount of \$25,000 to Bernice
Edwards, Executive Director of the First State Community Action Agency.
The check represents the final \$25,000 payment (fourth year), totaling
\$100,000.00. Ms. Edwards thanked the Council for its continued support.**

**Adminis-
trator’s
Report**

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

1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County Subcommittee Meeting

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County Conference Planning Subcommittee will meet on Tuesday, August 12, 2014, at 10:00 a.m. at the Sussex County Administrative Offices West Complex (2nd floor conference room), 22215 North DuPont Boulevard, in Georgetown. During the meeting, the Committee will continue discussion of its upcoming conference.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Americana Bayside-Sea Grass Bend received Substantial Completion effective July 25, 2014, and Americana Bayside-Phase 16, received Substantial Completion effective August 1, 2014.

3. 2014 Sussex County Tax Bills

Please be advised, the 2014 Sussex County tax bills are now available for review and payment online at www.sussexcountyde.gov. Property owners will receive their traditional hard copies in the mail next week. This year, there were 171,000 bills generated with 42,700 sent electronically to mortgage lenders. The bills collect an estimated \$117 million in tax revenue. Eighty-eight percent of the tax revenue goes to the schools. The bills also collect ditch taxes for the Conservation District, annual assessment sewer charges, and other special assessments. All payments are due September 30th.

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

**Delaware
Transit
Reim-
bursement
Program
Request**

Mrs. Jennings reported that DART, a division of DelDOT, has allocated \$796,862 for funding of transportation expenses for various senior centers in Sussex County. This amount has remained at the same level for a number of years. The County’s responsibility is to approve a recommended funding amount for Fiscal Year 2015 as per State law. This is an allocation of State grant funds to various senior centers for transportation purposes. The recommended funding for each agency is the same as in previous years:

Nanticoke Senior Center	\$ 44,959.30
Indian River Senior Center	2,100.00
Laurel Senior Center	99,082.94
Lewes Senior Center	27,120.41
Cape Henlopen Senior Center	43,065.65
CHEER, Inc.	<u>580,533.70</u>

(continued)

TOTAL

\$ 796,862.00

**M 373 14
Approve
Funding/
Senior
Agencies**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council approves the allocation of State funds to various senior agencies within Sussex County, as presented.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Wetlands
Advisory
Committee
Update**

Hal Godwin, Deputy County Administrator, presented an update on the progress of the Wetlands Advisory Committee (WAC). Mr. Godwin distributed a copy of the recommendations from DNREC and the Center for the Inland Bays and he asked the Council to review the information for discussion at a later date. Additionally, Mr. Godwin reported that he expects to receive any day a copy of the draft report that will be sent to the General Assembly and the Governor at the end of the year. Mr. Godwin noted that he will present this report to the Council once it has been received and Council can consider whether or not to support the recommendation. Mr. Godwin noted that the Committee meets again on Wednesday, August 13, 2014.

Marty Ross, a member of the Committee representing the Delaware Farm Bureau, was in attendance. Mr. Ross discussed the Delaware Farm Bureau's recommendation to modify the way the real estate tax (State's portion) is allocated and provided and he asked for the Council's support of that recommendation. He stated that the primary purpose for the real estate transfer tax was to have dedicated funding for farmland preservation and open space and in the current law, it says that \$10 million a year shall be provided to the Ag Land Preservation Foundation and \$10 million a year to open space. However, through the years, General Assemblies have used this fund to balance the budget and therefore; the law has been circumvented. The Farm Bureau would like to make it more difficult for the General Assembly to use this money for other uses not intended and to allow the Department of Agriculture to develop rules and procedures to directly collect that money instead of it going to the Division of Revenue while still staying within the parameters of the law. Mr. Ross stated that forest land preservation does not have a dedicated funding source; the recommendation would allocate \$5 million to the Forest Land Preservation Foundation but it would not increase the real estate transfer tax. Mr. Ross noted that it is important to understand that, according to DNREC, about 85% of the forest land preserved are wetlands. Mr. Ross stated that the second component to the Farm Bureau recommendation is to have joint meetings between the Open Space Council, Farm and Forest Land Preservation foundations and pertinent federal agencies to encourage open space and to consider the flexibility allowed under the Open Space Law.

**Wetlands
Advisory
Committee
Update
(continued)**

He noted that the Open Space Law does not require public access, it requires public purpose. Mr. Ross asked that the Council give Mr. Godwin the direction to support the recommendations of the Wetlands Advisory Committee.

Jim McCulley, a member of the Committee representing the Homeowners Association, stated that DNREC is recommending a fee in-lieu program and that these programs never work and wetland mitigation banking is preferred over fee in-lieu. He also stated that DNREC wants to develop a delineator training program and a delineation registry; that a delineation registry is already available at the County; and that there is no need to spend extra money on these initiatives. Mr. McCulley also stated that the Association supports the Realty Transfer Tax going to its intended purpose and he asked the Council to vote against the recommendations of DNREC.

It was the consensus of the Council that Mr. Godwin support Mr. Ross' recommendation and that Mr. Godwin should, on behalf of the Council and as previously directed, continue to vote against the recommendations of DNREC (taking over more control of the wetlands).

**Downtown
Develop-
ment
District
Program
Review**

Hal Godwin, Deputy County Administrator, presented information on the new Downtown Development Districts Act. Included in the packet was Senate Bill No. 191 and a draft version of the Application for Designation as a District. Senate Bill No. 191 was signed into law by the Governor in June 2014.

The Act establishes Downtown Development Districts (DDD), a small number of areas in our cities, towns and unincorporated areas that will qualify for development incentives and other state benefits. Municipalities must apply for District designation. In the case of unincorporated areas, counties must apply. Applications will be evaluated by the Cabinet Committee on State Planning Issues, which will make recommendations to the Governor. Following the initial round of applications, the Governor must designate at least 1 but no more than 3 Districts. Designation of the first 3 Districts must include 1 District in each county. Under the Act, no more than 15 Districts may be designated at any one time.

Mr. Godwin explained the details of the program which is available to all three counties and the municipalities in the State. He stated that this legislation has put aside \$5 million to be used for incentives. Under the Act, investors (both non-profit and for-profit) who make qualified real estate improvements in a District would be entitled to receive Downtown Development District Grants of up to 20 percent of their "hard costs" such as exterior, interior, and structural improvements.

As part of the application process, municipalities or counties must offer local incentives. The factors to be considered when applications are evaluated include, among others, (1) the municipality's or unincorporated area's need for District designation; (2) the quality of the District Plan; and

Downtown Development District Program Review (continued)	<p>(3) the quality of the local incentives offered. The Office of State Planning Coordination will prepare applications, establish criteria to determine what areas qualify as DDD's, and provide assistance to municipalities and counties during the application process.</p> <p>Mr. Godwin noted that the funding for this program will have to be approved by the General Assembly annually.</p>
Sussex Shores Suburban Community Improvements Proposal	<p>Joe Wright, Assistant County Engineer, presented for Council's consideration a Base Agreement (for engineering services) and Attachment A with George Miles & Buhr (GMB). Attachment A provides for design services for improvements to Sussex Shores through the County's Suburban Community Improvements Program (Chapter 96). Construction services will be provided through a separate amendment once the construction timeframe is better defined. The scope of services includes participation in a Value Engineering review. A separate independent firm (from a list of miscellaneous engineering firms) will be selected to provide the Value Engineering review of GMB's work; the Value Engineering review would be a separate cost. The work includes: placing underground the existing Delmarva Power, Verizon, and Mediacom aerial lines and also, minor drainage improvements and the repavement of all community roads. GMB services include surveying, coordination with all utility companies, design, and preparation of bidding documents and related permits. The GMB contract cost is in an amount not to exceed \$165,636.00; the cost will be the responsibility of the residents of Sussex Shores. The County Council approved the Resolution to proceed with this project at the July 29th Council meeting.</p>
M 374 14 Approve Base Agreement/ Engineering Services/ Sussex Shores Suburban Community Improvements	<p>A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the Base Agreement for Engineering Services with George, Miles & Buhr (GMB), along with Attachment A, for Design Services for Project 14-13, Sussex Shores Suburban Community Improvements, effective August 5, 2014.</p> <p>Motion Adopted: 3 Yeas, 1 Absent, 1 Abstention.</p> <p>Vote by Roll Call: Mrs. Deaver, Absent; Mr. Cole, Abstained; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
Angola North Design Contract	<p>John Ashman, Director of Utility Planning, presented for the Council's consideration Contract Amendment No. 4 to the North Coastal Planning Area with Whitman, Requardt & Associates, LLP (WR&A). This Amendment shall provide design services for the expansion of the Angola Neck Sanitary Sewer District, known as Angola North. WR&A is to provide project management, design, surveys, archaeological, preliminary engineering report, environmental assessment and active participation in the Value Engineering process by a firm included in the Miscellaneous</p>

**Angola
North
Design
Contract
(continued)**

Consulting Engineering Selection. Work will include the production of contract documents (plans and specifications) for one or more sub-regional pump stations, and grinder pump stations within Love Creek Woods and possibly in Fox Hollow, approximately 16,800 linear feet of gravity sewer and 12,000 linear feet of force main. The area served will be primarily along Route 24 (John J. Williams Highway) from Love Creek Bridge west to the area of Peddlers Village; the existing communities of Fox Hollow and Love Creek Woods, as well as Daniels and Woods Edge manufactured home parks along Route 24 are slated to be served. The cost is not to exceed \$377,670.00. Estimated construction costs for the project is \$5,664,574.00. Construction is scheduled for Summer 2015 with completion in Summer 2016.

**M 375 14
Authorize
Contract
Amendment
for Angola
North
Expansion**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, based upon the recommendation of the Engineering Department, that the Sussex County Council President is hereby authorized to execute Amendment No. 4, dated July 31, 2014, to its contract with Whitman, Requardt & Associates, LLP, to provide design services for the Angola North Expansion at a cost not to exceed \$377,670.00, as presented on August 5, 2014.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Grant
Requests**

Mrs. Jennings presented grant requests for the Council's consideration.

**M 376 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$100.00 from Mr. Cole's Councilmanic Grant Account to the Indian River Volunteer Fire Company for the Ladies Auxiliary's fundraiser.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Grant
Request
Deferred**

The grant request from the Lewes Fire Department was deferred until the August 12th Council meeting.

**M 377 14
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$1,000.00 (\$500.00 each from Mr. Wilson's and Mrs. Deaver's Councilmanic Grant Accounts) to Delmarva Clergy United in Social Action Foundation to support *The Griffin's Place*.

Motion Adopted: 4 Yeas, 1 Absent.

Introduction of Proposed Ordinances (continued) **REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS” (Change of Zone No. 1759) filed on behalf of Osprey Point D, LLC (Tax I.D. 334-18.00-83.00) (911 Address: 20836 Old Landing Road, Rehoboth Beach).**

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 114.4821 ACRES, MORE OR LESS” (Change of Zone No. 1760) filed on behalf of TD Rehoboth, LLC (Tax I.D. 235-23.00-1.00) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

Additional Business **Under Additional Business, Paul Reiger commented on his complaints regarding violations that take place on the parcel adjacent to his property and he specifically referenced portable storage containers.**

Mr. Reiger was advised that County staff would look into his comments/concerns and get back with him.

Under Additional Business, Dan Kramer commented on grants.

M 379 14 Recess **A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to recess until 1:30 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 380 14 Reconvene **At 1:32 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, to reconvene.**

Motion Adopted: 3 Yeas, 2 Absent.

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

**Public Hearing/
CU 1988** **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 MEDICAL OFFICE CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.3522 ACRES, MORE OR LESS” (Conditional**

**Public
Hearing/
CU 1988
(continued)**

Use No. 1988) filed on behalf of Zhenguo Zhang (Tax Map I.D. 235-16.00-64.00) (911 Address: 14614 Coastal Highway, Milton).

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2014 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 on June 12, 2014.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

The Council found that Zhenguo Zhang was present on behalf of his application and he stated that he is a licensed acupuncture practitioner; that he is applying to convert a dwelling into a medical office facility; that he may offer the facility for other medical office space; that he plans no expansions; and that he agrees to the conditions recommended by the Planning and Zoning Commission.

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

**M 381 14
Adopt
Ordinance
No. 2360
(C/U 1988)**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2360 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL OFFICE CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.3522 ACRES, MORE OR LESS” (Conditional Use No. 1988) filed on behalf of Zhenguo Zhang, with the following conditions:

- A. The use shall be limited to medical office uses, which may include acupuncture, massage therapy, and chiropractic services, as suggested by the Applicant.**
- B. The use shall occur within the existing structures on the property. Any expansion of those structures shall require site plan approval by the Planning and Zoning Commission, and possibly a new Conditional Use application depending on the extent of any expansion.**
- C. One un-lighted sign, not to exceed 32 square feet per side, shall be permitted.**
- D. Hours of operation shall be between 8:00 a.m. to 8:00 p.m. Monday through Saturday.**
- E. The use shall comply with all Sussex County parking requirements. The required parking shall be shown on the Final Site Plan and shall be clearly marked on the site itself.**
- F. The Applicant shall comply with all DelDOT requirements.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**M 381 14
(continued)**

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
CZ 1751**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 10(C) IMPOSED ON ORDINANCE NO. 2180 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE FACILITY” (Change of Zone No. 1751) filed on behalf of Peninsula at Long Neck, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2014 at which time action was deferred. On June 26 and July 17, 2014, the Commission deferred action again. On July 24, 2014, the Commission recommended that the application be approved with a condition and as stipulated.

(See the minutes of the meeting of the Planning and Zoning Commission on June 12, June 26, July 17, and July 24, 2014.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

The Council found that James Fuqua, Esquire, of Fuqua, Yori & Willard, P.A., was present with Daniel Bartak of Wells Fargo. They stated that the only outstanding issue/condition at The Peninsula is the design and construction of a private clubhouse facility; that they are requesting the amendment of Condition No. 10(c) of the RPC approval to provide the construction of the private clubhouse to commence by October 1, 2015 and it would be required to be completed and open for use within one year of that date; that Wells Fargo just acquired ownership in May and this would give them time to market the property, sell it to a new developer, and the new developer would design and actually build the clubhouse; that the Commission’s recommendation that Wells Fargo, through its subsidiary, submit a clubhouse concept design plan with estimated square footage costs and a revised Letter of Credit within 30 days of the concept design is inconsistent with the parties’ best interest and what is planned for the development; that this recommendation would be a waste of time and money and the Applicant thinks their request for a simple time extension is a more efficient and simple way to resolve the issue; that the recommendation of the Commission has the County becoming involved in the process of the private sector, requiring the construction of a certain building of a certain size, and that was never a part of the original approval and never a condition of approval; that the condition was that a clubhouse

Public
Hearing/
CZ 1751
(continued)

be built; that this is something the developer can make a commitment to but Wells Fargo, a bank, as the seller of the project, is not in a position to do that; that they request the Council's consideration for the condition as proposed by the Applicant; that the project is a 1,404 mixed unit residential use development with extensive amenities approved in 2002; that the majority of the amenities have been completed, except for the clubhouse; that in 2010, a time extension was granted for the construction of the clubhouse; that the County Council, in approving the time extension, required in Condition of Approval No. B that "The Nature Center shall be constructed and open to use by September 30, 2011"; that the Nature Center has been completed; that the County Council also required in Condition of Approval No. C that "Construction of the Clubhouse shall commence no later than three (3) years from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697"; that the irrevocable letter of credit was issued by Parks Sterling Bank in the amount of \$1,375,000.00 and is valid through March 23, 2015; that if this application is approved, the letter of credit would be renewed through the completion of the construction of the clubhouse; that this was acceptable to the County when it was done; that construction of the Clubhouse has not yet been started; that this application was filed with the County on March 7, 2014; that the question is, why didn't the construction of the clubhouse commence within the 3 years; that Wells Fargo pursued foreclosure in both the Court of Chancery and the Delaware Superior Court; that the process involved litigation and through that process, Wells Fargo, through its subsidiary, is now the owner of the property (as of May 2014); that it is Wells Fargo's intention, and they are now in the process, of finding a buyer for the development; that the buyer will take over the management and the completion of the development including the design and construction of the clubhouse; that Wells Fargo is actively marketing the development; that Wells Fargo expects to complete the process and sale this year; that the purchaser will be made aware of the obligation to construct the clubhouse and it is intended that the final design and construction will include the input from the existing Peninsula owners; that by granting the 14 month extension they are requesting (construction to start no later than October 1, 2015), it will provide enough time for Wells Fargo to find a buyer, to complete the settlement, and to have the new developer design the clubhouse with the input of the owners; that one of the financial securities is the bonding of 125% of the construction cost currently being held by the County; that if the time extension is not granted, the County Council could call the bond and proceed with the construction of the Clubhouse; that the purchaser will have to work with the residents of the project to determine the needs of the community for the Clubhouse; that the \$1,375,000.00 bonding was based on an estimate on the size of the previous footprint for the Clubhouse.; that the County has already accepted the \$1,375,000 as the Letter of Credit amount; and that there is an escrow account in the amount

**Public
Hearing/
CZ 1751
(continued)**

of \$3 million for the Clubhouse and that funds are added to this account as new homes and lots are sold with a fee being paid by the homeowners.

Mr. Fuqua proposed to modify Condition 10(C) in Ordinance No. 2180, as follows: “Construction of the Clubhouse shall commence no later than October 1, 2015, with construction to be completed 12 months thereafter. A bond, cash bond or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1751.”

Public comments were heard.

John Gee, Chairman of the Peninsula Homeowners Action Committee (PHAC), was present on behalf of PHAC and he stated in his presentation and in response to questions from the Council that they are a community of 635 homeowners; that of the 635 homeowners, 462 homeowners (approximately 75%) are members of PHAC, which is a 50% increase in the number of owners since the last requested time extension; that whatever action the Council decides to take in response to the request for an additional extension to build the Clubhouse will impact the present and existing homeowners as well as potentially 750 future homeowners, and also the bank and the new developer who purchases the property; that the PHAC fully and unequivocally endorses the Motion adopted by the Planning and Zoning Commission on July 24, 2014 pertaining to the design and construction of the Clubhouse and that they urge the Council to approve the Commission’s well developed and carefully timed plan for completion of the Clubhouse on or before December 1, 2016 including its stipulation that further extensions to build the clubhouse will not be entertained; that the Commission’s recommendation allows the owner and/or new developer sixty days to reach an agreement with the current homeowners on a concept and sketch of the clubhouse which must include both its size and an estimated construction and furnishing cost per square foot and thereafter, the owner/new developer would, according to the Motion approved by the Commission, be required to post a bond or letter of credit in an amount that is 125% of the total estimated cost of the building; that the Commission made clear that, if the owner and/or new developer do not comply with the Commission’s timetable, no new building permits would be issued for construction of new homes in The Peninsula; that the PHAC encourages the Council to approve these conditions which are entirely appropriate in the circumstances that now exist and which are also fully capable of being readily achieved; that the PHAC, with its 462 dues paying homeowners, is ready to perform responsibly and reasonably its role in evaluating and participating in the clubhouse design and budgeting process; that in conjunction with Wells Fargo, they obtained from The McMahon Group, one of the foremost clubhouse consulting firms in the United States, two separate size and cost estimates for a clubhouse based upon two scenarios: (1) the 1400 units authorized under the original and current Master Plan for this Community; or (2) a smaller number of units,

**Public
Hearing/
CZ 1751
(continued)**

1000; that there is no legitimate reason for any dilution or delay in implementing the Commission’s recommendation; that the PHAC will agree to an extension of the completion date until on or before December 1, 2016, only if they are assured that they will have a direct role in determining the design, size and cost of the clubhouse to be built and that real consequences will apply if the timetable for design and construction is not met; that they have been told repeatedly by Wells Fargo that it expects the sale of The Peninsula to occur in the fourth quarter of this year and that their Committee will be afforded a role in vetting the qualified buyers; that by establishing the square footage and cost requirements, potential buyers will be on a level playing field when submitting their bids; that this level playing field will also prevent the homeowners from being short changed by a buyer who promises one thing and delivers less; that the timetable established by the Commission will moreover allow the successful bidder at least six months to finalize the drawings and select a general contractor and an additional 16 to 18 months to complete the project; and that this is a very reasonable timetable; that while the ultimate size and cost of the facility to be constructed will, no doubt, be large, there are three important facts that the Council should take into consideration in resolving this matter: (1) Collectively, the current homeowners have invested well over a quarter of a billion dollars (more than \$250 million) in homes in this community, (2) the value of the properties has been depreciated by the repeated failures of the original developers and the Receiver to comply with the County’s ordinances (and amendments to same) by refusing to timely build the centerpiece of this community, a large gathering place with great vistas and top-grade amenities; and (3) it must be emphasized that the cost of the Clubhouse is “not” a one-off expenditure that will never be recouped by either bank or the new developer for two separate reasons: First, the facility that is built will be owned by the new developer and it will retain its inherent value and likely appreciate over time. Second, the construction of the new clubhouse will enhance the value to the developer of all the remaining 651 unfinished lots, especially, the 70 lots in the Sanctuary Community bordering the Indian River Bay; that the carefully crafted process and timetable articulated by the Commission requires that the ultimate decision on the size and cost of the clubhouse will be made by the Bank or new developer and the homeowners; that this process and timetable sets a firm, immovable deadline for completion that neither party can ignore; that there is some uncertainty as to the clubhouse; that there have been various sketches of the proposed clubhouse; that the Commission’s recommendation will provide some certainty to a process that, for the last 10 years, has not existed; and that, regarding the escrow account, it has accumulated itself to over \$3 million and the \$1,375,000 is a part of the \$3 million, which in effect secures the bond/letter of credit. In conclusion, Mr. Gee clarified that the PHAC approves the extension and agrees with the Planning and Zoning Commission’s recommendation.

Mr. Gee previously submitted a written statement which was distributed to Council and made a part of the record. The written statement included a Clubhouse Needs Assessment Report prepared by the McMahan Group

**Public
Hearing/
CZ 1751
(continued)**

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

Mr. Phillips commented that this matter has been going on for 12 years and that strict limitations/provisions are needed that will force Wells Fargo to begin construction of a \$15 million clubhouse.

**M 382 14
Defer
Action/
CZ
No. 1751**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action for two weeks (until August 19, 2014) on Change of Zone No. 1751 filed on behalf of Peninsula at Long Neck, LLC to give the Council the opportunity to consult with Planning and Zoning and Legal Counsel.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing/
CZ 1753**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS” (Change of Zone No. 1753) filed on behalf of Cadbury at Lewes, Inc. (911 Address: 17028 Cadbury Circle, Lewes) (Tax Map I.D. 3-35-8.00-37.00 - Part of).

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2014 at which time action was deferred. On June 26, 2014, the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission on June 12 and 26, 2014.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Planning and Zoning Commission’s Public Hearing.

It was noted that the Applicant submitted Exhibit Books which were distributed to the Council.

The Council found that Carol Holzman, representing Cadbury at Lewes, Inc., was present with Robert Gibbs, Esquire, of Morris, James, Wilson, Halbrook & Bayard, LLP, and Ring Lardner, Professional Engineer, of Davis, Bowen & Friedel, Inc.

**Public
Hearing/
CZ 1753
(continued)**

Mr. Gibbs stated that the site is located just off Gills Neck Road to the rear of the existing Cadbury project; that the parcel contains 5.0 acres and is being purchased from the Mitchell property for expansion of the existing assisted/independent living project; that the existing Cadbury project was approved by Ordinance No. 1679 in April 2004; that the original MR-RPC approved 212 units and 215 were built; that the issue of the three additional units will be corrected with this proposed application because the 5 acres would actually support 32 units; that the project is currently at 90% capacity; that they are proposing 29 additional apartment type units on this site and the three (3) units within the existing project; that the current project includes independent cottages, apartments, assisted living quarters, and nursing/rehabilitation facilities; that this proposal is intended to be an expansion, not a separate application site; and that they have no objections to the conditions proposed by the Planning and Zoning Commission.

Mr. Lardner stated that the proposal is for four buildings; that two shared parking lots will be located on the side of the buildings; that the proposal will be harmonious with the existing buildings; that the landscaped buffer that currently exists will be relocated to form the western boundary of the property; that the property is currently split-zoned (AR and MR) and the request is to rezone the entire property to MR-RPC; that 2.9 acres is proposed to be open space; that a maintenance shed is also proposed with this expansion; that the project was reviewed by PLUS on April 23, 2014 and comments were received from the Office of State Planning Coordination on May 21, 2014; that DeDOT did not require a Traffic Impact Study; and that an Environmental Assessment and Public Facilities Report was prepared and included in the Exhibit Book.

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

**M 383 14
Adopt
Ordinance
No. 2361
(CZ 1753)**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to Adopt Ordinance No. 2361 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS” (Change of Zone No. 1753) filed on behalf of Cadbury at Lewes, Inc., with the following conditions:

- a. The total number of units permitted by this application shall be 32. This includes 29 new units in the rezoning area and three (3) units within the existing Cadbury project.**
- b. The property that is covered by this application shall be incorporated into the entire Cadbury at Lewes project.**
- c. The existing 30 foot landscaped buffer located along the western boundary of Cadbury shall be relocated to the western boundary of**

**M 383 14
Adopt
Ordinance
No. 2361
(CZ 1753)
(continued)**

the expansion area.

- d. With the exception of the number of units, the conditions imposed on Ordinance No. 1679 shall apply to this approval.**
- e. The Final Site Plan for this MR-RPC shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 4 Yeas, 1 Absent.

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

**M 384 14
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 2:50 p.m.

Motion Adopted: 4 Yeas, 1 Absent.

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

Respectfully submitted,

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